

WE WILL make Clyde Crider whole for any loss of pay suffered because of the discrimination against him.

LOCAL UNION 595, INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL AND ORNAMENTAL
IRON WORKERS, AFL,

Labor Organization.

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.

HANCOCK TRUCKING, INC.¹ and OFFICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 33, AFL. *Case No. 6-CA-758. July 8, 1954*

Decision and Order

On March 2, 1954, Trial Examiner Albert P. Wheatley 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 also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief. The Respondent filed a brief in support of 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 exceptions and the briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the exceptions, modifications, and additions noted below.

1. We agree with the Trial Examiner that the Respondent, in violation of Section 8 (a) (1) of the Act, by its interrogation of and threats to William Taylor on September 29, 1953, interfered with, restrained, and coerced employees in the exercise of rights guaranteed under Section 7 of the Act.

2. We further agree with the Trial Examiner that the Respondent did not, in violation of Section 8 (a) (3) of the Act, discharge Angeline Greco and Philomena Pesce because of their membership and activities in the Union. As noted in part by the Trial Examiner in his Intermediate Report, uncontradicted evidence reveals that, not only had the decision to discharge Greco and Pesce during the week

¹ The name of the Respondent appears as corrected at the hearing

of September 28, 1953, been made on Monday evening, September 28, 1953, and prior to any knowledge by the Respondent of union activity by its employees, but also, that the decision to make said discharges effective on Thursday, October 1, 1953, had been made on Tuesday, September 29, 1953, and prior to the time that the Respondent had knowledge that Greco and Pesce were members of the Union. Such knowledge on the part of management is a prime requisite to establish illegal motivation.²

Accordingly, as the record does not warrant the conclusion that the discharges of Greco and Pesce were effectuated because of the Respondent's knowledge of union activity, we concur with the Trial Examiner, and find no basis upon which to make a finding that these employees were discharged in violation of Section 8 (a) (3) of the Act.³

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Hancock Trucking, Inc., McKees Rocks, Pennsylvania, its agents, successors, and assigns, shall:

1. Cease and desist from discouraging self-organization or concerted activities among employees for their mutual aid and protection as guaranteed in Section 7 of the Act, by interrogating employees concerning, or by threatening employees with economic reprisals because of, such activities.

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

(a) Post at its terminal in McKees Rocks, Pennsylvania, copies of the notice attached to the Intermediate Report marked "Appendix A."⁴ Copies of said notice, to be furnished by the Regional Director for the Sixth Region, shall, after being duly signed by a representative of the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to office 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.

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

² See *Neuhoff Bros , Packers*, 103 NLRB 451 at 455

³ See *Trumfit of California, Inc.*, 101 NLRB 706 at 707-708.

⁴ This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner," the words "A Decision and Order." In the event that this Order is enforced by a decree of the United States Court of Appeals, there shall be substituted for the words "A Decision and Order," the words "A Decree of the United States Court of Appeals, Enforcing an Order"

IT IS FURTHER ORDERED that the allegations of the complaint to the effect that the Respondent unlawfully discharged and failed to reinstate Angeline Greco and Philomena Pesce, be, and they hereby are, dismissed.

Intermediate Report

STATEMENT OF THE CASE

The primary issue herein concerns the discharges of Angeline Greco and Philomena Pesce on October 1, 1953. Counsel for the General Counsel contends they were discharged because of their membership and activities in Office Employees International Union, Local 33, AFL, herein called the Union. Hancock Trucking, Inc., herein called Respondent, contends they were discharged for legitimate and valid economic reasons in an endeavor to improve its financial condition at the terminal and warehouse at McKees Rocks, Pennsylvania.¹

FINDINGS OF FACT

Early in 1953 Respondent undertook to improve its financial condition at McKees Rocks, and with this aim moved Ray Vega, in February 1953, from its principal offices in Evansville, Indiana, to McKees Rocks, as office manager. The situation had not improved substantially in June 1953 when Vega resigned. Vega was replaced by David Meeker in the middle of June 1953. At that time there was "quite a backlog of work" and the accounts receivable were \$87,000 delinquent (\$87,000 was due and owing to Respondent). Meeker was instructed to improve the situation regarding accounts receivable and the office generally.

In order to measure the efficiency of the terminal in collecting monies due and owing, Respondent has developed a formula resulting in what is known as a "collection factor," represented by a numerical figure. The method of computing this collection factor and its full significance is not clear to the undersigned. However, there is no doubt from this record that in gauging efficiency Respondent relied upon the collection factor and that decreasing this factor was a major goal. Generally, a low collection factor indicates high efficiency and vice versa. Respondent seeks to have a collection factor of just under 40 percent.

In April 1953 the collection factor at McKees Rocks was 109 percent. It dropped to between 80 percent and 90 percent in May. The record does not reveal what this factor was in June but the inference is that it was considerably higher than 40 percent.

When Meeker became office manager in June 1953, he was instructed to get the collection factor down as close as possible to 40 percent. He at once instigated a campaign to clear up the accounts receivable. It was anticipated that within 30 days and in not more than 60 days the accounts receivable would be reduced to where the collection factor was near 40 percent. Nevertheless, the collection factor by the end of July was 66.10 percent and by the end of August was near 66.12 percent.

Officials from Respondent's home office were constantly in communication with Meeker demanding that more improvement be made with respect to the accounts receivable and suggestions were made that Meeker discharge some or all of the office force, if necessary, to improve these accounts. Meeker was reluctant to make any discharges. Nevertheless, in August and September he contacted an employment service (Rox Office Service Company) in an endeavor to get competent clerical workers. Difficulty was experienced in obtaining qualified persons who would accept employment at Respondent's McKees Rocks place of business. Several persons were interviewed but for various reasons did not become employees. Finally, on or about September 15, 1953, Shirley Saffa was employed and she began working for Respondent on September 22, 1953.

Meanwhile pressure from Respondent's home office to clear up the accounts receivable situation became more intense and it was indicated to Meeker and to Terminal Manager Sam Framiglio that they would have to achieve more satisfactory results or risk the possibility of their being changed (transferred or discharged).

On Friday, September 18, 1953, there was a meeting in the terminal manager's office and those present (Framiglio and office employees Fenk, Taylor, Greco, Pesce,

¹ Respondent is an Indiana corporation having its principal offices in Evansville, Indiana, and places of business in 10 States and is engaged in the transportation of freight, in intrastate and interstate commerce, by motor vehicles. There is no issue herein concerning jurisdiction.

and Rogers) were informed by Meeker that the situation concerning accounts receivable was not satisfactory and that if the "collection factor" was not decreased to 40 percent all their jobs were in danger, including his own and Framiglio's.

Roy R. Brown, Respondent's comptroller, visited the terminal involved herein September 20 to 22, 1953. During this visit Brown told Meeker, that he (Meeker) had been at the terminal "long enough to have achieved more results than had been accomplished" and that "in order to vindicate his [Meeker's] transfer here [to McKees Rocks] and the money we [Respondent] were paying him, that he would have to accomplish our objective [get the collection factor near 40 percent] or we would have to replace him." Meeker indicated to Brown that he (Meeker) was having difficulty getting office employees "to change their methods or follow instructions" and to work overtime. Brown told Meeker he (Brown) wanted better results, that it was up to Meeker to get them even if he (Meeker) had to change personnel to get them, and that Meeker's job was in jeopardy unless better results were achieved. Brown left to Meeker's discretion whether replacement of personnel should be made, but indicated he (Brown) believed replacements necessary. Brown was satisfied that there were a sufficient number of officeworkers to handle the volume of work. Brown was also concerned about "difficulty getting reports" which his office in Evansville, Indiana, required and suggested that Meeker "prevail upon [the cashier—Greco] to take on additional functions" since "seemingly"² she was in a position to do so. Brown and Meeker also discussed giving the employees a bonus as an incentive to get them to work harder to get the collection factor to less than 40 percent.

On September 22, 1953, Meeker offered a bonus "of \$25 a month" and a \$2 per week wage increase to office employees Taylor, Pesce, Greco, Fenk, and Rogers if the accounts receivable were decreased to where the collection factor was in the neighborhood of 40 percent. The inference from the entire record is that to obtain this bonus and increase the employees were to accomplish, or at least approach, this result by the end of the month. At about this date, Meeker also sought to have the office employees work overtime. On various dates thereafter (and prior thereto) various individuals, but not all office employees on the same date, did in fact work overtime.³

About the middle of September 1953, office employees Fenk, Taylor, Greco, Pesce, and Mozurak discussed joining a union for office employees. Thereafter a shop committeeman of the union which represents Respondent's truckdrivers, dockhands, and helpers was contacted and the office employees were referred to the Union involved herein. A meeting with the Office Employees Union was scheduled for September 26.

During the week beginning September 21, 1953, office employee Fenk asked Terminal Manager Framiglio whether "anybody was to be fired" and upon being told that he (Framiglio) "didn't know anyone was going to be laid off" requested that in the event "anybody was going to be" laid off that person be given notice of such layoff before the layoff was made effective.⁴ Framiglio answered that "was up to Mr. Meeker."

On Saturday afternoon, September 26, 1953, Fenk, Taylor, Greco, Pesce, and Mozurak signed union membership application forms at the headquarters of the Office Employees Union located in Pittsburgh and Fenk was designated shop steward.⁵

On several occasions throughout the events outlined above, Morris, Respondent's operation manager, visited the terminal involved herein and suggested replacement of the two employees whom he believed primarily responsible for the condition of the accounts receivable. On Monday, September 28, Morris told Meeker to dis-

² From Brown's casual observation.

³ Respondent's brief states that the office employees were informed on September 22 "that they would have to work overtime every night until the end of the month." Although there is testimony that such is a fact, the undersigned, on the basis of the entire record, is not convinced that the evidence warrants a finding to this effect. Also, the undersigned is not convinced that employees not working overtime on particular dates refused to so work. The record reflects they may not have been asked to work overtime on those dates and, if asked, may have been excused.

⁴ It had not been the practice or custom of Respondent to give such notice.

⁵ Neither Greco nor Pesce became an officer or steward for the Union and Greco testified she did not "do anything to try to help organize the employees" other than to go to this meeting. There is no evidence that Pesce was more active than Greco on behalf of the Union.

charge these employees by the end of the week, or be replaced himself. Although Morris may not have referred to Greco and Pesce by name, it is apparent from the record herein that he was referring to these two employees and that Meeker so understood.⁶

On Monday, September 28, after Respondent's usual working hours, Meeker employed Dorothy Naves, who at that time had a part-time job with an advertising agency. Naves was informed that Meeker did not know exactly when he would actually need her but, nevertheless, she was assured of a job and he did not want her to seek other employment. Naves was promised 3 days' pay, without performing any work, in return for her promise to be available to start work on short notice.

On Tuesday, September 29, Meeker and Framiglio decided that on the following Thursday, October 1, Greco and Pesce would be discharged.⁷

During the morning on September 29, Mike Robic, operations manager at the terminal, told Meeker and Framiglio that he (Robic) had overheard a conversation between office employee Florence Fenk and the steward for the union which represents the truckdrivers, dockhands, and helpers, in which Fenk and this steward discussed a union for officeworkers. That evening (September 29) office employee William J. Taylor was called back to the terminal and interrogated about the union activities of the office employees. Taylor, in response to questions by Meeker, stated that Fenk, Greco, and Pesce were probably in the Union and indicated his own interest in the Union. Meeker indicated to Taylor that he (Meeker) was opposed to the union activities of the office employees and was going to stop them and cautioned Taylor that union activities by him (Taylor) might lead to his (Taylor's) discharge. Meeker also told Taylor that Greco and Pesce "would be fired that week" and asked him (Taylor) not to mention it.⁸

Before noon on October 1, Naves (the individual subject to call on short notice) received a message that she was to report for work at Respondent's place of business the next day. Before 5 p. m., on October 1, she telephoned Meeker and he confirmed this report. Naves appeared at the terminal on October 2, but did not begin working that day because there was a picket line. She started working October 5.

At 9:30 a. m. on October 1, Meeker called Frances S. Yeschka, operator of the Rox Office Service Company, and asked for a replacement for one of the girls. Yeschka contacted Theresa Babro and made an appointment for her to see Meeker after working hours that date. At 7 o'clock that night Babro conferred with Meeker. Meeker wanted her to start work the following morning but Babro insisted it was necessary to give her present employer 1 day's notice. Babro was employed by Meeker and it was agreed that she would report for work the following Monday, which she did.

Between 2 and 3 p. m. on Thursday, October 1, Meeker and Framiglio went out to lunch. En route they stopped at the post office where Meeker received a registered letter from the Union dated September 29, 1953, stating that the Union represented the office employees and requesting a meeting for the purpose of establishing a collective-bargaining agreement. Meeker and Framiglio discussed the effect of this letter upon the plan to discharge Greco and Pesce but, because of an investigation of thefts being conducted that afternoon, did not give the matter their full attention until about 4:30 p. m. At this time Meeker telephoned Brown, Respondent's comp-

⁶ The evidence reveals that Greco's primary duties concerned the accounts receivable and that a substantial portion of Pesce's, and of other officeworkers, duties concerned these accounts. While there is some question in the mind of the undersigned as to whether Pesce was more responsible for the condition of these accounts than some of the other officeworkers there is no doubt that she properly could be, and was, held responsible by Morris. The undersigned cannot find that Morris' belief, noted above, was unwarranted.

⁷ The testimony is not consistent as to whether this decision was made on Monday or Tuesday. The inference from the entire record is, and the undersigned finds, that it was made on Tuesday and before the conversation with Taylor hereinafter outlined. Also it is not clear why Thursday instead of Friday (payday) was selected as the date for the discharges, but the record is clear that it was determined that Thursday was to be the effective date (the last day these employees would work).

⁸ Taylor testified that Meeker told him that he (Meeker) was going to fire all the girls in the office and get new ones but that he (Meeker) would like to keep Pesce "because she is the best worker." The record herein indicates that Meeker, on this occasion, probably did threaten to combat organizational efforts by firing all the girls in the office. Nevertheless, in the light of the entire record it does not appear probable that Meeker said he would like to keep Pesce "because she is the best worker." The undersigned finds the facts to be as noted above.

troller, in Evansville, Indiana, and asked him the effect, if any, of the letter upon the contemplated discharges. Brown told Meeker to contact Morris⁹ in Indianapolis. Meeker had some difficulty contacting Morris, since Morris was attending a meeting, and did not talk with him until about the time the office employees left the terminal for the day. Morris told Meeker the union letter had no effect on the matter, and, upon being told that the employees had already left the terminal, told Meeker to send them telegrams terminating their employment.¹⁰

By telegram dated and delivered October 1, 1953, Meeker advised Greco and Pesce:

Due to unavoidable circumstances your services are no longer required as of this date October 1st. Your checks will be mailed to you along with three days severance pay.¹¹

Naves and Babro, the two employees who reported for work on October 5, replaced Greco and Pesce.

The accounts receivable outstanding at the end of September were \$68,506.13; by the end of October they had dropped to \$47,022.65. The collection factor at the end of October was 42.92 percent. In September it was 58.81 percent. At the hearing on December 18, 1953, Brown, Respondent's comptroller, testified "At the end of November, I believe it to be less than 40."

Conclusions

As noted above, the evidence reveals that the decision to discharge Greco and Pesce was made prior to September 29 and the effective date of such discharges was determined prior to the meeting with Taylor on September 29 where Taylor told Meeker that Greco and Pesce were "probably in the Union." There is no direct evidence that Respondent was aware of the union membership of Greco and Pesce prior to the evening of September 29 and the evidence adduced is not sufficient to warrant an inference of such knowledge prior to that date. Furthermore, if it be assumed that these discharges were not contemplated and the effective date therefor not determined until after Respondent became aware of the union activities of its officeworkers and that Respondent was motivated by a desire to discourage such union activities, a question arises as to why Respondent discharged mere members of the Union instead of known or suspected leaders thereof (Fenk and Taylor). Added emphasis is given to this query since the record reveals that apparently Respondent has specific grounds for discharging Taylor and the Union's majority status would have been affected by his discharge (the Union had only a bare majority). In view of the foregoing the undersigned recommends that the allegations of the complaint concerning Greco and Pesce be dismissed.¹²

As noted above, on September 29, officeworker Taylor was called back to the terminal after office hours and interrogated about the union activities of the officeworkers and told that Respondent was opposed to such activities and might resort to discharges to combat them and that he (Taylor), too, might lose his job if he engaged in such activities. Respondent, conceding that such conduct is violative of the National Labor Relations Act, as amended, herein called the Act, asserts that it would not effectuate the policies of the Act to recommend a cease-and-desist order with respect to this matter since the interrogation and threats took place during a single discussion with one employee. The undersigned rejects this contention. In the opinion of the undersigned these illegal activities go to the very heart of the Act and indicate a purpose to defeat self-organization of employees and the Act will be thwarted unless an adequate remedy is provided.

⁹ Morris' duties as operation manager included handling of matters pertaining to personnel and labor relations.

¹⁰ Morris frequently used telegrams to discharge employees

¹¹ It is the practice of Respondent to give notice of discharge the same day an employee is to be relieved from duty and also to give severance pay of from 3 days to a week in lieu of advance notice

¹² At the hearing before the undersigned, evidence was received concerning specific instances of alleged inefficiency, lack of cooperation, and absenteeism by Greco and/or Pesce. Assuming, arguendo, that Respondent's evidence with respect to these matters does not stand up under scrutiny, nevertheless, the preponderance of the evidence taken does not establish that Greco and Pesce were discharged because of their membership and activities in the Union. Accordingly, the undersigned is not resolving the issues with respect to these matters.

ULTIMATE FINDINGS AND CONCLUSIONS

In summary, the undersigned finds and concludes:

1. Office Employees International Union, Local 33, AFL, is a labor organization within the meaning of the Act.
2. Hancock Trucking, Inc., is engaged in commerce within the meaning of the Act.
3. By its interrogation of, and threats to, William Taylor on September 29, 1953, Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and thus engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
4. The aforesaid unfair labor practices occurring in connection with the operations of Respondent's business, 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.
5. The evidence adduced does not establish that Respondent engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

[Recommendations omitted from publication.]

Appendix A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a trial examiner 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 discourage self-organization or concerted activities among employees for their mutual aid and protection as guaranteed in Section 7 of the Act by interrogating employees concerning, or by threatening employees with economic reprisals because of, such activities.

All our employees are free to become, remain, or to refrain from becoming or remaining members of any labor organization except to the extent that such right may be affected by an agreement in conformity with Section 8 (a) (3) of the National Labor Relations Act.

HANCOCK TRUCKING, 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.

PAUL STEVENS, RECEIVER OF CAROLINA SCENIC STAGES, A CORPORATION;
CAROLINA SCENIC STAGES, AS A CORPORATION AND AS DEBTOR IN POSSESSION;
AND HAMISH TURNER *and* BROTHERHOOD OF RAILROAD TRAINMEN, F. L. PICOTTE LODGE No. 1038. *Case No. 11-CA-542.*
July 9, 1954

Decision and Order

On November 23, 1953, Trial Examiner Eugene F. Frey 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 Respond-