

[The Board denied the motion to set aside its order and to dismiss its complaint.]

MEMBER BEESON took no part in the consideration of the above supplemental Decision and Order.

---

BLUE FLASH EXPRESS, INC. and GENERAL TRUCK DRIVERS, WAREHOUSEMEN & HELPERS LOCAL 270, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL. *Case No. 15-CA-618. July 30, 1954*

### Decision and Order

On November 13, 1953, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report accompanied by a supporting brief. The Respondent filed a brief in support of the Intermediate Report.

The Board has reviewed the rulings of the Trial Examiner made 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 briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations contained in the Intermediate Report, except as modified below.

1. The Trial Examiner in this case was faced with a sharp conflict in testimony as to whether the Respondent's general manager, Golden, and its superintendent, Gravolet, made to employees certain express threats and promises, more fully set forth in the Intermediate Report. The Trial Examiner found that there was nothing in the demeanor of the witnesses of the General Counsel and of the Respondent to detract from their trustworthiness and that there was no inconsistency in the testimony of any witness which would enable the Trial Examiner to determine who was telling the truth. Because of these circumstances, the Trial Examiner stated in his Intermediate Report that he could not "find a preponderance of evidence to support the alleged threats of shutdown and promises of benefit." Accordingly, he found, consistently with the testimony of Golden and Gravolet, "only that Golden conducted the conversations with the employees in the manner to which he testified."

Contrary to the General Counsel's exceptions, we find nothing improper in the manner in which the Trial Examiner resolved this issue.

The burden of proof is upon the General Counsel. When, as in this case, the Trial Examiner is not persuaded by the testimony of the General Counsel's witnesses that threats and promises were made to them by the Respondent, the General Counsel has failed to meet that burden of proof. As an examination of the record discloses no other basis for reversing the Trial Examiner,<sup>1</sup> we find that the allegation that the Respondent violated the Act by making threats of reprisals or promises of benefit to its employees has not been sustained.

2. Between the date of the Respondent's receipt of a letter from the Union, dated May 19, 1953, claiming majority status and requesting collective bargaining, and the Respondent's reply thereto, dated May 22, 1953, which questioned the Union's majority status and thus rejected the Union's request, General Manager Golden interviewed the employees, individually, in his office. In substance, Golden told them that he had received the letter from the Union, that it was immaterial to him as to whether they were union members, but that he desired to know whether they had signed a union card so that he might know how to answer the Union's letter. In reply to Golden's interrogation, each employee denied that he had signed any union card, although a majority of them had done so, designating the Union as their representative on or about May 17, 1953.

On the basis of these facts, the Trial Examiner, without determining whether Golden's interrogation of the employees constituted a violation of Section 8 (a) (1) of the Act, concluded that no useful purpose would be served by issuing a cease and desist order based thereon because such conduct was of an "isolated nature."

Whether or not such conduct is to be regarded as "isolated," we are, in any event, of the opinion that Golden's interrogation of the employees was not violative of the Act. At the time of the interrogation, the Respondent had just received a communication from the Union claiming majority status and the right to represent the Respondent's employees in collective bargaining. Golden so informed the employees. He further gave them assurances that the Respondent would not resort to economic reprisals and advised them that he wished to know whether they had signed union authorization cards in order to enable him to reply to the Union's request for collective bargaining. As found above, there is no credible evidence that the Respondent at any time made any threats or promises violative of the Act, resorted to any reprisals, or exhibited any antiunion animus. Although the employees who had signed union authorization cards gave false answers to Golden's inquiries, the Respondent did nothing to afford them a reasonable basis for believing that the Respondent might resort to reprisals because of their union membership or activity. The facts here are similar to those presented in *Atlas Life Ins. Co. v. N. L. R. B.*, 195 F. 2d

<sup>1</sup> *Standard Dry Wall Products*, 91 NLRB 544

136, where the Employer tried to find out whether a union represented a majority of the employees so that he would know whether he was obligated to bargain with the union. In that case, the Court of Appeals for the Tenth Circuit held that such interrogation was proper.<sup>2</sup> When such interrogation is conducted under proper safeguards, as was the situation in the instant case, the fact that the interrogation is systematic does not, in itself, impart a coercive character to the interrogation. The purpose of such interrogation could not be achieved without systematic inquiry.

Contrary to the assertion of our dissenting colleagues, we are not holding in this decision that interrogation must be accompanied by other unfair labor practices before it can violate the Act. We are merely holding that interrogation of employees by an employer as to such matters as their union membership or union activities, which, when viewed in the context in which the interrogation occurred, falls short of interference or coercion, is not unlawful.

Our dissenting colleagues rely upon the rationale of *Standard-Coosa-Thatcher*, 85 NLRB 1358, in which the Board held that interrogation *per se* is unlawful. They appear to overlook cases, for the most part of recent date, in which the courts of at least six circuits have explicitly or by necessary implication condemned the rationale of *Standard-Coosa-Thatcher*.<sup>3</sup> We hereby repudiate the notion that interrogation *per se* is unlawful and overrule *Standard-Coosa-Thatcher* and the line of cases following it to the extent that they are inconsistent with our decision today.

In our view, the test is whether, under all the circumstances, the interrogation reasonably tends to restrain or interfere with the employees in the exercise of rights guaranteed by the Act. The fact that the employees gave false answers when questioned, although relevant, is not controlling. The Respondent communicated its purpose in questioning the employees—a purpose which was legitimate in nature—to the employees and assured them that no reprisal would take place. Moreover, the questioning occurred in a background free

<sup>2</sup> Also, cf. *Graham County Electric Cooperative, Inc*, 96 NLRB 684, 685, where, in finding a violation of Section 8 (a) (1), the Board, unlike the Trial Examiner, refused to rely on an employer's conduct in seeking verification from some employees of their signature to a designation "petition" which a union had submitted as proof of its majority representation

<sup>3</sup> *N. L. R. B. v. England Bros*, 201 F. 2d 395 (C. A. 1); *N. L. R. B. v. Montgomery Ward & Co*, 192 F. 2d 160 (C. A. 2); *N. L. R. B. v. Associated Dry Goods Corp*, 209 F. 2d 593 (C. A. 2); *Jacksonville Paper Co v N. L. R. B.*, 137 F. 2d 148 (C. A. 5); *N. L. R. B. v. Tennessee Coach*, 191 F. 2d 546 (C. A. 6); *Sax v. N. L. R. B.*, 171 F. 2d 769 (C. A. 7); *N. L. R. B. v. Winer*, 194 F. 2d 370 (C. A. 7); *Wayside Press, Inc v N. L. R. B.*, 206 F. 2d 862 (C. A. 9). As far back as 1943, the Court of Appeals for the Fifth Circuit, in rejecting the view that interrogation *per se* is unlawful, stated in the *Jacksonville Paper* case, cited *supra* in this footnote: "He [the employer] is not precluded by the Act from inquiring or being informed as to the progress of unionism. He has a right to inquire if the Union was organized or washed up . . .," provided he does not do so "threateningly or coercively . . ."

of employer hostility to union organization. These circumstances convince us that the Respondent's interrogation did not reasonably lead the employees to believe that economic reprisal might be visited upon them by Respondent.

The instant case is thus distinguishable from such cases as *Syracuse Color Press*, 103 NLRB 377, enforced by the Court of Appeals for the Second Circuit, 209 F. 2d 596, where the employer called the employees to the superintendent's office a week before a scheduled Board election, advocated adherence to 1 of 2 rival unions, and questioned them concerning their union membership and activities, as well as the membership and activities of other employees, without giving any legitimate explanation for the interrogation or any assurance against reprisal. In such cases, unlike the situation in the instant case, the surrounding circumstances together with the nature of the interrogation itself imparted a coercive character to the interrogation.<sup>4</sup>

This decision does not by any means grant employers a license to engage in interrogation of their employees as to union affiliation or activity. We agree with and adopt the test laid down by the Court of Appeals for the Second Circuit in the *Syracuse Color Press* case which we construe to be that the answer to whether particular interrogation interferes with, restrains, and coerces employees must be found in the record as a whole. And, as the court states "The time, the place, the personnel involved, the information sought and the employer's conceded preference [as in that case] must be considered. . . ." Members of the majority have participated in a number of recent decisions in which we have joined in holding that certain acts of interrogation were violative of the Act, and we reaffirm that position here. Therefore, any employer who engages in interrogation does so with notice that he risks a finding of unfair labor practices if the circumstances are such that his interrogation restrains or interferes with employees in the exercise of their rights under the Act.

The rule which we adopt will require the Trial Examiners and the Board to carefully weigh and evaluate the evidence in such case, but that is what we believe the statute requires us to do. The only alternatives, both of which we reject, are either to find all interrogation *per se* unlawful, or to find that interrogation under all circumstances is permissible under the statute.

Our dissenting colleagues express disagreement with our decision, but do not make it clear precisely what rule they would follow. There is the strong implication that the dissenting members would hold interrogation to be coercive *per se*, which, of course, means wholly with-

<sup>4</sup> All the court cases cited in the second footnote of the dissent in the instant case, except *Jackson Press, Inc*, 201 F. 2d 541, 545, involved fact situations in which interrogation was coupled with independent acts of unfair labor practices; and the *Jackson Press* case is opposed to the overwhelming weight of court authority.

out regard to the circumstances in which it occurs. This would mean that a casual, friendly, isolated instance of interrogation by a minor supervisor would subject the employer to a finding that he had committed an unfair labor practice and result in the issuance of a cease and desist order, which, if enforced by the court, would subject the employer to punishment for contempt of court if the same or another minor supervisor repeated the question to the same or another employee. If this is not the position of our colleagues, and they agree that the Board is required to determine the significance of particular acts of interrogation in the light of the entire record in the case, the difference between their view and ours merely reflects disagreement as to the conclusion to be drawn from the particular facts of the case.

Hence, we conclude that the Respondent's interrogation of the employees under the circumstances of this case did not carry an implied threat of reprisal or in any other way interfere with, restrain, or coerce the employees in the exercise of the rights guaranteed in Section 7 of the Act. Accordingly, we find that such conduct is not violative of Section 8 (a) (1) of the Act.<sup>5</sup>

3. As the record does not establish that, in refusing to extend recognition to the Union, the Respondent was motivated by any consideration other than its asserted good-faith doubt as to the Union's majority status, we find, in agreement with the Trial Examiner, that the Respondent did not violate Section 8 (a) (5) of the Act.

As we find that the Respondent engaged in no unfair labor practice, the entire complaint shall be dismissed.

[The Board dismissed the complaint.]

**MEMBERS MURDOCK and PETERSON, dissenting:**

We dissent from this decision. The majority has here found that an employer did not violate the Act when he systematically interrogated his employees concerning their union adherence. In so doing the majority departs without convincing explanation from an established interpretation of the Act founded on long administrative experience and supported by court authority. In our opinion this departure is unsound and ignores the realities of industrial life. It fails to insure to employees the full protection of the Act in the exercise of the rights given them under Section 7 and fails to effectuate the declared policy of the Act to encourage collective bargaining.

The exact meaning and extent of the majority decision is not certain. Apparently, however, the majority has decided that interrogation unaccompanied by other unfair labor practices is not conduct which violates the Act.<sup>6</sup> We cannot agree.

<sup>5</sup> See cases cited in footnote 3, *supra*.

<sup>6</sup> This interpretation of the majority opinion is confirmed by the position of Chairman Farmer and Member Rodgers in *A. E. Nettleton Co.*, 108 NLRB 1637. In that case they

From the very beginning of the administration of this Act the Board has, with court approval, found that interrogation by an employer prevents employees from exercising freely their right to engage in concerted activities.<sup>7</sup> After a substantial period of administrative experience and after amendment of the Act, the Board reaffirmed its position that when an employer questions his employees concerning any aspect of concerted activity he violates Section 8 (a) (1) of the Act.<sup>8</sup> We believe that the carefully considered position on interrogation taken by the Board in previous cases is well founded, and we are aware of no recent development which warrants a departure from such precedent.

The rationale for finding interrogation violative of the Act is simple. Section 1 of the Act declares the purpose of the Act is to encourage collective bargaining and to protect "the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." Section 7 implements this purpose by guaranteeing employees the "right" to engage in or refrain from such activity. Section 8 enforces the guarantee by declaring it an unfair labor practice for an employer "to interfere with, restrain, or coerce" employees in the exercise of their rights under Section 7 and for a labor organization or its agents "to restrain or coerce" employees in the exercise of those rights. Employees can exercise fully their right to engage in or refrain from self-organizational and other concerted activities only if they are free from employer prying and investigation. When an employer inquires into organizational activity whether by espionage, surveillance, polling, or direct questioning, he invades the privacy in which employees are entitled to exercise the rights given them by the Act. When he questions an employee about union organization or any concerted activities he forces the employee to take a stand on such issues whether or not the employee desires to take a

---

concluded that instances of interrogation were not violative of Section 8 (a) (1) when the instances were "isolated remarks occurring in an atmosphere free of anti-union background" and were "not part of a pattern of conduct hostile to the Union." See also the views they expressed in *H. R. Vanover Coal Co*, 107 NLRB 1411, and *Poe Machine & Engineering Company, Inc.*, 107 NLRB 1372.

<sup>7</sup> See, for example, First Annual Report of the National Labor Relations Board (1936) 76; *Saxe Glassman Shoe Corp.*, 97 NLRB 332, enfd. 201 F. 2d 238 (C. A. 1); *Prcesson Fabricators, Inc.*, 101 NLRB 241, enfd. 204 F. 2d 567 (C. A. 2); *Kanmak Mills, Inc.*, 93 NLRB 490, enfd. in part 200 F. 2d 542 (C. A. 3); *Southland Mfg. Co.*, 98 NLRB 53, enfd. 201 F. 2d 244 (C. A. 4); *Stratford Furniture Corp.*, 96 NLRB 1031, enfd. 202 F. 2d 884 (C. A. 5); *F. H. McGraw and Co.*, 99 NLRB 695, enfd. as modified 206 F. 2d 635 (C. A. 6); *Jackson Press, Inc.*, 96 NLRB 897, enfd. as mod. 201 F. 2d 541 (C. A. 7); *United Biscuit Co.*, 101 NLRB 1552, enfd. 208 F. 2d 52 (C. A. 8), cert. denied 347 U. S. 934; *W. T. Grant Company*, 94 NLRB 1133, enfd. 199 F. 2d 711 (C. A. 9), cert. denied 344 U. S. 928; *Tri-State Casualty Insurance Co.*, 83 NLRB 828, enfd. 188 F. 2d 50 (C. A. 10); *Joy Silk Mills*, 85 NLRB 1263, enfd. as mod. 185 F. 2d 732 (C. A., D. C.), cert. denied 341 U. S. 914.

<sup>8</sup> *Standard-Coosa-Thatcher*, 85 NLRB 1358; *Syracuse Color Press*, 103 NLRB 377, enfd. 209 F. 2d 596 (C. A. 2) cert. denied, 347 U. S. 966; *Protein Blenders, Inc.*, 105 NLRB 890.

position or has had full opportunity to consider the various arguments offered on the subject. And the employer compels the employee to take this stand alone, without the anonymity and support of group action. Moreover, employer interrogation tends to implant in the mind of the employee the apprehension that the employer is seeking information in order to affect his job security and the fear that economic reprisal will follow the questioning. The fear induced by an employer's questions is illustrated by the fact that employees, as in this case, often give untruthful or evasive answers to such questions. The many cases in the Board's experience in which interrogation was the prelude to discrimination demonstrate the reasonableness of such fear. Interrogation thus serves as an implied threat or a warning to employees of the adverse consequences of organization and dissuades them from participating in concerted activity. It thereby undermines the bargaining agent chosen by the employees, thwarts self-organization, and frustrates employee attempts to bargain collectively. Such conduct tends to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Section 7 as prohibited by Section 8 (a) (1). Board condemnation of interrogation, which we believe is required by the Act, protects the right of employees to privacy in their organizational activities, removes the restraint and coercion resulting from the threat implicit in interrogation, and deters the commission of further unfair labor practices.

For these reasons the Board in its expert judgment and in the light of its administrative experience is warranted in concluding, as it has in the past, that interrogation generally inhibits employee self-organization and is violative of Section 8 (a) (1) whether or not other unfair labor practices are committed. This does not mean that all interrogation is automatically unlawful or requires remedial action by the Board. There are, of course, instances of interrogation which can be properly regarded as isolated, casual, and too inconsequential in their impact to constitute a violation of the Act or to warrant a Board remedy. In such situations we have participated in dismissing the allegations of illegal interrogation.<sup>9</sup>

The test for determining the legality of interrogation—as the members of the majority profess to recognize—is whether the interrogation, reasonably interpreted, tends to impair the free exercise by em-

---

<sup>9</sup> See, for example, *Socony Vacuum Oil Co., Inc.*, 78 NLRB 1185; *U. S. Gypsum*, 93 NLRB 666; *Boston & Lockport Block Co.*, 98 NLRB 686; *Remington Rand Inc.*, 103 NLRB 152; *Capital Lumber Co.*, 103 NLRB 187; *Maryland Sportswear Co.*, 104 NLRB 70; *Western Textile Products Company of Tennessee*, 104 NLRB 162; *Protein Blenders Inc.*, 105 NLRB 890.

A number of the circuit court cases cited by the majority as opposed to our position reflect the courts' conclusion that the interrogation there presented was "casual," "isolated," or "perfunctory." In considering the view of the Sixth and the Seventh Circuit Courts, see the following cases decided after the *Tennessee Coach, Saz*, and *Winer* decisions referred to by the majority: *F. H. McGraw and Co.*, 206 F. 2d 635 (C. A. 6); *Jackson Press, Inc.*, 201 F. 2d 541 (C. A. 7)

ployees of their rights under the Act.<sup>10</sup> In applying this test in interrogation cases, the Board must, of course, carefully weigh and evaluate the evidence as it must in all cases. And it must do so in the light of its administrative experience and specialized knowledge.<sup>11</sup> Viewing the interrogation in this case with these considerations in mind, we fail to see how the Respondent's questioning of its employees can be considered lawful. Certainly Section 8 (c) of the Act when it recognizes that an employer's expression of opinion is not an unfair labor practice does not privilege an employer to ferret out the views of his employees and to pry into their organizational activities.<sup>12</sup> We see no circumstances in this case which would make unreasonable the fear which questions such as those of the Respondent usually tend to engender. Here a high managerial representative, the general manager, was the interrogator; all employees in the bargaining unit were subjected to the questioning; each employee was interviewed separately; the place of the interviews was the general manager's office. While the general manager did state to the employees that it was immaterial to him whether they were union members and explained that he was seeking information for the purpose of answering the Union's letter, his assurances were ineffective when the entire situation belied them.<sup>13</sup> As the majority states, the interrogation was not accompanied by express threats or promises and was not followed by reprisals. The interrogation alone, however, we conclude, tended to create fear in the employees and to thwart organization. The facts demonstrate clearly the soundness of our conclusion: The employees obviously did not accept the assertions of the general manager and felt it necessary to misrepresent their union position. Each of the employees questioned denied that he had signed a union card although each had in fact signed a card only about 5 days before. The employees' denial of union adherence through fear furnished the Respondent grounds for refusing to bargain; the Union which had in fact represented all employees in the bargaining unit, was deprived of the recognition to which it was entitled by reason of its actual majority status and was incapacitated as bargaining agent; and the employees were deprived of the opportunity for collective bargaining. The majority apparently believes, however, that the employees here, in concealing their union adherence in the face of the general manager's assurances and explanation, behaved in an unreasonable manner. But these employees acted in a manner typical of employees subjected to interrogation. We wonder whether the members of the majority would

<sup>10</sup> *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 588; *Joy Silk Mills v. N. L. R. B.*, 185 F. 2d 732 (C. A., D. C.).

<sup>11</sup> See *Universal Camera Corp. v. N. L. R. B.*, 340 U. S. 474, 488; *N. L. R. B. v. Seven-Up Bottling Co.*, 344 U. S. 344, 346.

<sup>12</sup> *N. L. R. B. v. Minnesota Mining & Mfg. Co.*, 179 F. 2d 323, 326 (C. A. 8).

<sup>13</sup> See *Joy Silk Mills v. N. L. R. B.*, 185 F. 2d 732, 739, 743 (C. A., D. C.), cert. denied 341 U. S. 914.

consider the employees' behavior more reasonable had the employees, instead of denying their union affiliation, tested the good faith of their Employer's explanation by disclosing their allegiance to the Union or had the employees claimed a right under the Act not to answer their Employer's question. The majority's conclusion that the employees had no reasonable basis for fear of reprisal is simply contrary to all the Board's administrative experience and the realities of industrial life.

In addition to arriving at the unsound conclusion that the Respondent's interrogation did not reasonably tend to interfere with, restrain, or coerce its employees, the members of the majority encourage employers to engage in interrogation as a means of determining whether a labor organization represents a majority of their employees. They emphasize that the Respondent here questioned its employees to enable it to reply to the Union's request for recognition and that this purpose was legitimate in nature. An employer's purpose for inquiring into the union activities of his employees, we must point out, is not a significant or mitigating consideration in determining the legality of such conduct under Section 8 (a) (1). This section is concerned with the *effect* of the employer's conduct upon his employees' exercise of their statutory rights regardless of what motivates the conduct.<sup>14</sup> The Act protects employees from an innocent or ignorant invasion of their rights as well as from an intended invasion. And the remedy for the invasion does not penalize the employer but merely restores freedom of activity to employees by requiring the employer to refrain from the conduct which impairs that freedom and to notify the employees that he will do so. Yet the majority sanctions interrogation, with its attendant discouraging effects upon collective bargaining, when engaged in for the purpose of resolving the question of a labor organization's majority status.<sup>15</sup> We cannot understand this position nor can we see how our colleagues can approve such a method of determining a question concerning representation, a statutory function of the Board. This method places in the hands of an interested party, with obvious capacity to resort to economic reprisal against the voters, complete control over the timing, means of inquiry, the phrasing of the question, and compilation of results of the polling of employees; and it offers none of the traditional safeguards of voting such as a secret ballot and conduct of the poll by an impartial agency.<sup>16</sup> The fallibility of such a method for testing a majority claim and the

---

<sup>14</sup> See *N. L. R. B. v. Illinois Tool Works*, 153 F. 2d 811, 814 (C. A. 7); cf. *Republic Aviation Corp. v. N. L. R. B.*, 324 U. S. 793; *Radio Officers' Union, AFL v. N. L. R. B.*, 347 U. S. 17.

<sup>15</sup> See *A. E. Nettleton Co.*, 108 NLRB 1670, where the members of the majority, apparently relying upon the erroneous test of the employer's motive, likewise found that an employer's interrogation as to a labor organization's representative status was not violative of Section 8 (a) (1).

<sup>16</sup> Cf. *Protein Blenders, Inc.*, 105 NLRB 890.

inaccuracy of the results it obtains is demonstrated in this case where all employees in the bargaining unit when subjected to individual interrogation by the Respondent denied the union adherence which they had earlier adopted.

Several approved methods of determining whether a labor organization represents a majority of his employees are available to an employer. He may ask the labor organization to offer proof of its majority; he may request the organization to file a petition for a Board determination by election; or he may file a similar petition himself. He may agree with the labor organization to submit authorization cards to an impartial third party for a check; and we note that in making its bargaining request the Union here stated its willingness to agree to such a check. Finally, if an employer has a *genuine* doubt as to the labor organization's majority status, he may simply refuse to recognize the organization, and his good-faith doubt is a defense to a charge of a violation of the duty to bargain. With all these avenues open to an employer, plainly there is no need for him to utilize interrogation, with its coercive effect, in order to reply to a union's request for recognition, and the Board should not approve such conduct.

We are convinced that the majority decision in this case is unsound and an unwarranted departure from well-considered Board and court precedent. The unrealistic view our colleagues have taken of employer interrogation fails to protect employees adequately in the exercise of the rights guaranteed them by the Act and permits conduct which, in our opinion, will necessarily have an adverse effect on collective bargaining. We are firmly persuaded that the decision does not effectuate the purposes of the Act.

### Intermediate Report and Recommended Order

#### STATEMENT OF THE CASE

Upon charges filed by General Truck Drivers, Warehousemen & Helpers Local 270, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, a labor organization herein called the Union, the General Counsel for the National Labor Relations Board issued a complaint on June 24, 1953, against Blue Flash Express, Inc., herein called Respondent, alleging that the Respondent had engaged in specified conduct violating Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the complaint and charges were served upon the Respondent, and the Respondent in turn filed an answer denying the commission of the unfair labor practices alleged.

Pursuant to notice, a hearing was held in New Orleans, Louisiana, on October 19-20, 1953, before the undersigned Trial Examiner. The General Counsel and the Respondent were represented by counsel and all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The parties were given opportunity to present oral argument before the Trial Examiner and also to file briefs and proposed findings of the fact and conclusions of law.

Upon the record in the case, and upon observation of the demeanor of the witnesses, I make the following:

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

**Respondent, a Louisiana corporation with its registered corporate office in Baton Rouge, Louisiana, maintains its principal place of business in New Orleans, Louisiana, where it is engaged in the business of transporting roofing, siding, and other materials by motor truck between various points in and between the States of Louisiana and Mississippi. Respondent operates as an interstate motor carrier under a license issued by the Interstate Commerce Commission.**

In the year immediately preceding June 1, 1953, Respondent rendered services in the approximate value of \$132,000 to the following firms and corporations: 40 percent to Flintkote Company and the remainder to Jones-Laughlin Steel Corp., Laclede Steel Corp., and Orleans Materials & Equipment Co., Inc. During said period each of said firms and corporations, except Orleans Materials & Equipment Co., Inc., produced and handled goods for out-of-State shipment and performed out-of-State services valued in excess of \$100,000. Approximately 9 or 10 percent of said \$132,000 represents services rendered by Respondent in transporting materials directly between the States of Louisiana and Mississippi.

I find that the Respondent is engaged in commerce within the meaning of the Act.

## II. THE ALLEGED UNFAIR LABOR PRACTICES

The principal question in this case is whether the Respondent had a good-faith doubt concerning the Union's majority and was therefore justified in refusing to recognize and bargain with the Union.

The parties agree, and I find, that all truckdrivers and helpers employed by Respondent at its New Orleans terminal, excluding office and clerical employees, guards, professional employees, and supervisors, constitute an appropriate bargaining unit within the meaning of Section 9 (b) of the Act. The record further establishes that a majority of the approximately seven employees in this unit as of May 17, 1953, signed cards on or about that date designating the Union as their exclusive bargaining representative.

By letter dated May 19, 1953, the Union advised the Respondent that it represented a majority of the employees in the above-stated unit and that it was prepared to submit proof of such representation to Respondent or through a card check by an impartial third party, and it requested Respondent to enter into negotiations on a specified day. Respondent's general manager, John Golden, replied on May 22, 1953, that he had a question as to the Union's majority and he advised the Union to take up any further matters in this connection with Respondent's designated attorney.

Upon receiving the Union's letter and before sending his own response, Golden directed Superintendent Ben Gravolet to send the employees into Golden's office, which Gravolet did. Golden told each employee that he had received the aforementioned letter from the Union and that it was immaterial to him whether or not they were union members, but that he desired to know whether they had joined so that he might know how to answer the letter. Each employee denied his membership to Golden. According to Golden, this was the entire conversation with employees on this occasion, and he was corroborated in this regard by Gravolet and Mrs. Golden both of whom testified to having heard the conversations in an adjoining office. Several employees, on the other hand, testified that Golden also stated on this occasion that Respondent was too small to operate with a union and that Respondent would be impelled to sell out or reduce operations should the business be unionized. According to the stipulated testimony of employee Morris Jarvis, Golden also asked Jarvis as to who had solicited Jarvis in the Union's behalf. The next day, according to the stipulated testimony employee John Walker, Superintendent Gravolet told Walker that he (Gravolet) and Walker would both lose their jobs and Respondent would shut down if the Union were successful but that Walker would get a wage increase if the Union did not succeed in organizing the employees. Gravolet denied this testimony, and Golden testified in this connection that he had instructed Gravolet not to discuss any union matters with the employees.

Early in April 1953, driver Willie Brown had some difficulty in making delivery to a union project because he was not a union member. Brown testified that Golden told him on this occasion that Respondent was not big enough to operate with a union and would have to sell out should the employees become organized. Golden denied making this statement to Brown.

Each of the witnesses—the General Counsel's and the Respondent's—appeared to be trustworthy, so far as my demeanor observation of them is concerned, and

no inherent or circumstantial inconsistency was developed in any witnesses' testimony. Under these circumstances; I cannot find a preponderance of evidence to support the alleged threats of shutdown and promises of benefit, and I accordingly find only that Golden conducted the conversations with the employees in the manner to which he testified.

There is no substantial basis for finding that Golden interrogated the employees for the purpose of dissipating the Union's representation. And, as the record does not otherwise show any efforts by the Respondent to undermine the Union or that it withheld recognition of the Union for reasons other than its stated good-faith doubt concerning the Union's majority, I conclude that the Respondent has not thereby violated Section 8 (a) (5) of the Act. See *The Walmac Company*, 106 NLRB 1355; *Beaver Machine & Tool Co., Inc.*, 97 NLRB 33; *Roanoke Public Warehouse*, 72 NLRB 1281, 1282-1283; *Chamberlain Corporation*, 75 NLRB 1188, 1189-1190.

This leaves only the matter of Golden's interrogation. Although such conduct under Board doctrine has been a long-established violation of Section 8 (a) (1) of the Act (*Syracuse Color Press, Inc.*, 103 NLRB 377; *Standard-Coosa-Thatcher Company*, 85 NLRB 1358), the Board recently held in a factual context similar to the present case that such interrogation of all employees within a proposed bargaining unit is, absent other unfair labor practices, to be regarded as of "isolated nature." *The Walmac Company*, 106 NLRB 1355. Without determining whether the interrogation in the *Walmac* case was an unfair labor practice, the Board dismissed the allegation upon finding that no useful purpose would be served by issuing a cease and desist order thereon. The *Walmac* holding is applicable here. Having found no other unfair labor practices, I shall recommend that the entire complaint be dismissed.

[Recommendations omitted from publication.]

---

#### STERLING FURNITURE COMPANY and CHARLES O. BARNES

CARPET, LINOLEUM & SOFT TILE WORKERS, LOCAL No. 1235 and  
CHARLES O. BARNES. *Cases Nos. 20-CA-350 and 20-CB-109.*  
*July 30, 1954*

#### Second Supplemental Decision and Order

On April 27, 1951, the National Labor Relations Board issued a Decision and Order in the above-entitled cases,<sup>1</sup> finding, *inter alia*, that Sterling Furniture Company, herein called Sterling, and Carpet, Linoleum & Soft Tile Workers, Local No. 1235, herein called the Union, had violated Section 8 (a) (3) and 8 (b) (2) of the Act, respectively, by discharging Charles O. Barnes pursuant to an unlawful union-security provision contained in a contract between the Union and the Retail Furniture Association of California, of which Sterling is a member. The Board therefore ordered that Sterling and the Union, jointly and severally, make Barnes whole for any loss of pay suffered as a result of the discrimination practiced against him.

In due course, the Board petitioned the United States Court of Appeals for the Ninth Circuit for enforcement of its Order. On February 4, 1953, the court remanded the cases to the Board for further consideration of the remedial scope of its Order.<sup>2</sup> The court,

---

<sup>1</sup> 94 NLRB 32.

<sup>2</sup> 202 F. 2d 41 (C. A. 9).

109 NLRB No. 98.