

In the Matter of HALL FREIGHT LINES, INC. and CHICAGO TRUCK DRIVERS, CHAUFFEURS AND HELPERS UNION OF CHICAGO AND VICINITY, LOCAL 705 and FRANK J. BELSKY, JOSEPH INGO, EDWARD LAURISCH, GEORGE BERNDT, CHARLES J. CIOLINO, SAM CIOLINO, CARIO COVELLI AND JOSEPH LYDON and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 705, A. F. L., PARTY TO THE CONTRACT

Case No. 13-C-2378.—Decided January 14, 1946

Mr. Gustaf B. Erickson, for the Board.

Messrs. Hyman Abrams and John Newberry, of Chicago, Ill., for the respondent.

Messrs. Raymond F. Hayes and J. A. Quigley, of Chicago, Ill., for the C. T. D.

Messrs. Daniel D. Carmell and Leo Segall, of Chicago, Ill., for the I. B. T. and Local 710.

Miss Grace McEldowney, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon an amended charge filed on May 18, 1944, by Chicago Truck Drivers, Chauffeurs and Helpers Union of Chicago and Vicinity, Local 705, herein called the C. T. D., the National Labor Relations Board, herein called the Board, by its Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint, dated June 14, 1944, against Hall Freight Lines, Inc., Chicago, Illinois, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon the respondent, the C. T. D., International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 705, A. F. L., herein called the I. B. T., and

65 N. L. R. B., No. 72.

International Brotherhood of Teamsters, Meat Drivers and Helpers, Highway Drivers, Dockmen and Helpers, Local 710, A. F. L., herein called Local 710.

With respect to the unfair labor practices, the complaint alleged, in substance, that on or about March 28, 1944, the respondent: (1) entered into, and thereafter enforced, a collective bargaining contract with the I. B. T., requiring membership in the I. B. T. as a condition of employment of the respondent's city drivers, although the I. B. T. was not then the representative of said drivers; (2) terminated the employment of city drivers Frank J. Belsky, Joseph Ingo, Edward Laurisch, George Berndt,¹ Charles J. Cioluno, Sam Ciolino, Carlo Covelli, and Joseph Lydon, because of their membership in and activities on behalf of the C. T. D., and because they had refused to join the I. B. T.; and (3) refused to bargain collectively with the C. T. D. as the representatives of the respondent's city drivers, although the C. T. D. was the representative of said drivers in an appropriate collective bargaining unit.

On July 10, 1944, the respondent filed its answer, admitting certain allegations of the complaint, but denying that it had terminated the employment of the employees named in the complaint and that it had engaged in the alleged unfair labor practices. Thereafter, the I. B. T. also denied the alleged unfair labor practices insofar as it was involved therein.

Pursuant to notice duly served upon the parties, a hearing was held in Chicago, Illinois, on July 13, 14, and 15, 1944, before Charles W. Schneider, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, the C. T. D., the I. B. T., and Local 710 were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

On the first day of the hearing, over objection by the respondent, the I. B. T., and Local 710, a second amended charge, dated July 13, 1944, was filed. This charge, reciting the same allegations as the previous charge, was signed by a representative of the C. T. D., and also by the persons alleged in the complaint to have been discriminatorily discharged. At the same time, over similar objection, the complaint was amended to include the latter individuals as parties to the action.

During the course of the hearing, the respondent, the I. B. T., and Local 710 moved to dismiss the proceeding for failure of proof and also upon the ground that the Board was deprived of jurisdiction by

¹ Incorrectly referred to in the complaint as George Bennett.

reason of the limitation on the use of the Board's funds contained in the National Labor Relations Board Appropriation Act, 1945.² The Trial Examiner reserved his ruling upon these motions, which he thereafter denied in his Intermediate Report. During the hearing, the Trial Examiner also denied a motion of the I. B. T. to dismiss the complaint on the ground that the C. T. D. was not a labor organization.³ At the close of the hearing, the pleadings were amended, without objection, to conform to the proof with respect to names, dates, and other formal matters. During the course of the hearing, the Trial Examiner made rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner, and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Thereafter, the Trial Examiner issued his Intermediate Report, copies of which were served upon the respondent, the C. T. D., the I. B. T., and Local 710. In the Intermediate Report, the Trial Examiner found that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1) and (3) of the Act, and recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. He also found that the respondent had not engaged in unfair labor practices within the meaning of Section 8 (5) of the Act, and recommended that the complaint be dismissed insofar as

² 58 Stat. 567, approved June 28, 1944. The pertinent language of the statute is as follows:

No part of the funds appropriated in this title shall be used in any way in connection with a complaint case arising over an agreement, or a renewal thereof, between management and labor which has been in existence for three months or longer without complaint being filed by an employee or employees of such plant, *Provided*, That, hereafter, notice of such agreement, or renewal thereof, shall have been posted in the plant affected for said period of three months, said notice containing information as to the location at an accessible place of such agreement where said agreement shall be open for inspection by any interested person.

The respondent and the I. B. T. contend that under this provision and a similar provision in the 1946 Appropriation Act, the Board is barred from proceeding with the case because more than 3 months elapsed between the date of the execution of an agreement, discussed below, between the respondent and the I. B. T. and the date of the filing of a charge signed by employees of the respondent. We find no merit in this contention. The provision quoted above specifically requires the posting of a notice in order for the limitation on the use of the Board's funds to become operative. Admittedly, no notice of the contract or its location was posted in this case. Furthermore, although the record indicates that copies of the I. B. T.'s standard form of contract were mailed by the I. B. T. to all the drivers on March 28, 1944, the date on which the contract was executed, it does not appear that these copies bore any indication of the fact that such a contract had actually been executed by the respondent and the I. B. T. Under these circumstances, even assuming that actual notice of the contract would have constituted compliance with the posting requirement, we are of the opinion that the mailing of the copies of the standard form did not constitute such notice.

³ The I. B. T. contends that the C. T. D. is not a labor organization because it has failed to comply with the Illinois law governing such organizations. We agree with the Trial Examiner that because the record shows that the C. T. D., since 1908, has existed for the purpose of dealing with, and has dealt with, employers on behalf of employees concerning terms and conditions of employment, it is a labor organization, within the meaning of Section 2 (5) of the Act.

such allegations were concerned.⁴ Thereafter, the respondent and the I. B. T. filed exceptions to the Intermediate Report and supporting briefs.

Upon request of the respondent and the I. B. T., and pursuant to notice, the Board held a hearing for the purpose of oral argument at Washington, D. C., on November 20, 1945. The respondent and the I. B. T. were represented by counsel and participated in the argument; the C. T. D. did not appear.

The Board has considered the exceptions and briefs filed by the respondent and the I. B. T. and finds that the exceptions, insofar as they are consistent with the findings, conclusions, and order set forth below, have merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Hall Freight Lines, Inc., is an Illinois corporation engaged as a common carrier, under certificate of the Interstate Commerce Commission, in the business of carrying and transporting freight, consisting of substantial quantities of machine tools and other equipment for manufacturing plants, to and from various terminal points in Illinois, Indiana, and neighboring States. The main office and terminal of the respondent is located in Danville, Illinois. The respondent maintains and operates additional terminals at Chicago, Bloomington, Champaign, Peoria, Kankakee, Paris, and Pontiac, Illinois, and at Terre Haute, Indiana. The respondent admits that it is engaged in commerce, within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 705, and International Brotherhood of Teamsters, Meat Drivers and Helpers, Highway Drivers, Dockmen and Helpers, Local 710, are labor organizations affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

Chicago Truck Drivers, Chauffeurs and Helpers Union of Chicago and Vicinity, Local 705, is an unaffiliated labor organization admitting to membership employees of the respondent.

⁴ In the Intermediate Report, the Trial Examiner also denied motions to dismiss its complaint, which had been filed after the hearing by the respondent and the I. B. T.

III. THE ALLEGED UNFAIR LABOR PRACTICES.

A. *Chronology of events*

1. Preliminary findings

The events here concerned occurred at, and involve only, the respondent's Chicago terminal. All the events took place during the period between Monday morning, March 27, and Friday morning, March 31, 1944.

At the time of these events, the personnel employed at the Chicago terminal consisted of a manager, Edward M. Beazley, a dispatcher named Charney, several clerical employees, 10 "city" drivers, 2 to 5 "over-the-road" drivers, and 8 to 10 dock or platform men. The city drivers operate trucks in and around Chicago; the over-the-road men drive between Chicago and the respondent's various terminals; the dockmen handle and transfer freight at the Chicago terminal.

On March 27, 1944, the respondent was operating under the terms of a collective bargaining contract with the C. T. D., covering the Chicago city drivers.⁵ At that time, and for a number of years prior thereto, the respondent recognized and dealt with the C. T. D. as the bargaining representative of such drivers and checked off their dues for the C. T. D. At the time of the events herein, all the city drivers were members of the C. T. D. and their dues in that organization were paid up through the month of March by reason of the check-off. However, the respondent's over-the-road drivers and dockmen at the terminal were, and apparently for a number of years had been, represented by Local 710 by virtue of a contract between the respondent and Local 710.

Sam Ciolino, a city driver employed by the respondent, was the last C. T. D. steward at the terminal.⁶ Ciolino was friendly with Joseph Desmyter, an official of the I. B. T. Before March 27, 1944, Desmyter, on a number of occasions, sought, apparently unsuccessfully, to induce Ciolino to persuade the respondent's city drivers to affiliate with the I. B. T.

2. Monday, March 27

The city drivers begin work at 8:00 a. m. On Monday morning, March 27, 1944, at about 7:30 a. m., Desmyter, accompanied by John Russo, Willie O'Brien, Johnny Hartnett, and Frank Kratkey, officials

⁵The record fails to show that this contract had ever been formally executed. An unsigned copy, introduced in evidence, recited that it was effective January 1, 1943, to December 31, 1944, and provided for automatic renewal unless written notice was given by either party 60 days prior to January 1 of any year thereafter.

⁶Ciolino held this office until December 31, 1943, at which time the C. T. D. abolished the office of steward in "barns" employing less than 15 drivers.

or representatives of the I. B. T., and by Thomas Keegan, O'Connor, and Tony Serrone,⁷ officials of Local 710, went to the terminal and told Manager Beazley that they wished to talk to the city drivers. With Beazley's permission, the 9 city drivers who were at work that day⁸ were summoned to the dispatcher's office, where the I. B. T. representatives attempted to persuade them to affiliate with the I. B. T. Beazley remained in his office. The drivers declined to change their affiliation, left the room, and walked out to the dock or loading platform. Keegan thereupon ordered the dockmen to cease their work, which they did. The I. B. T. officials then approached the drivers individually and renewed their efforts to induce the men to change their affiliation. After this had gone on for about an hour, several C. T. D. officials, who had been called by Joe Lydon, one of the drivers, arrived at the terminal. Someone summoned the police. By the time the police arrived, about 9 or 10 o'clock, the crowd was milling around and the situation was one of general confusion. There was no violence, however, nor threats of any. After a time, the drivers went into the drivers' room to discuss what to do. Later, Beazley went in and asked them who was going to pay them for standing around. The drivers replied that they wanted to work and that Beazley was the only one who could send them out. Beazley asked what good it would do to send the trucks out empty, and told them to settle it one way or another so that they could get back to work. The drivers asked to be let alone for a while. They then discussed the problem among themselves, but were unable to reach a decision. A vote was taken. This time, about four of the drivers voted to affiliate with the I. B. T. After further fruitless discussion, they reported to the union officials outside that they were unable to agree. Someone suggested that the representatives of the I. B. T. and the C. T. D. talk to the men and poll them. This was done. Representatives of both unions went into the room; each side explained the advantages of its organization; and Russo then polled the men individually. This time, a majority voted for the I. B. T. The rest of the drivers, with the exception of Lydon, then agreed to abide by the decision of the majority. The C. T. D. representatives left. Desmyter distributed I. B. T. dues books in which stamps were inserted showing the payment of dues for April.⁹ Russo told Lydon, who was not given a book, that he would be given 30 to 60 days in which to join the I. B. T. Sam Ciolino was designated steward. It was then about 11:30 a. m.

Russo and Desmyter then took Ciolino into Beazley's office, and told Beazley that the drivers, with the exception of Lydon, had voted

⁷ Sometimes spelled Cirone in the transcript.

⁸ Tony Scarano and the eight men alleged in the complaint to have been discriminatorily discharged. The tenth city driver, Constantine Distasio, was absent that day.

⁹ This finding is based on the uncontradicted testimony of Russo, which we credit.

to affiliate with the I. B. T. Beazley asked Ciolino if that was so. Ciolino replied that it was. Russo then asked Beazley to give him \$45 for 1 month's dues for the nine men. Beazley objected to checking off dues for Distasio, who was absent. Ciolino assured him that Distasio would agree. Beazley thereupon gave Russo the \$45.¹⁰ During the interview, Russo left with Beazley three copies of the I. B. T.'s standard form of contract, signed by officials of the I. B. T.¹¹ Work was then resumed.

That evening, when Lydon drove his truck into the terminal after the day's work, six or seven of the drivers were waiting for him.¹² They told Lydon that they did not want the I. B. T. books and that they had taken them only because acceptance was "the only way out." They then delegated Lydon to have the C. T. D. officials come to the terminal to get the I. B. T. books and also to take their C. T. D. books for safekeeping.

3. Tuesday, March 28

On the next morning, Tuesday, the men asked Lydon where the C. T. D. officials were. Lydon said that he had not been able to communicate with them the previous evening. On this morning, the men learned that I. B. T. dues of \$5 were to be deducted from their pay checks. This aroused further dissatisfaction. That evening, the men again waited for Lydon to come in and instructed him to communicate with the C. T. D. that night. Lydon did so.

On the same day, according to the testimony of Beazley and Russo, Beazley gave Russo a signed copy of the contract.¹³ The I. B. T. sent copies of the contract, together with hospitalization cards and other I. B. T. material, to all the drivers.¹⁴

4. Wednesday, March 29

On Wednesday morning, Frank Pirkins, a vice president of the C. T. D., went to the terminal. In the presence of the dockmen, all

¹⁰ Although Ciolino denied having said anything during this interview, we credit the testimony of Beazley and Russo with respect thereto, as did the Trial Examiner.

¹¹ This finding is based on the uncontradicted testimony of Beazley and Russo

¹² As stated in the Intermediate Report, the identity of the men present is not clear. Lydon testified that all the drivers but Belsky were waiting for him and that all present except Scarano went to a nearby tavern to discuss the matter. Sam Ciolino testified that all the drivers went to the tavern except Scarano and Laurisch. Belsky did not remember whether he had been at the tavern that night, but said that he might have been. Laurisch was not questioned with respect to this incident. Scarano did not testify.

¹³ Beazley, when first called as a witness for the Board, testified that he did not sign the contract until 2 days after the drivers had left the respondent's employ. Later, both when recalled as a witness for the Board and when called as a witness for the respondent, he stated that he signed the contract and gave it to Russo on Tuesday. Russo testified to the same effect.

¹⁴ This finding is based on the uncontradicted testimony of Russo. None of the drivers denied having received this material. As stated above, however, the record fails to show that the copies of the contract which were sent to them bore any indication of the fact that the contract had actually been executed by the respondent.

the drivers gave Pirkins the I. B. T. books which had been given them by Desmyter, and also gave him their C. T. D. books for safe-keeping. Beazley later asked Sam Ciolino what was "up." Ciolino replied that the men were dissatisfied and were going back to the C. T. D., and that he did not know what was going to happen. Beazley told Ciolino, in effect, that they could not be changing back and forth, and that they should make up their minds.

Later that afternoon, when Lydon returned to the terminal, I. B. T. officials Serrone, O'Brien, and Mike Ronan were there. In the presence of Dispatcher Charney, one of the I. B. T. officials asked Lydon why the men had surrendered their I. B. T. books. Lydon said that they did not want to belong to the I. B. T. Serrone told Lydon that "the mistake that John Russo made was leaving you hang around; if I had been here I would have chased you off that dock in one second." Just then drivers Scarano and Berndt also arrived at the terminal. Serrone asked Berndt "what was the idea." Berndt referred him to Lydon. Serrone, turning to Lydon, told him that he would be back the next morning, and further said, "When we take this barn you will never work in an International barn . . . in [this] country or Canada."

That night Sam Ciolino asked Desmyter whether the I. B. T. had made a contract with the respondent for the drivers. Desmyter replied "No, that is where I think we slipped up."

5. Thursday, March 30

On Thursday morning, when the drivers arrived at the terminal, representatives of the I. B. T., Local 710, and the C. T. D. were there. The dockmen, on instructions from Keegan, an official of Local 710, ceased work and refused to load the drivers' trucks. The drivers then arranged with Beazley to take out the trucks, make their pick-ups, and transfer their loads in the street. They worked all day Thursday under this arrangement.

On Thursday evening, when some of the drivers returned to the terminal, the I. B. T. and C. T. D. officials were waiting for them, and the dockmen still were not working. Russo, of the I. B. T., told Slahor, president of the C. T. D., that he would let the drivers decide for themselves which organization they wanted. Russo, Lydon, and Slahor then polled the men. Three of the drivers, Sam Ciolino, Ingo, and Belsky, were not present at the meeting, but telephoned in while it was in progress and gave their votes to Lydon. All but two of those polled voted for the C. T. D. Russo then said that although the

C. T. D. had won, nevertheless, "the dock would still be tied up."¹⁵ Some of the drivers then told Beazley of the vote.

Later in the evening, Slahor and Ciolino discussed with Manager Beazley how the drivers could work if the dockmen remained out. Beazley told them that they should continue to operate on Friday as they had on Thursday.

6. Friday, March 31

When the drivers reported for work Friday morning, officials of the I. B. T. and the C. T. D. were at the terminal. Also present were several police officers who had been summoned by Beazley. The drivers' time cards had been removed by Beazley from the time clock rack. Beazley called Russo, Pirkins, Police Lieutenant Barnes, and Sam Ciolino to his office and told them that he had consulted the respondent's attorney and the home office. He then told them, in substance, that he did not care what union the drivers belonged to, and that their jobs were there for them, but that they had voluntarily selected the I. B. T., that the respondent had made a contract with the I. B. T., and that the drivers would have to abide by the contract and remain members of the I. B. T. Pirkins requested that he tell this to the men. Beazley then repeated his statements to the drivers.¹⁶ After Beazley had finished, Pirkins told the drivers that those who wished to remain with the I. B. T. should stay, and that those who did not should go with him to the C. T. D. hall. The eight drivers named in the complaint left the terminal with Pirkins. Distasio and Scarano remained.

B. Conclusions as to the alleged unfair labor practices

The complaint alleges, *inter alia*, that the respondent, on or about March 28, 1944, entered into, and thereafter enforced, a collective bargaining contract with the I. B. T., requiring membership in the I. B. T. as a condition of employment of its city drivers, although the

¹⁵ The above findings are based on the mutually corroborative testimony of Lydon and Covelli, supported, insofar as their votes were concerned, by the testimony of Sam Ciolino, Ingo, and Belsky. Although Berndt, Laurisch, and Charles Ciolino were witnesses, they did not testify regarding the poll; but all three, according to the testimony of Lydon and Covelli, were present and voted for the C T D. Distasio and Scarano, the two drivers who voted for the I B T, were not called as witnesses. Russo admitted that he was at the dock on Thursday afternoon, but denied that he had a meeting with the drivers or talked with Slahor. He further testified that, so far as he knew, no vote was taken at any time on Thursday. On the record as a whole, we do not credit his testimony as to this incident.

¹⁶ As stated in the Intermediate Report, the testimony as to what Beazley said on Friday morning is conflicting. Witnesses for the respondent and for the I B T. denied that Beazley told the men that they would have to remain with the I B T. On the record as a whole, however, it seems clear, and we find, as did the Trial Examiner, that Beazley informed the men, in substance, that continued membership in the I. B. T. was a condition of their further employment.

C. T. D. was then, and for approximately 20 years had been, the duly designated collective bargaining representative of said drivers; that on or about the same date the respondent terminated the employment of eight named drivers because of their refusal to join the I. B. T.; and that the respondent thereby violated Section 8 (1) and (3) of the Act. The respondent admits the execution of the contract, but denies that the C. T. D. was, at the time, the collective bargaining representative of its drivers, on the ground that they had, on March 27, designated the I. B. T. as such representative. On the facts set forth above, we agree with this contention. Thus, the record shows that on Monday, March 27, Russo, the I. B. T. representative, conducted a poll of the respondent's city drivers,¹⁷ with the acquiescence of representatives of C. T. D.; that in the poll a majority of the drivers voted for the I. B. T. and others agreed to abide by the majority's decision; that the representatives of the C. T. D. then left; and that the respondent was thereupon notified of the result of the poll. Although six of the drivers testified that they voted for the I. B. T. because of the pressure to which they were subjected and in order to return to work, the record establishes that there was no violence, threat of violence, or fraud involved, and that the so-called "pressure" consisted merely of the presence of, and solicitation by, several I. B. T. organizers and the fact that the dockmen had stopped work, thus tying up the dock. We do not regard this conduct as sufficient to vitiate the consent of the employees involved.¹⁸ We therefore find that the vote for the I. B. T. on March 27 constituted a valid designation of that organization as the collective bargaining representative of the drivers. Further, we agree with the Trial Examiner, and we find, that in these circumstances, the acquiescence of the C. T. D. officials to the polling of the men and Beazley's acceptance of the I. B. T. as exclusive representative constituted a rescission by mutual assent of the contract between the respondent and the C. T. D.

The respondent further contends that it did not discharge any of the drivers, but that they voluntarily left its employ. As found above, however, Manager Beazley, on March 31, informed them that membership in the I. B. T. was a condition of their further employment. The imposition of this condition would clearly be illegal under the Act, and tantamount to a discriminatory discharge, unless the respondent had, at the time, a valid contract with the I. B. T. under which it was privileged to require membership in that organization.¹⁹

¹⁷ As found below, these drivers constitute an appropriate bargaining unit.

¹⁸ See *N. L. R. B. v. Dahlstrom Metallic Door Co.*, 112 F. (2d) 756 (C. C. A. 2); *N. L. R. B. v. Karp Metal Products Co.*, 134 F. (2d) 954 (C. C. A. 2), cert. den. 322 U. S. 726

¹⁹ Section 8 (3) of the Act, which makes it an unfair labor practice for an employer by discrimination in regard to hire or tenure of employment to encourage or discourage membership in any labor organization, specifically provides that "nothing in this Act . . . shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor

The Trial Examiner's conclusion that the respondent was not privileged to impose the condition in question, and that its conduct was therefore violative of the Act, is based on the following findings: (1) that the contract between the respondent and the I. B. T. was signed not on Tuesday, March 28, as claimed by the respondent and the I. B. T., but sometime after the employees had conveyed to Beazley their intention not to remain affiliated with the I. B. T., or that, if signed on March 28, it was revoked by the subsequent conduct of the parties; and (2) that in any event, although the contract provided for membership in the I. B. T. as a condition of hiring, it did not require maintenance of membership. For the reasons given below, we do not agree with these findings.

Although the copy of the contract which was produced at the hearing was undated, the complaint alleges, and the respondent in its answer admits, that it was executed on or about March 28, 1944, and both Beazley and Russo testified that it was signed by Beazley and delivered by him to Russo on Tuesday, March 28. As set forth above, however, Beazley had previously testified that he did not sign the contract until 2 days after the drivers had left the respondent's employ. The Trial Examiner's finding that it was not signed until after the employees had conveyed to Beazley their intention not to remain affiliated with the I. B. T. is based on this statement by Beazley, on Ciolino's testimony that Desmyter, on Wednesday night, March 29, told him that the I. B. T. had not secured a contract with the respondent, on the fact that the drivers were not informed of any contract before Friday, and on a finding that Beazley's actions on Wednesday and Thursday were inconsistent with the hypothesis that the agreement had then been signed. On the record as a whole, we are not convinced that Beazley's failure to inform the drivers of the contract or his other conduct during the period in question was inconsistent with his having signed the contract on Tuesday, nor do we consider the other factors relied on by the Trial Examiner as sufficient, particularly in view of the fact that the pleadings raised no issue as to the exact date of the execution of the contract, to sustain the burden of establishing that the contract was not signed until after March 28.

The Trial Examiner further finds, however, that even assuming that the contract was signed on March 28, it was thereafter revoked by the conduct of the parties. Although this finding is supported to some extent by the evidence that Russo, on Thursday, March 30, agreed to let the drivers decide for themselves which organization they wanted, we find in Beazley's conduct no evidence that the respondent intended

practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made" See *Matter of Graham Ship Repair Co.*, 63 N. L. R. B. 542.

or agreed to revoke the contract. On the contrary, as soon as Beazley learned, late on Thursday, of the drivers' vote for the C. T. D., he consulted with the respondent's home office and with its attorney, and on the following morning clearly stated to the drivers and to the representatives of the two unions the respondent's position that the contract with the I. B. T. was in effect.

We also disagree with the Trial Examiner's finding that, although the contract provided for membership in the I. B. T. as a condition of hiring, it did not require maintenance of membership. The relevant provision of the contract is as follows:

The employer agrees to hire only members of Local 705, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., carrying the regular working card of the Union. Should necessity require it and extra chauffeurs are needed, and the Union is unable to supply the demand, the employer will have the authority to employ such help as he requires . . .

While this language is susceptible of the strict construction given it by the Trial Examiner, we note that the C. T. D. contract, which contained an identical provision, was apparently regarded as a closed-shop contract. Furthermore, the complaint alleges, and the respondent's answer admits, that the contract provided for "membership in the I. B. T. as a condition of employment," and the amended charge, upon which the complaint was issued, alleges that the respondent signed "a closed-shop contract with the I. B. T." On the record as a whole, we are convinced, and we find, that the provision quoted above was intended by the parties, and was understood by the employees, to require membership in the I. B. T. as a condition both of hiring and of continued employment.

Since the I. B. T. was, on March 28, the duly designated representative of the respondent's city drivers, and since there is no evidence that it was an organization established, maintained, or assisted by any unfair labor practices on the part of the respondent, we find that the contract of March 28, 1944, between the respondent and the I. B. T., providing for membership in the I. B. T. as a condition of employment of said drivers, was a valid contract. We therefore further find that the respondent's conduct in executing and enforcing said contract and in requiring membership in the I. B. T. as a condition of employment did not constitute discrimination, within the meaning of Section 8 (3) of the Act, or interference, restraint, and coercion, within the meaning of Section 8 (1).

The complaint further alleges that on or about March 28, 1944, the respondent refused to bargain collectively with the C. T. D. as the representative of the respondent's city drivers, although the C. T. D. was

the representative of said drivers in an appropriate collective bargaining unit. The Trial Examiner has found, and we agree, that the alleged unit, composed of all city drivers at its Chicago terminal, is appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act, but that the evidence is insufficient to establish that the C. T. D. was, at the time of the alleged refusal to bargain, the representative of the employees in the unit. No exceptions have been filed to these findings. We therefore find, as did the Trial Examiner, that the respondent has not refused to bargain collectively with the C. T. D. as the representative of its employees, within the meaning of Section 8 (5) of the Act.

Since we have found that the respondent has not engaged in the unfair labor practices alleged in the complaint, we shall dismiss the complaint in its entirety.

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

CONCLUSIONS OF LAW

1. The operations of the respondent, Hall Freight Lines, Inc., Chicago, Illinois, occur in commerce, within the meaning of Section 2 (6) of the Act.

2. Chicago Truck Drivers, Chauffeurs and Helpers Union of Chicago and Vicinity, Local 705, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 705, A. F. L., are labor organizations, within the meaning of Section 2 (5) of the Act.

3. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (1), (3), and (5) of the Act, as alleged in the complaint.

ORDER

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board orders that the complaint against the respondent, Hall Freight Lines, Inc., Chicago, Illinois, be, and it hereby is dismissed.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Order.