

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

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 brief, and the entire record in the case, and finds merit in the Respondent's exceptions.

In accordance with the Board's previous determination in the representation case in which the Union was certified,¹ the Trial Examiner recommended that the Board should assert jurisdiction herein. The Respondent contends, among other things, that the Board should decline jurisdiction because it is purely a local operation.

In the representation case, a majority of the Board followed the then prevailing policy and assumed jurisdiction over the Respondent as a franchised Plymouth and Dodge automobile dealer. Recently, the Board has considered this question and concluded that it will not effectuate the policies of the Act to assert jurisdiction over an automobile dealer solely because it operates under a franchise from a national enterprise but that it will take jurisdiction if the automobile dealer satisfies some other criterion of the Board's revised jurisdictional plan.² As the Respondent is an independent retail establishment which neither makes direct out-of-State sales in the amount of \$100,000 per year, nor purchases materials in the amount of \$1,000,000 a year coming directly from outside the State or in the amount of \$2,000,000 coming indirectly from outside the State,³ we find that it will not effectuate the policies of the Act to exercise jurisdiction herein. Accordingly, we will dismiss the complaint in its entirety, without passing on any other question raised by the Respondent.

[The Board dismissed the complaint.]

¹ Case No. 1-RC-3395, 107 NLRB 1499.

² *William T. Wilson and Mabel J. Wilson, a Partnership, d/b/a Wilson Oldsmobile*, 110 NLRB 534. Member Murdock, who dissented in that case, considers himself bound by the majority's decision therein.

³ *William T. Wilson and Mabel J. Wilson, a Partnership, d/b/a Wilson Oldsmobile, supra*, and *J. R. Knott and Hugh H. Hogue d/b/a Hogue and Knott Supermarkets*, 110 NLRB 543. Members Murdock and Peterson, who dissented in the latter case, consider themselves bound by the majority's decision therein.

ROSCOE WAGNER D/B/A WAGNER TRANSPORTATION COMPANY and GENERAL TEAMSTERS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 483, AFL. *Case No. 19-CA-977. December 6, 1954*

Decision and Order

On August 23, 1954, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the 110 NLRB No. 192.

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 and recommended that the complaint be dismissed in that respect. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner with the following modifications.

1. We concur in the Trial Examiner's findings that the Respondent violated Section 8 (a) (1) of the Act by interrogation, threats, and suggestion of surveillance of its employees' protected activities.

2. The Trial Examiner found that the Respondent had discriminatorily discharged Cecil Weyer. While we concur in the result reached by the Trial Examiner, we do so for different reasons.

As set forth more fully in the Intermediate Report, Roger Wagner learned on February 6, 1954, that the Union had commenced organizing the Respondent's employees. On February 16, Roger Wagner interrogated certain employees, including Weyer, as to "how are you and the Union doing?" and "I hear you fellows are organized." When Roger Wagner inquired if Weyer had not in fact signed an application card for the Union, Weyer answered that there was no need for him to do so in view of the extensive period of his membership in that labor organization. At that juncture, Roscoe Wagner, brandishing a piece of paper, told Weyer that Weyer was a liar because "I can tell you right where you signed this application and the day and everything, all about it." Advancing in a menacing manner and threatening to strike Weyer, Roscoe Wagner announced that he did not "want to talk to a Communist," that "You are going to resign," and "I don't want no union man around here" because "They are just nothing but a bunch of Communists." Turning to Roger Wagner, Roscoe Wagner instructed him to prepare Weyer's "resignation papers." When Roger Wagner returned with the papers drawn, Weyer inquired as to how the Wagners found out about his union membership. Roger Wagner refused to divulge this information, but stated "You know how Roscoe feels about the union, you know what happened to Dick

¹Although the Trial Examiner detailed in his Intermediate Report the jurisdictional facts concerning the impact of the Respondent's operations upon interstate commerce, he did not find that the Respondent was engaged in commerce within the meaning of the Act. We so find.

Gear and Bob Sauers and some more of them.” Weyer accepted the resignation papers and left the Respondent’s premises.

In defense to the charge that it discriminatorily terminated Weyer’s employment, the Respondent contended that Weyer was actually discharged because he characterized Roscoe Wagner as a “damned liar” during their conversation on February 16, 1954. According to Roscoe Wagner, this characterization resulted from his admonishing Weyer for having spent an inordinately long time at a stopover in Nevada. The Trial Examiner, who had the advantage of observing the demeanor of the witnesses, discredited Roscoe Wagner’s assertion that Weyer actually called Roscoe Wagner a liar.

The Trial Examiner concluded that the Respondent discharged Weyer because the latter had aroused the anger of Roscoe Wagner by untruthfully answering an unlawful inquiry. Viewing the entire record in this proceeding, however, we are persuaded that the Respondent’s real reason for discharging Weyer was not Weyer’s equivocation in response to Roscoe Wagner’s inquiry concerning Weyer’s union membership, but the fact that Weyer had actually joined the Union and was an active member. We believe that Roscoe Wagner seized upon his violent argument with Weyer as an excuse to rid himself of a union adherent. We are fortified in this conclusion by Weyer’s undenied and credited testimony that Roscoe Wagner informed Weyer on February 16, 1954, that “you are going to resign” because “I don’t want no union man around here,” as well as by Roger Wagner’s statement to Weyer that “You know how Roscoe feels about the union, you know what happened to Dick Gear and Bob Sauers and some more of them.” These circumstances, viewed in connection with the Respondent’s threats of discharge or loss of employment to Gear and Funk if the Union was successful in its organizational campaign, convince us that Weyer was discharged because he had allied himself with the Union. Accordingly, we find, like the Trial Examiner, that Weyer’s discharge was in violation of Section 8 (a) (3) and (1) of the Act.

Order

Upon the basis of the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Roscoe Wagner d/b/a Wagner Transportation Company, Twin Falls, Idaho, his agents, successors, and assigns, shall :

1. Cease and desist from :

(a) Discouraging membership in General Teamsters, Warehousemen and Helpers Union, Local No. 483, AFL, or in any other labor organization, by discharging any of his employees or by discriminating in any other manner in regard to hire, tenure of employment, or any term or condition of employment.

(b) Discharging, by threats or interrogation, or in any other manner interfering with, restraining, or coercing employees in the exercise of the rights to self-organization, to form labor organizations, to join any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

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

(a) Make Cecil Weyer whole for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Post at his place of business in Twin Falls, Idaho, copies of the notice attached to the Intermediate Report and marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by the Respondent, be posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Make available to the Board or its agents all payroll or other records convenient for a computation of the amount of back pay due under the terms of this Order.

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

IT IS FURTHER ORDERED that the complaint, insofar as it charges that the Respondent violated Section 8 (a) (3) of the Act by discharging Raymond S. Clement and Arlen Weeks, be, and it hereby is, dismissed.

² This notice, however, shall be and it hereby is amended by striking from the first paragraph thereof the words "Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon charges filed by General Teamsters, Warehousemen and Helpers Union, Local No. 483, AFL, herein called the Union, the General Counsel of the National Labor Relations Board issued a complaint dated June 8, 1954, against Roscoe Wagner d/b/a Wagner Transportation Company, Twin Falls, Idaho, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair

labor practices within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

In respect to unfair labor practices, the complaint alleges that on dates subsequent to February 1, 1954, the Respondent interfered with, restrained, and coerced his employees in the exercise of rights guaranteed in Section 7 of the Act by means of interrogation, threats, and discharges and that the Respondent discouraged membership in and activity on behalf of the Union by the discharge of Cecil A. Weyer, Raymond S. Clement, and Arlen Weeks.

Respondent's answer admits the jurisdictional allegations of the complaint, denies the commission of unfair labor practices, and asserts that Weyer, Clement, and Weeks were discharged for lawful cause.

Pursuant to notice a hearing was held before the duly designated Trial Examiner in Twin Falls, Idaho, on July 14, 1954. All parties were represented by counsel, were permitted to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues. During the course of the hearing I granted Respondent's unopposed motion to dismiss the complaint in respect to the discharge of Raymond S. Clement.

Upon the entire record of the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Roscoe Wagner d/b/a Wagner Transportation Company, with headquarters in Twin Falls, Idaho, operates trucks under a certificate from the Interstate Commerce Commission to and through the States of Idaho, Oregon, Nevada, Washington, Utah, and California. Respondent's gross annual revenue from trucking services is approximately \$350,000, of which about \$250,000 is derived from the transportation of commodities in interstate commerce. Respondent is primarily a carrier of livestock and produce.

II. THE LABOR ORGANIZATION INVOLVED

General Teamsters, Warehousemen and Helpers Union, Local No. 483, AFL, is affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

Roscoe Wagner is the active manager of his business and is assisted by his brother Roger. Many of the drivers employed by the Respondent were hired by Roger Wagner and some discharged by him. Roger Wagner testified that his actions in respect to hiring and firing were subject to the final approval of his brother, but the evidence is clear and I find that Roger Wagner is a supervisor within the meaning of the Act. The Respondent has been in the business of trucking livestock and produce for several years. In 1951 the Respondent and the Union bargained concerning a contract. According to Roscoe Wagner no agreement was reached that would permit him to continue doing business with the number of trucks then being used and in consequence he disposed of some of his equipment and curtailed his operations. In early 1954 Respondent's business had again expanded to a point where he was operating about 13 trucks with approximately 25 drivers. Early in February, probably Saturday, February 6, according to the import of the testimony of Roger Wagner, the Respondent learned that the Union was again attempting to organize the drivers. On February 16 both Wagners called on Cecil F. Jones, the Union's business representative. Roscoe Wagner, according to Jones' substantially undented and credited testimony, asked why the men wanted a union and asserted that he was paying good wages, leaving no reason for dissatisfaction. Jones answered that wages appeared not to be a source of grievance to the employees, but that certain other working conditions perhaps were. Roscoe Wagner said that there would be no necessity for holding an election, that he was willing to sign an agreement, but that he could not pay the rates applicable to some other freight trucking operations; that before he would sign such a contract he would sell his trucks and dismiss his employees. The next morning Roscoe Wagner and Jones met again briefly. Jones asked Wagner if he would not reinstate Cecil Weyer, who had been discharged a day or two previously. Wagner answered that he would not rehire a

man who had called him a liar; that Weyer had been wasting too much time on trips and had been drinking on the job.¹ Sometime later in the month the Respondent and the Union signed a consent-election agreement and an election was held in early March. The numerical result of the election does not appear in the record, but it is clear that the Union was not successful. The Regional Director set the election results aside on some date in June. No refusal to bargain is alleged.

In September 1953 the Respondent hired Cecil Weyer as a driver. Weyer thereafter worked regularly, principally on a run between Twin Falls, Idaho, and Los Angeles, California, until he was discharged on February 16, 1954. Weyer testified that he had been a member of the Union for about 15 years and in early February had signed a new authorization card at the solicitation of Business Representative Jones. On February 16,² still according to Weyer, while in a conversation with other employees in Respondent's shop, Roger Wagner asked, "How are you and the Union doing? . . . I hear you fellows are organized." Weyer replied that he knew nothing of it and when Roger Wagner asked if he had not signed an application card for the Union, answered that it was unnecessary for him to do so as he had been a member for 15 years. At this point Roscoe Wagner, who appears to have been in a position to overhear the exchange, told Weyer that he was a liar and producing a piece of paper from his pocket held it up and said, "I can tell you right where you signed this application and the day and everything, all about it." With that, according to Weyer, Roscoe Wagner approached with doubled fist and threatened to strike Weyer. Weyer attempted to mollify him but the latter said that he did not want to talk to a Communist and announced that Weyer would have to resign. At Roscoe Wagner's direction Roger Wagner took Weyer to the office where the former typed the following:

To Whom It May Concern: Mr. Cecil Weyer has been in my employ from the 9th month of 1953 to the 2d month of 1954. He left of his own free will. His services as a truck driver have been satisfactory.

After Roscoe Wagner had signed it, Roger Wagner gave the writing to Weyer, saying, "You know how Roscoe feels about the Union. You know what happened to Dick Gear and Bob Sauers and some more of them." Weyer then left.

Roger Wagner testified that Weyer was a competent and industrious employee insofar as his driving was concerned, but that he left time unaccounted for while on the road. On cross-examination Roger Wagner testified that there was only one incident of this nature which caused any concern and that it occurred sometime in December 1953. On the occasion of Weyer's discharge, according to Roger Wagner, he heard only a part of the exchange between Roscoe Wagner and Weyer, but from what he heard both of the men were using strong language, both were excited and intemperate in their assertions, and Weyer at some point called Roscoe Wagner a liar. It was this last expression, according to Roger, that caused Weyer's discharge. Roscoe Wagner testified that on the occasion of Weyer's termination Weyer and Roger were in a discussion in which Roscoe intervened. According to Roscoe he then criticized Weyer for making unauthorized and lengthy stops at some point in Nevada. Whereupon according to Roscoe, Weyer called him a "damned liar." This, according to Roscoe Wagner, almost precipitated a fist fight and resulted in Weyer quitting his job. Roscoe Wagner denied that membership in the Union played any part in Weyer's termination. On April 30 the Respondent offered Weyer re-employment, which the latter refused.

Arlen Weeks, whose termination is also alleged to have been discriminatorily motivated, did not appear as a witness. The evidence is that Weeks, then having been employed for a lesser time than any other driver, was told on February 15 that because the Respondent had disposed of two trucks there no longer would be work for him. Between then and March 1 Weeks worked as an extra driver on a trip or two and then, according to the credited and uncontradicted testimony of Roger Wagner, was again offered full-time employment. Roger Wagner testified that after accepting this offer and working a few days Weeks quit to take other employment. There is testimony that the Respondent on February 15 knew that Weeks was an applicant for membership in the Union. However, Roger Wagner denied that he had such information.

Richard Gear, at the age of 19, was hired in June 1953, as a driver and in early February 1954 signed an application for membership in the Union. On a date which I find the evidence to establish as Sunday, February 14, Roger Wagner told him

¹ Wagner did not give any instance of such an occurrence in his testimony

² Weyer said the 15th. Principally because the letter of recommendation then given to him bears the later date, I am persuaded that he is mistaken

that because he was under the age of 21 he would have to be discharged. Roger went on to say, according to the testimony of Gear, that the latter apparently was not very happy in his employment. Gear replied that he was. Whereupon Roger said that he disapproved of what Gear had done. After some verbal sparring, Roger conceded that he had in mind the fact that Gear had joined the Union. Gear protested that he had not joined the Union yet and Roger asserted that he had at least signed an application blank. Roger said that Gear had a right to do so but went on, "You know we will never go union. . . they tried it once and we sold out." Some further conversation, the details of which Gear could not recall, then took place in the course of which Roger said that the "good" men, naming two of Respondent's drivers, were not members of the Union. Roger also said that when Gear became 21 he probably could be reemployed. The discharge of Gear is not alleged to be a violation of Section 8 (a) (3) of the Act, and his reinstatement is not sought. According to Gear his age was common knowledge around the shop. George Jones, another driver who was discharged in February, testified that in late 1953, learning that Gear was under age and believing this to be a matter about which the Respondent should be informed, told Roger Wagner about it. According to Jones, Roger said that he was aware of that circumstance.

Clinton E. Funk, who after some earlier employment with Respondent was rehired in November 1953, was discharged in May 1954. Funk has been a member of the Union for a number of years and appears to have been the one responsible for the latest effort of the Union to organize Respondent's employees. Shortly after Funk began his activity in this connection, Roscoe Wagner, apparently then unaware of Funk's activity, said that if the Union ever did "step in" he would be ruined. In March, at about the time that the representation election was being conducted, Roscoe Wagner and Funk had a conversation in which the former said that if the Union won the election, its wage demands would be beyond Wagner's ability to pay, with the result that he would be forced to sell his equipment and get rid of his employees. Roscoe went on to say that the Union was getting to be like a bunch of Communists, that the business agent was no good but interested only in getting sufficient members so as to hold his own job. In the same conversation Wagner said that he had been unaware that Gear was under age and that Weyer was discharged because of "past conduct." At that time the Respondent had, as previously mentioned, disposed of two trucks. Roscoe said that a lot more of them would go the same way if the Union got in.

Leroy Fox, a driver, testified credibly and without contradiction that about February 16, Roger Wagner asked if he had been approached by the Union and how he "felt" about it.

Both Wagners appear to have had means of knowing who of their employees had authorized the Union as his representative. It seems probable, although it is denied, that the Respondent was aware that Weeks had signed a union designation before his discharge. I do not consider the evidence to establish, however, that the disposition of two trucks, which circumstance made it possible for the Respondent to operate with fewer drivers, was motivated by any consideration other than economic and Weeks was the most recently hired among the drivers. The fact that Weeks was subsequently employed on an occasional basis and was finally offered regular employment, negates any inference of an unlawfulness attending his initial separation. I find no unfair labor practice in connection with the termination of Weeks.

A different answer is provided by the evidence, however, in respect to Weyer. I have no doubt that on some day in December Weyer stopped his truck in Nevada and remained parked for several hours, contrary to Respondent's desires. But, as Roger Wagner admitted in his testimony, this was not an operating factor in his discharge and the matter was not even mentioned to Weyer prior to February 16. On that date it is clear that Roscoe Wagner became seriously angry with Weyer and, according to Roscoe, his anger was aroused by Weyer's denying the occurrence of the unauthorized delay in December capped by calling Roscoe a "damned liar." Having observed the two men, Weyer and Roscoe Wagner, in the hearing room, I doubt seriously that Weyer would so have risked retaliation from Roscoe. On the other hand I consider it entirely probable that Weyer denied some assertion by Roscoe in such a fashion as to permit Roscoe to believe that his word was questioned. It is unclear how an incident not since repeated, which was not even commented upon to Weyer in December, became of such importance on February 16 until one considers that Weyer had designated the Union. Roscoe became informed of this and his displeasure with such conduct arose to anger when Weyer made his denial. Weyer had a right under the Act to keep his own counsel concerning his relation with the

Union and was not required to divulge whatever action he may have taken under the interrogation by Roscoe or Roger. The temper of the questioning by Roger in the hearing of Roscoe was accusatory and Weyer could well have believed that his job would be safer if he denied designating the Union.

If the principal reason then for Weyer's discharge was the use of the phrase "damned liar," the letter couched in terms of recommendation then given to him is puzzling. If the reason for the discharge was a lawful one, the record does not suggest how the Respondent could benefit by making it appear to be a resignation. The letter which states that Weyer left of his own free will, recites a circumstance contrary to fact in that respect. I am persuaded that the letter was drafted in that fashion because of a consciousness on the part of Roscoe Wagner that the discharge was indeed for reasons which the Act does not permit. I credit Weyer's testimony that he accepted this letter even though it misstated the circumstances of his termination for the reason that the occasion was an unpleasant one, containing the suggestion of possible bodily injury, and that Weyer, as he testified, wanted to get out quickly.

I find that Weyer was discharged on February 16 because he incurred the anger of Roscoe Wagner by untruthfully answering an unlawful inquiry as to his membership in or activity on behalf of the Union. The questioning was of such a character as to intimidate Weyer, and he was under no obligation to provide the Wagners with an answer. In this complex of circumstances, the question about his union activity itself amounted to a violation of the Act and his discharge because he answered untruthfully was an invasion of the rights which Section 7 of the Act guaranteed him. The discharge of an employee because he refuses to divulge or answer misleadingly to questions which are designed to secure the divulgence of his relation to a labor organization, has a reasonable and natural tendency to discourage membership and activity in behalf of a labor organization. Because this is so, I find that the discharge of Weyer on February 16 discouraged membership in and activity in behalf of the Union and that the Respondent thereby violated Section 8 (a) (3) and (1) of the Act.

Concerning Richard Gear, I find that the Respondent knew of his minority a month or two before his termination. The complaint is so framed that the issue in respect to Gear is not the motivation for the discharge or whether the Respondent thereby discouraged membership in the Union but poses for decision the question if the Respondent by that action interfered with, restrained, or coerced his employees. I find, in accord with the testimony of Weyer, that on February 16 Roger Wagner intimated that Gear was discharged because of membership in the Union and that on the 14th Roger suggested that the Respondent might sell its business if the drivers chose the Union to represent them. I find that by holding out the discharge of Gear as resulting from membership in the Union and by suggesting that designation of the Union might result in the sale of Respondent's business, the Respondent interfered with, restrained, and coerced his employees in the exercise of rights guaranteed in Section 7 of the Act and thereby violated Section 8 (a) (1) of the Act.

I credit the undenied testimony of Clinton Funk that Roscoe Wagner intimated that the success of the Union might result in a loss of employment and that in such event more trucks would be sold or otherwise disposed of. By threatening in this fashion unfavorably to affect the employment of his drivers in the event of union success, by interrogating his drivers—particularly Weyer, Fox, Gear, and Jones—about their participation in the union drive, and by telling his drivers that he knew who among them had joined the Union; where and when they had done so, thus encouraging them to believe that their protected activities were under surveillance, the Respondent interfered with, restrained, and coerced them in the exercise of rights guaranteed in Section 7 of the Act and thereby violated Section 8 (a) (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with his operations described in section I, above, 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 thereof.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that he be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminated in regard to the tenure of employment of Cecil Weyer by discharging him on February 16, 1954, it will be recommended that the Respondent cease and desist from such conduct and make Weyer whole for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to that which he normally would have earned as a driver from February 16 to the date of offer of reemployment on April 30, less his net earnings during that period. The back pay shall be computed in the manner established by the Board and the Respondent shall make available to the Board upon request payroll and other records to facilitate checking of the back pay due (*F. W. Woolworth Company*, 90 NLRB 289).

Having found that by interrogation, threats, and suggestion of surveillance, the Respondent has violated Section 8 (a) (1) of the Act, it will be recommended that he cease and desist from such activity.

Upon the basis of the above findings of fact, and upon the entire record of this case, I make the following:

CONCLUSIONS OF LAW

1. General Teamsters, Warehousemen and Helpers Union, Local No. 483, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.
2. By discriminating in regard to the hire and tenure of employment of Cecil Weyer, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.
3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
4. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

Appendix

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, you are hereby notified that:

WE WILL NOT discourage membership in any labor organization of our employees by means of discharge or by discriminating in any other manner in regard to hire, tenure of employment, or terms or conditions of employment.

WE WILL make Cecil Weyer whole for any loss of pay suffered as a result of the discrimination against him.

WE WILL NOT by means of discharge, interrogations, threats, or in any other manner, interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form labor organizations, to join or assist General Teamsters, Warehousemen and Helpers Union, Local No. 483, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection and to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

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

ROSCOE WAGNER D/B/A
 WAGNER TRANSPORTATION COMPANY,
 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.