

its local pick-up and delivery service, and its over-the-road services will be handled through independent contractors.

From the matter set forth above, you will observe that your assumption that we plan to take over the operation of Hunt Freight Lines and to become obligated to its agreements is in error.

Yours very truly,

(Signed) William D. Sellers, Jr.,  
WILLIAM D. SELLERS, Jr.,  
President.

WDS:lt

**Troy C. Friend, d/b/a Friend Lumber Company and American Federation of Labor and Congress of Industrial Organizations.**

*Case No. 6-CA-1099. July 11, 1958*

**DECISION AND ORDER**

On December 23, 1957, Trial Examiner John H. Eadie issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report, together with a supporting brief.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Jenkins].

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 Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions.

1. The Trial Examiner found that the Respondent discharged employee Charles Chester Thomas because of his activity on behalf of the Union and thereby violated Section 8 (a) (3) and (1) of the Act. We agree.

The credited testimony in the record<sup>1</sup> shows that on Saturday, November 10, 1956, while Thomas was off duty from the Respondent's

<sup>1</sup>The Respondent excepts to the correctness of credibility resolutions made by the Trial Examiner. However, we are reluctant to disturb credibility resolutions as the Trial Examiner, unlike the Board, has the opportunity to observe the deportment and demeanor of the witnesses as they appear before him. Therefore, we will not overrule his resolutions as to credibility unless a clear preponderance of all the relevant evidence convinces us that such resolutions were incorrect. Upon the entire record, such conclusion is not warranted here. *Standard Dry Wall Products*, 188 F. 2d 362 (C. A. 3), enf. 91 NLRB 544; *Universal Camera Corporation v. N. L. R. B.*, 340 U. S. 474, 492-497.

mill; he solicited employees at the Respondent's kiln to join the Union. Employees always talked on the job and the Respondent admitted that it had no rule against talking so long as it did not interfere with the work. After Thomas left the kiln, heated argument among the employees, including some name calling, occurred. Thomas was called into Respondent's office on Monday, November 12, and accused by Troy C. Friend, owner of the Respondent, of organizing the employees, bothering them, and calling them names because they would not sign up with the Union. Although Thomas denied bothering the employees or calling them names he was discharged. Indeed, the Respondent admitted that "probably" the reason for his action against Thomas was opposition to union activity on company time and property. Under these circumstances, we agree with the Trial Examiner that the Respondent discharged Thomas not because he interfered with employees at work but because of his union organizing activity. However, even assuming that the Respondent was of the belief that Thomas had bothered employees and participated in the name-calling incident, the record shows that Thomas did not, in fact, do so. And it also shows that Respondent was aware at that time that Thomas was engaged in activity on behalf of the Union. Thus, the Respondent's good faith alone is insufficient to justify the discharge of an employee for engaging in an activity otherwise protected by the Act.<sup>2</sup> We find therefore, in agreement with the Trial Examiner, that the Respondent discharged Thomas because he solicited employees to join the Union and thereby violated Section 8 (a) (3) and (1) of the Act.

2. The Trial Examiner found that the Respondent independently violated Section 8 (a) (1) of the Act by interrogating employee Foster Thomas. The record discloses that Troy C. Friend, owner of Respondent, questioned employee Foster Thomas as to whether he had "signed up for the union." Friend did not deny that he so interrogated Thomas. In its exceptions to this finding, the Respondent contends that the Trial Examiner improperly permitted the General Counsel to amend the complaint to add an allegation of independent 8 (a) (1) violation, and thereby deprived it of the opportunity to determine the basis of the alleged violation and the possibility of producing additional testimony in the matter. Section 102.17 of the Board's Rules and Regulations authorizes the Trial Examiner to accept an amendment of a complaint at any time during the course of the hearing. We find therefore that the amendment of the complaint was permissible and timely. Nor do we find that the Respondent was prejudiced by the ruling permitting the amendment. The

<sup>2</sup> See *Hill & Hill Truck Line, Inc.*, 120 NLRB 101, and cases cited therein. We also note, in this connection, that the Pennsylvania State Unemployment Compensation Board also found that the Respondent had discharged Thomas for engaging in union activity.

owner of Respondent who engaged in the violation, testified at the hearing without denying the interrogation, and the Respondent does not contend that this record testimony is untrue. Furthermore, the Respondent could have requested a continuation if it felt that it needed more time in which to produce additional testimony. Therefore, under all these circumstances and in agreement with the Trial Examiner, we find that by such interrogation the Respondent violated Section 8 (a) (1) of the Act.

### ORDER

Upon 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 the Respondent, Troy C. Friend, d/b/a Friend Lumber Company, Hopwood, Pennsylvania, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in American Federation of Labor and Congress of Industrial Organizations or in any other labor organization of its employees, by discriminating against them in regard to their hire or tenure of employment or any term or condition of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

(b) Interrogating employees concerning their union membership and activities in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act.

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

(a) Offer to Charles Chester Thomas immediate and full reinstatement to his former or substantially equivalent position, without prejudice to any seniority or other rights and privileges previously enjoyed.

(b) Make whole said employee in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(c) Preserve and make available to the Board or its agents upon request, for examination and copying, all payroll records, social-security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the rights of employment under the terms of this Order.

(d) Post at its kiln and plant, Hopwood, Pennsylvania, copies of the notice attached hereto marked "Appendix A."<sup>3</sup> Copies of such notice, to be furnished by the Regional Director for the Sixth Region,

<sup>3</sup> In the event that this Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by substituting 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."

shall, after being duly signed by the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by him for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

## APPENDIX A

### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in American Federation of Labor and Congress of Industrial Organizations or in any other labor organization of our employees, by discriminating against them in regard to their hire or tenure of employment or any term or condition of employment, except to the extent permitted by Section 8 (a) (3) of the Act.

WE WILL NOT interrogate our employees concerning their union membership and activities in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act.

WE WILL offer to Charles Chester Thomas immediate and full reinstatement to his former or substantially equivalent position, without prejudice to any seniority or other rights and privileges previously enjoyed, and will make him whole for any loss of pay suffered as a result of the discrimination against him.

All our employees are free to become or remain members of the above-named Union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

TROY C. FRIEND, d/b/a FRIEND LUMBER 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.

## INTERMEDIATE REPORT

## STATEMENT OF THE CASE

Upon charges duly filed by American Federation of Labor and Congress of Industrial Organizations, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Sixth Region, issued a complaint, dated September 24, 1957, against Troy C. Friend, doing business as Friend Lumber Company, herein called Friend or the Respondent, alleging that the Respondent had engaged 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, herein called the Act.

The Respondent filed an answer on about October 7, 1957, in which it admitted the jurisdictional allegations of the complaint, but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Uniontown, Pennsylvania, on November 6 and 7, 1957, before the duly designated Trial Examiner. At the close of the whole case, the Respondent moved to dismiss the complaint. Ruling was reserved. The motion to dismiss is disposed of as hereinafter indicated. The General Counsel moved to conform the pleadings to the proof as to minor variances, such as dates and spelling of names. The motion was granted without objection. The General Counsel also moved to amend the complaint so as to include an allegation of violation of Section 8 (a) (1) of the Act. The motion was granted over the Respondents' objection. The General Counsel argued orally on the record at the conclusion of the hearing. None of the parties filed a brief.

Based upon the record as a whole, and from his observation of the witnesses, the Trial Examiner makes the following:

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

Troy C. Friend is an individual with his principal office in Hopwood, Pennsylvania, and places of business in Hopwood and West Virginia, where he is engaged in the operation of saw and planing mills and the business of wholesaling and retailing lumber and its related products.

During the year ending September 1, 1957, the Respondent processed and manufactured lumber and related products, of which in excess of \$50,000 was sold and shipped by Respondent directly in interstate commerce from the Hopwood and West Virginia plants to States of the United States other than Pennsylvania and West Virginia, and of which in excess of \$100,000 was sold and shipped by Respondent to companies located in Pennsylvania, which companies annually sell and ship products valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania.

It is found that the Respondent is engaged in commerce within the meaning of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

American Federation of Labor and Congress of Industrial Organizations is a labor organization which admits to membership employees of the Respondent.

## III. THE UNFAIR LABOR PRACTICES

Charles Chester Thomas was employed by the Respondent for 17½ years. He worked as a laborer under Foreman Delbert DeWitt at the Hopwood planing mill.

The Respondent<sup>1</sup> operated a "dry kiln" at Atlas, which is located about a mile from Hopwood. About eight employees worked at the dry kiln. On November 9, 1956, Thomas met William Antuck, an employee who worked at the dry kiln. Antuck told Thomas that the dry kiln would be operated the next day, a Saturday. Thomas, who did not work on Saturday, went to the dry kiln on November 10, where he solicited the employees to sign union cards. Strawser was not present at the time. Some of the employees signed cards, but Antuck and employees Virgil Friend and Foster Thomas refused. After Charles Thomas had left the dry kiln, the employees created a disturbance by calling the employees who had refused to sign names, such as "scab, stool pigeon, and a cripple."

<sup>1</sup>Greely Strawser owned an interest in the dry kiln. He also acted as foreman at the dry kiln. Otherwise he has no interest in the Friend Lumber Company.

Later that same day, Troy Friend spoke to Joseph Wood, who performed automobile repair work for the Respondent. Wood told Friend about the trouble at the dry kiln. Concerning this conversation, Friend at first testified that Wood told him that Charles Thomas had been "circulating papers down at the kiln for signatures" for a union. Later, he denied that Wood had told him this. Wood, a witness for the Respondent, testified to the effect that he told Friend "that the fellows were giving [Antuck] a pretty rough time" at the dry kiln, but that he did not recall mentioning any names of employees involved to Friend.

At about 8 a. m. on Monday morning, November 12, Friend called Charles Thomas to the office. William Shaw, Respondent's bookkeeper, was present at the time. Concerning his conversation with Friend, Thomas was questioned and testified as follows:

Q. And, what did he say?—A. He said, "Just wait a little bit. Bill will have your pay envelope. I'm done with you, done with you for good."

Q. Who said that?—A. Mr. Friend, Troy Friend.

Q. What did you say?—A. I wanted to know what I done. He said, "You had your nose in my business too much," he says, "I'm done with you."

Q. What did you say?—A. I didn't say nothing and he went on and Bill got my pay ready and he wanted me to sign a slip. I asked him what it was and he read it off and I said, "No, I won't sign it." Mr. Friend said, "Put it back. Don't pay him."

Q. (By Mr. Narick.) We're talking about this conversation. I think you said you had asked him what you had done wrong?—A. Yes, I did. I asked him what I had done wrong. He said I'd organized. He said, "I want you to get out or I'll throw you out," he says, "I won't push you out, I'll throw you out on the street," so I couldn't reason with him, so I went out.

Q. Was there anything said in that conversation about scabs?—A. He said I called them names and I said I didn't.

Q. Who brought this subject up?—A. He did.

Q. How?—Well, he just said I was down there and called them names, being as they wouldn't sign up for the union and I said I didn't.

Q. (By Mr. Narick.) And, if you recall, did he say how you bothered the employees at work?—A. Well, on Monday morning when I went in there, he said "You bothered the fellows at work."

Q. Did he say anything beyond that?—A. And I said I didn't bother them from work. They didn't lose no time.

Friend denied the remarks attributed to him by Thomas or that he said anything that could be construed as a discharge. He testified in substance, that he merely reprimanded Thomas "maybe not in a very nice tone, because I was pretty much upset about the whole thing"; that at the time he thought that Thomas was the one who had called Antuck and other employees names such as "scab"; and that "probably" the reason for the reprimand was his opposition to union activity on company time and property. Concerning the conversation, Friend testified, "when Mr. Thomas came in, I said, 'Chester, what do you mean going down to the kiln and causing confusion amongst my men and picking on a cripple [Antuck],'. . . he said, 'They told me to come down,' and I said, 'Who do you mean by they?' And he said, 'The men down at the kiln.' And I said, 'What men?' And, he didn't answer that question. . . . Well, I said, 'I just won't condone to these practices and I won't have my men abused like this,' or something to that effect. . . . I said, 'I just won't have you going down to the kiln no more. I'd rather you wouldn't go down there any more.' And then he said, 'I quit. Give me my pay,' or some words similar to those."

Shaw denied that Friend had instructed him to make up Thomas' pay before the conversation, or that Friend told Thomas that he was discharged. He testified, "Mr. Thomas didn't do too much talking. Mr. Friend kept repeating the same things over and over. He was really sore because of the thing. It happened during working hours and he was upset about that and he was upset about the statement that he had heard about him picking on a cripple. . . . Mr. Friend said he wouldn't tolerate any actions like that, and that he didn't want them down there causing a disturbance and commotion, the best I can recollect. . . . That's when Mr. Thomas spoke up and I'd say they were both heated, and he spoke up and said, 'I quit. Give me my pay.'"

I credit Thomas' version of the above conversation, and find that Friend discharged him on November 12, 1956, because of his activity on behalf of the Union. It is

clear from the record that Friend knew the reason for Thomas' visit to the dry kiln on November 10. In fact, he admitted that union activity on company time and property "probably" was the reason for the action that he took. The testimony of Shaw and Friend shows that the latter was angry. This fact lends support to Thomas' version of the conversation. Shaw's testimony indicates that the conversation was not brief, and that Thomas did not have much to say. However, Shaw could recollect very little of what Friend said, other than the above. If Friend merely made the statement to which he and Shaw testified, a mild reprimand at the most, I do not believe that Thomas, whose employment by Respondent amounted to 17½ years, would have quit. Thomas was not a young man, and did not appear to me to be the impulsive type.

Foster Thomas testified without contradiction that "the first thing in the morning" when he reported for work (7:30 a. m.) at the Hopwood yard he met Friend at the office; that Friend asked him if Charles Thomas had been to the dry kiln; that he gave a report to Friend of what had taken place at the dry kiln on November 10; that Friend asked him if he had "signed up for the union"; and that he told Friend that he had not signed.<sup>2</sup>

It is found that Friend's interrogation of Foster Thomas constitutes interference, restraint, and coercion.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent, set forth in section III, above, occurring in connection with the operations of the Respondent set forth 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 of commerce.

#### V. THE REMEDY

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

It has been found that on November 12, 1956, the Respondent discriminated against Charles Chester Thomas. Therefore, it is recommended that the Respondent offer Charles Chester Thomas immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and that the Respondent make whole said employee for any loss of pay he may have suffered by reason of Respondent's discrimination by payment of a sum of money equal to that which he would have earned as wages from the date of the discrimination, November 12, 1956, to the date of reinstatement, less his net earnings during such period, the loss of pay to be computed on a quarterly basis in accordance with the formula adopted by the Board in *F. W. Woolworth*, 90 NLRB 289.

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

#### CONCLUSIONS OF LAW

1. American Federation of Labor and Congress of Industrial Organizations is a labor organization within the meaning of Section 2 (5) of the Act.
2. By discriminating against Charles Chester Thomas the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of the 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 aforesaid unfair labor practices affect commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

<sup>2</sup> Friend testified that on November 12, after his conversation with Charles Thomas, he talked to Foster Thomas and other employees of the dry kiln concerning Charles Thomas' visit there on November 10. He did not deny the above statements attributed to him by Foster Thomas.