

of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. Anthony Schneider is an agent of Respondent District Council and each of the Respondent Locals within the meaning of Section 8(b) of the Act.

4. By maintaining in effect an agreement with Davis-Fetch which makes union membership a condition of employment and requires payment of dues and assessments as a condition of employment, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and 8(b)(2) of the Act.

5. By causing or attempting to cause Davis-Fetch to discriminate against Glyn N. Osgood and Frank E. DeBolt, Jr., in violation of Section 8(a)(3) of the Act, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

6. By the aforementioned acts, the Respondents have restrained and coerced the employees of Davis-Fetch in the exercise of their rights guaranteed by Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Lakeland Bus Lines, Incorporated *and* Robert Gibson

Lakeland Bus Operators' Association *and* Robert Gibson. *Cases Nos. 22-CA-34 and 22-CB-23. December 3, 1958*

DECISION AND ORDER

On January 6, 1958, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaged in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the General Counsel filed exceptions to the Intermediate Report and a brief in support thereof.¹ No exceptions were filed by either Respondent.

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 the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent consistent herewith.²

THE REMEDY

To remedy the unfair labor practices, we shall adopt the Trial Examiner's recommendations except as modified herein. Having

¹ The exceptions and brief, as discussed below, relate only to the adequacy of the recommendations of the Trial Examiner as a remedy for the unfair labor practices.

² The Trial Examiner inadvertently omitted a recommendation that the Respondent Company preserve and make available payroll records. We have included this customary provision in our Order.

found that the Respondents engaged in the unfair labor practices set forth in the Intermediate Report, we shall order that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

1. The General Counsel excepted to the Trial Examiner's failure to recommend that the Respondent Company withdraw recognition from the Respondent Association until the latter is certified by the Board as the representative of the Company's employees, and to his failure to recommend that the Company and the Association cease giving effect to their agreement until the latter is certified by the Board. As we find, like the Trial Examiner, that the Respondents respectively have violated Section 8(a) (1), (2) and (3) and Section 8(b) (1) (A) and (2) of the Act by maintaining and enforcing a collective-bargaining agreement which contains unlawful union-security provisions, and by discriminating against Gibson pursuant to such provisions, we find merit in the General Counsel's exceptions.³ In accordance with the Board's established policy in such cases, however, we shall provide that further recognition of the Association and performance of the agreement between the Company and the Association shall be conditioned on demonstration by the Association of its exclusive majority representative status in a Board-conducted election rather than certification of the Association by the Board.⁴ Nothing in our Order, however, shall be construed as requiring the Company to abandon or vary those wage, hour, seniority, or other lawful substantive features of the relationship between the Company and its employees which may have been established pursuant to such agreement.

2. By the aforesaid unlawful union-security provisions of the contract, the Respondents have unlawfully coerced employees to join the Respondent Union in order to obtain employment thereby inevitably coercing them into the paying of initiation fees, union dues, assessments, and other moneys. We find that it would not effectuate the policies of the Act to permit the Respondents to retain such payment of initiation fees, union dues, assessments, and other moneys which have been unlawfully exacted from employees of Respondent Company as the price of their employment. Therefore, as part of the remedy we shall order the Respondents, jointly and severally, to refund to the employees of Respondent Company initiation fees, dues, assessments, and other moneys paid by them as the price of their employment although no exception in this respect was filed by the General Counsel. We believe that these remedial provisions are appropriate and necessary in order to expunge the coercive effect of

³ *Imperial Wire Company, Inc.*, 118 NLRB 775.

⁴ *Bowman Transportation, Inc.*, 120 NLRB 1147.

the Respondents' unfair labor practices.⁵ As the Trial Examiner found the contract herein unlawful, we shall not exempt from reimbursement the period between the date of the issuance of the Intermediate Report and the date of this Order. The Respondents' liability for reimbursement shall begin 6 months prior to the date of the filing and service of the charge against each Respondent, and shall extend to all such moneys thereafter collected.

ORDER

Upon the basis of the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

1. The Respondent Company, Lakeland Bus Lines, Incorporated, Dover, New Jersey, its officers, agents, successors, and assigns, shall:

- a. Cease and desist from:

- (1) Encouraging membership in any labor organization by suspending any of its employees, by maintaining or enforcing the unlawful clauses of any collective-bargaining agreement with any labor organization, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment, except as authorized in Section 8(a) (3) of the Act.

- (2) Contributing support to Lakeland Bus Operators' Association, or any other labor organization, and from otherwise interfering with the representation of its employees through a labor organization of their own choosing.

- (3) Recognizing Lakeland Bus Operators' Association, or any successor thereto, as the representative of any of its employees for the purpose of dealing with the Respondent Company with respect to rates of pay, wages, hours of employment, or other conditions of employment, unless and until the said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the Respondent Company's employees.

- (4) Performing, enforcing, or giving effect to its collective-bargaining agreement of May 14, 1956, with Lakeland Bus Operators' Association, or entering into or enforcing any extension, renewal, modification, or supplement thereof, or any superseding collective-bargaining agreement with the said labor organization, unless and until the said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the Respondent Company's employees.

⁵ *Los Angeles-Seattle Motor Express, Incorporated*, 121 NLRB 1629; *Broderick Wood Products Company*, 118 NLRB 38; *Brown-Olds Plumbing & Heating Corporation*, 115 NLRB 594; *Coast Aluminum Company*, 120 NLRB 1326; and *Hibbard Dowel Co.*, 113 NLRB 28.

(5) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

b. Take the following affirmative action, which the Board finds will effectuate the policies of the Act.

(1) Withdraw and withhold all recognition from Lakeland Bus Operators' Association, as the representative of any of its employees for the purpose of dealing with the Respondent Company with respect to rates of pay, wages, hours of employment, or other conditions of employment, unless and until the said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the Respondent Company's employees.

(2) Offer to Robert Gibson immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(3) Jointly and severally with the Respondent Association, make the said Robert Gibson 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."

(4) Jointly and severally with the Respondent Association reimburse its employees for all initiation fees, dues, assessments, and other moneys illegally exacted as a condition of union membership by said Association, liability therefor to begin 6 months prior to the date of the filing and service of the charge against each Respondent, and to extend to all such moneys thereafter collected.

(5) Post at its office in Dover, New Jersey, copies of the notices attached hereto marked "Appendix A" and "Appendix B."⁶ Copies of said notices, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by the respective representatives, be posted by the Company immediately after receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(6) 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 amounts of back pay

⁶ 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."

due and the rights of employment under the terms of this Order.

(7) Mail to the Regional Director for the Twenty-second Region signed copies of the notice attached hereto marked "Appendix A," for posting by the Association. Copies of said notice, to be furnished by said Regional Director, shall, after being duly signed by the Company's representative, be forthwith returned to said Regional Director for such posting.

(8) Notify the Regional Director for the Twenty-second Region in writing, within ten (10) days from the date of this Decision and Order, what steps have been taken to comply herewith.

2. The Respondent Association, Lakeland Bus Operators' Association, its officers, agents, successors, or assigns, shall:

a. Cease and desist from:

(1) Performing, enforcing, or giving effect to its collective-bargaining agreement of May 14, 1956, with the Respondent Company, or entering into or enforcing any extension, renewal, modification, or supplement thereof, or any superseding collective-bargaining agreement with the Respondent Company, unless and until the Respondent Association shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the Respondent Company's employees.

(2) Demanding, requiring, instructing, or inducing the Respondent Company, its officers, agents, successors, or assigns, or any other employer to suspend employees because they are not members in good standing in the Respondent Association, except in accordance with Section 8(a) (3) of the Act.

(3) In an other manner causing or attempting to cause the Respondent Company, its officers, agents, successors, or assigns or any other employer to discriminate against any employee in violation of Section 8(a) (3) of the Act.

(4) In any other manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

(1) Notify the Respondent Company, in writing, that it withdraws its objection to the employment of Robert Gibson by the Company, and requests it to offer to him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges.

(2) Jointly and severally with the Respondent Company make the said Robert Gibson 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."

(3) Jointly and severally with the Respondent Company reimburse the employees of the Respondent Company for all initiation

fees, dues, assessments, and other moneys illegally exacted as a condition of union membership by Respondent Association, liability therefor to begin 6 months prior to the date of the filing and service of the charge against each Respondent and to extend to all such monies thereafter collected.

(4) Post at its office in Dover, New Jersey, copies of the notices attached hereto marked "Appendix A" and "Appendix B."⁷ Copies of said notices, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by the respective representatives, be posted by the Association immediately upon receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by the Association to insure that said notices are not altered, defaced, or covered by any other material.

(5) Mail to the Regional Director for the Twenty-second Region signed copies of the notice attached hereto marked "Appendix B," for posting by the Company. Copies of said notice, to be furnished by said Regional Director, shall, after being duly signed by the Association's representative, be forthwith returned to said Regional Director for such posting.

(6) Notify the Regional Director for the Twenty-second Region in writing, within ten (10) days from the date of this Decision and Order, what steps have been taken to comply herewith.

⁷ See footnote 6 *supra*.

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 Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT encourage membership in Lakeland Bus Operators' Association, or any other labor organization, by suspending any of our employees or discriminating against them in any other manner in regard to hire or tenure of employment or any term or condition of employment, except as authorized in Section 8(a) (3) of the Act.

WE WILL NOT contribute support to Lakeland Bus Operators' Association, or any other labor organization, or otherwise interfere with the representation of our employees through a labor organization of their own choosing.

WE WILL NOT recognize Lakeland Bus Operators' Association or any successor thereto, as the representative of any of our employees for the purpose of negotiating with us with respect

to rates of pay, wages, hours of employment, or other conditions of employment unless and until the said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board conducted election among the Company's employees.

WE WILL NOT perform, enforce, or give effect to our collective-bargaining agreement of May 14, 1956, with Lakeland Bus Operators' Association, or enter into or enforce any extension, renewal, modification, or supplement thereof, or any superseding agreement with the said labor organization, unless and until the said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among the employees of this Company.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL offer to Robert Gibson immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and jointly and severally with Lakeland Bus Operators' Association, make him whole for any loss of pay suffered as a result of the discrimination against him.

WE WILL jointly and severally with Lakeland Bus Operators' Association, reimburse our employees for all initiation fees, dues, assessments, and other moneys illegally exacted as a condition of union membership by said Association.

LAKELAND BUS LINES, INCORPORATED,
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.

APPENDIX B

NOTICE TO ALL MEMBERS OF LAKELAND BUS OPERATORS' ASSOCIATION AND TO ALL EMPLOYEES OF LAKELAND BUS LINES, INCORPORATED

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

WE WILL NOT demand, require, instruct, or induce Lakeland Bus Lines, Incorporated, its officers, agents, successors, or assigns, or any other employer to suspend employees because they are not members in good standing in our Association, except in accordance with Section 8(a) (3) of the Act.

WE WILL NOT perform, enforce, or give effect to our collective-bargaining agreement of May 14, 1956, with Lakeland Bus Lines, Incorporated, or enter into or enforce any extension, renewal, modification, or supplement thereof, or any superseding agreement with that Company, unless and until we have demonstrated our exclusive majority representative status pursuant to a Board conducted election among the Company's employees.

WE WILL NOT in any other manner cause or attempt to cause Lakeland Bus Lines, Incorporated, or any other employer, to discriminate against employees in violation of Section 8(a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

WE WILL jointly and severally with Lakeland Bus Lines, Incorporated, make Robert Gibson whole for any loss of pay suffered as a result of the discrimination against him.

WE WILL jointly and severally with the Lakeland Bus Lines, Incorporated, reimburse the employees of the Company for all initiation fees, dues, assessments, and other moneys illegally exacted as a condition of union membership by the Lakeland Bus Operators' Association.

LAKELAND BUS OPERATORS' ASSOCIATION,
Labor Organization.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

The consolidated complaint herein alleges that: At the Union's insistence, and because he was not a member in good standing of the Association, the Company discharged Gibson on or about June 20, 1957, and has failed and refused to reinstate him; the Association insisted that the Company discharge Gibson because he was not a member; on or about May 14, 1956, the Company and the Association executed and they have since maintained and enforced a collective-bargaining agreement which requires company employees to be members of the Association in good standing; and by said acts the Company has violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act, as amended, 136 Stat. 61, and the Association has violated Section 8(b)(1)(A) and (2) of the Act. The joint answer of the Respondents denies that Gibson was discharged or was refused reinstatement, and denies each of the allegations of violation.

A hearing was held before me at Dover, New Jersey, on November 19 and 20, 1957. Pursuant to leave granted to all of the parties, a brief was thereafter filed by the Company, the time to do so having been extended.

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

FINDINGS OF FACT (WITH REASONS THEREFOR)

I. THE COMPANY'S BUSINESS AND THE LABOR ORGANIZATION INVOLVED

It was admitted and I find that: the Company, a New Jersey corporation with principal office and place of business in Dover, New Jersey, operates an inter-

state public transit system; during the 12 months prior to issuance of the complaint it received from said operation gross revenues in excess of \$100,000; and the Company is engaged in commerce within the meaning of the Act.

The answer left open for decision the question whether the Association is a labor organization within the meaning of the Act, and testimony was received to the effect that the Company's decisions with respect to wages, hours, and conditions of employment were unilaterally determined, the Company deciding what it could afford and making changes as it felt able to do so. The agreement between the Company and the Association declares a stated purpose "to provide a working understanding between the COMPANY and the EMPLOYEES regarding hours, conditions of labor, rates of wages, and other conditions of employment." It appears further that in the Association's dealings with the Company there are references to wages, hours, working conditions, grievance procedure. The Company acts on requests of the Association even if it does not accede to them. Even if there is no give and take, there is negotiation or discussion as the Association at least "takes up" drivers' requests and grievances with the Company. With respect to disciplinary action against Gibson, the Company advised the Association's representatives that it would abide by their request or recommendation. The Act's definition of labor organization is clear, and authorities are plentiful that the Company need not accede; we have a labor organization within the meaning of the Act if the group in question is at least in part organized to and does discuss with the employer grievances, disputes, or terms or conditions of employment. To cite but one case, not on the issue of domination or support, but on the immediate question whether the Association is a labor organization, the Board found a labor organization in *Cabot Carbon Company, etc.*,¹ where it declared:

The Committees have never attempted to negotiate a contract with Respondents, and all benefits, privileges, or concessions to employees resulting from such conferences depend entirely upon company policy or magnanimity.

I find that the Association is a labor organization within the meaning of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The collective-bargaining agreement*

On May 14, 1956, the Company and the Association entered into a collective-bargaining agreement which, except for modification with respect to rates of pay, is now in effect. That agreement provides, *inter alia*:

All new operators shall be hired only through the approval of the COMMITTEE (Association). . . .

All new operators shall be informed by management as to the presence of the Association, their membership to it, and their adherence to its officers and such officers shall, as a condition of employment, be members of the Association in good standing.

The calling of a strike or walkout (is cause for immediate discharge or suspension).

Under no circumstances, shall any operator voice his grievance directly to management, and by the same token, management shall not accept any grievance except from the COMMITTEE.

Violation of Section 8(a)(1), (2), and (3) and 8(b)(1)(A) and (2) in the maintenance and enforcement of the agreement (the execution alleged is outside the statutory period) is so clear that discussion of these provisions is unnecessary.

B. *Gibson*

Gibson had been employed as a driver by the Company since 1952. He was a member of the Association, had been its secretary, and as such a member of the three-man committee which spoke for it. About June 18, 1957, the Company posted summer runs for which the drivers were to bid according to seniority. Gibson, who was second in seniority, did not attempt to make his selection until June 19, those below him thus being prevented from making their choice. He explained that he had to wait until the driver ahead of him had chosen. When Gibson attempted to sign for a run which had a dispatching job out of New York, Grois, the Company's manager, erased that run, telling him that the Company

¹ 117 NLRB 1633, 1647.

did not want him on that job. That evening, Gibson called York, the Company's vice president, and complained that, when he wanted to pick a certain run, Grois had told him that they would straighten it out the next day.

Under the Act and the conditions therein set forth, an employee may, despite a representation agreement, present his own grievance to the employer. Under no compulsion to process his grievance through the Association or its committee, Gibson nevertheless explained that he did not go to the committee with his grievance because the Association's president, Taylor, and Stewart, a second member of the committee, had allegedly declared that they would not handle it. (Gibson testified also that, when he later explained to the committee that Taylor had told him that he would no longer handle his grievances, Taylor denied that he had said that.) Whatever the committee's right to notice of a grievance, other provisions of the Act are not repealed when an employee presents a grievance himself.

Gibson came to work at 6 a.m. on June 20. He made a trip to New York and returned to Dover, where Grois told him that there were two letters for him. One, from the Association, suspended him from membership, stating the reason as follows:²

Reason:

By going directly to management with grievances, and failure to recognize the committee. You have forfeited your right to belong to Lakeland Operator's Association. [Spelling as in original.]

The other letter, from the Company, suspended Gibson as a driver, stating its reason as follows:

Reason:

The company has been notified by the Driver's Committee that you are no longer in good standing with the Lakeland Operator's Association.

The Association had notified the Company of its action against Gibson, and the Company's letter was issued in response to such notification. It is not claimed nor does it appear that the Company acted in the belief that the Association's action was for the statutory reason, i.e., nonpayment of dues.

We are here concerned with the legal significance of Gibson's suspension from membership in the Association for the reason stated, the Association's notice to the Company, and the latter's consequent and immediate suspension of Gibson as a driver. Not only was there illegality in the Company's suspension of Gibson for the reason given and the Association's causation thereof, but, since the agreement between the Company and the Association was violative of the Act, the Company's suspension and the Association's to the extent that it caused the Company's action (distinguishing it from suspension as an intraunion procedure) must likewise be declared violative whatever the reason based on that agreement.

It is clear that some action had to be taken on assignment of runs to the various drivers when Gibson refused to make another selection on June 19. However this could have been handled as a grievance lawfully and tactfully, whether or not to Gibson's satisfaction, the steps taken by the Association and the Company were based on the Association's unlawful claim to the exclusive right to handle grievances and Gibson's direct approach to the Company with his grievance. This is not to declare Gibson's entitlement to the run which he sought nor to determine his rights in that connection. But, whatever the Company might lawfully have done, its suspension of Gibson for the reason which it stated and "acting upon the suspension imposed by the Association," was unlawful. The Company's brief to the contrary notwithstanding, it did not suspend Gibson for "deliberate misconduct." We turn now to appraisal of the subsequent acts.

The suspension reading "as of this date," Gibson waited for and spoke with York, Grois being too busy at the time. York's advice was that Gibson apologize to or get himself straightened out with the committee; perhaps they would then lift their suspension. This further indication that company action depended on Association action, all of which in turn depended on the unlawful agreement, constituted an unlawful condition to reinstatement; it further indicated that the suspension by the Company, by its terms indefinite in duration, would continue

² Taylor testified that Gibson was suspended for his failure to make a pick and for going over the committee's head to management with his grievances. Aside from the fact that the first of these two reasons was not declared in the letter which caused the Company's action, it would not be a lawful reason for the Association to cause the Company to suspend Gibson even if the Company might without discrimination have taken action against him.

as long as the agreement was recognized—and the latter is still in effect. Hence when Gibson rejected York's suggestion and insisted on being paid off, replying to York that if that advice represented the latter's attitude, he might as well pay him, Gibson's declaration represented but recognition of the Company's action and attitude. In short, Gibson's statement, in effect a resignation, was prompted and provoked by the Company's declared intent to prolong his suspension until he complied with its unlawful insistence on recognition of the agreement and the action taken thereunder. The Company's action constituted a constructive discharge; even before Gibson indicated that he would quit, the indefinite suspension, which might be modified only by an apology, effectively terminated his employment. Further, it provoked Gibson's resignation.³

At the request of two other employees, the committee arranged a hearing for Gibson on June 22. When he denied that he had quit, Taylor indicated that he would check on that, and declared that the suspension was no longer in effect and there was no need to lift it if Gibson had in fact quit. Taylor then called York, who told him that Gibson had quit. Here it must be noted that Taylor's first information that Gibson had allegedly quit came from York on June 20: any action or failure to act based on such alleged quitting is no more valid as a defense than is the so-called quitting itself, which has been found to have been provoked and to have been the result of a constructive discharge.

When the committee met with Gibson again on June 24 or 25, Taylor reported that the Company had told him that Gibson had quit. Asked why he had gone over the committee's head with his direct appeal to the Company, Gibson replied as we have already seen that Taylor had said that he would no longer handle his grievances. Gibson explained that he had not selected a run because the Company refused to let him select the one he wanted. He testified without contradiction that one of the committee members now favored his reinstatement, but the other two opposed it. Whatever personal differences might have existed between Gibson and Association representatives, the Act does not recognize them as justification for discrimination; in fact, it is intended to safeguard against it.

Here we may note that the Company thereafter paid Gibson the bonus customarily paid men who had a safe driving record. If this was brought out by the Company to show that it had not in fact discharged him and that he was still considered to be an employee, it would further indicate that his status as an employee continued despite his so-called resignation. Actually, whether or not Gibson has been regarded as an employee of the Company, he has been denied his full employment rights, including seniority; and such denial, prompted by the Association, is discriminatory. Gibson is entitled to reinstatement to his former position without diminution of any of his rights.

After leaving York about noon on June 20, Gibson that afternoon went to see Flynn, the Company's president, at home. (Unlike Gibson, Grois, and Taylor, Flynn placed these events on June 21. Adjustment, if necessary, can await compliance.) Shown the two letters, Flynn said that he would find out what it was all about, and suggested that Gibson call him on Monday, June 24. Gibson called on the 24th and several times thereafter, Flynn saying that he was busy but working on it, getting together with the committee, and doing everything possible to straighten the matter out. At one time Flynn asked whether Gibson was willing to return to work at the bottom of the board, i.e., with the last job selection, and Gibson replied that he was, provided his full seniority would be recognized when the next pick came up. Flynn then said that he had nothing definite but would call Gibson and let him know; he did not call, and there was no other conversation between the two.

Even if, as Flynn testified, Gibson told him that he had quit, Flynn "sensed" without any request from Gibson, that the latter wanted him to "intervene" or "intercede." There is no basis here for assuming that Gibson waived his rights whatever word he used; and Flynn proceeded with an investigation and report which recognized that Gibson still had certain rights even if the report attempted to abbreviate or limit them. Flynn issued a three-page report on July 11, a copy being sent to each member of the Association, including Gibson. In it he emphasized the equities of the situation, the significance and result of disciplinary action, and the importance of recognizing established rules and procedures consented to by the drivers and the Company although, as he stated, no rules had been adopted. Apparently overlooked were the Act and its provisions. Flynn did point out that "If management does not have the right to discharge the driver, then certainly no *sub-division of the company* has. . . ." [Emphasis supplied.] Further, as if anticipating the finding herein, he declared: "The writer finds that

³ *McCarron Co.*, 100 NLRB 1537, 1545.

the resignation of driver Gibson was occasioned through a suspension, which thought it may have been temporary in character, became tantamount to dismissal, that the driver's offer to resign was occasioned by provocation. . . ." (On the stand, Flynn testified that the suspension did not provoke the resignation.) Flynn further stated in his report his belief "that what amounts to dismissal of Gibson has been unfair. . . ." The reinstatement which he then directed was, however, incomplete and not in conformity with the remedy which the Board provides in such cases. The reinstatement which Flynn directed was probationary, subject to all association rules, and otherwise invalid.

Flynn's attitude and direction, although ironic, would have led to a compromise only; they did not tend to settle the basic questions of the right to suspend Gibson as a driver and to demand or cause such suspension. Although he recognized the element of provocation, Flynn testified that he has no control over the seniority list (this would support another allegation and finding of violation) and that under the Association's stand Gibson would now be at the foot of the list. There is nothing to indicate that, if Gibson apologized, he would get the run to which he is entitled as second highest man on the seniority list. On the contrary, while Flynn thought that he would be going too far if he suggested that Gibson be restored to his number two position, he sought to persuade the committee that Gibson be restored to some position on the list and be given regular employment; but the committee "couldn't see [his] point of view." Nor was there any obligation on Gibson to apologize to the committee. (We are not here considering what would have been discreet action; we are concerned with the provisions of the Act and the effect of the unlawful agreement and the actions taken thereunder. Thus, although Gibson's concept of *fortiter in re* obscured any tendency toward *suaviter in modo*, we are here limited to consideration of the legality of the steps taken, without regard to any lack of tact or finesse. Nor need we here answer other questions concerning the Company's right to withhold runs from men whom it considers to be lacking in necessary qualifications.)

The Company and the Association remain liable for the indefinite suspension of June 20 and the causation thereof. Neither Gibson's provoked resignation nor the consideration which the Company and the Association thereafter gave the entire matter relieved them of their liability under Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2) of the Act respectively.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in section II, above, occurring in connection with the 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 labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that the Respondents have engaged in and are engaging in certain unfair labor practices affecting commerce, I shall recommend that they cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It has been found that the Respondents respectively have violated Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and (2) of the Act by maintaining and enforcing a collective-bargaining agreement which contains unlawful provisions. I shall therefore recommend that they cease and desist therefrom.⁴

It has been further found that the Company, by suspending Gibson, discriminated against him in regard to his hire and tenure of employment in violation of Section (a)(3) and (1) of the Act; and that the Association caused the Company so to discriminate, and itself restrained and coerced employees in violation of Section 8(b)(2) and (1)(A) of the Act. I shall therefore recommend that the Company offer to Gibson immediate and full reinstatement to his former or substantially equivalent position⁵ without prejudice to his seniority or other rights and privileges. I shall further recommend that the Company and the Association, jointly and severally, make him whole for loss of pay sustained by reason of the

⁴ There is neither allegation nor evidence attacking the majority status of the Association. It will therefore not be recommended that the agreement be set aside in its entirety.

⁵ *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827.

discriminatory action aforementioned, computation to be made in the customary manner.⁶

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

CONCLUSIONS OF LAW

1. Lakeland Bus Operators' Association 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 and terms and conditions of employment of its employees, thereby encouraging membership in a labor organization, Lakeland Bus Lines, Incorporated, has engaged in and is engaging in unfair labor practices within the meanings of Section 8(a)(3) of the Act.

3. By contributing support to the Association, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act.

4. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. By causing the Company to discriminate in regard to hire and tenure of employment and terms and conditions of employment in violation of Section 8(a)(3) of the Act, the Association has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

6. By restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Association has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

7. The aforesaid 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.]

⁶ *Crossett Lumber Company*, 8 NLRB 440; *Republic Steel Corporation v. N.L.R.B.*, 311 U.S. 7; *F. W. Woolworth Company*, 90 NLRB 289. In the case of the Association, the terminal date shall be the date of a proper offer of reinstatement or the date upon which the Association serves upon the Company the written notice, whichever shall first occur.

Pennsylvania Power & Light Company and Utility Engineers Association, Engineers and Scientists of America, Petitioner.
Case No. 4-RC-3594. December 3, 1958

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Chester S. Montgomery, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The Petitioner and the Intervenor, Employees Independent Association, are labor organizations claiming to represent certain employees of the Employer.