Vincent J. Miller and Ferdinand Leardi d/b/a Biltwell Trailer Company *and* Local 596, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent. *Case No. 4-CA-1564. December 19, 1958*

DECISION AND ORDER

On July 31, 1958, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent has 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 and a supporting brief.[1]

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

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.[2] The Board has considered the Intermediate Report, the exceptions and the brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with certain additions.[3]

ORDER

Upon 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 the Respondent, Vincent J. Miller and Ferdinand Leardi d/b/a Biltwell Trailer Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local 596, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, as exclusive representative of the employees in the unit described in the Intermediate Report.

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[1] The Respondent's request for oral argument is hereby denied as, in our opinion, the record, exceptions, and brief adequately present the issues and positions of the parties.

[2] We find no merit in the Respondent's contention that the Trial Examiner at the hearing and in the Intermediate Report demonstrated bias and prejudice against the Respondent. See *Linton-Summit Coal Company, Inc.*, 120 NLRB 346, footnote 2.

[3] The Respondent contends in challenging the Union's majority that (1) the six dischargees were temporary employees, and (2) three other individuals—Frank Alkins, Elwood Richards, and Peter Tyrel—were supervisors as defined in the Act. As to (1), there is no evidence in the record to establish that the dischargees were temporary rather than permanent employees. As to (2), we find it unnecessary to pass upon the supervisory status of Alkins, Richards, and Tyrel because it is clear from the record that the Union represented a sufficient number of other individuals to constitute an employee majority.

(b) Discouraging membership in Local 596 or in any other labor organization of their employees by discharging or refusing to reinstate or in any other manner discriminating against employees in regard to hire or tenure of employment or any term or condition of employment.

(c) Interrogating employees concerning their union membership and in any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Local 596 or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of mutual aid or protection as guaranteed in Section 7 of the Act, or 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.

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

(a) Upon request, bargain collectively with Local 596 as the exclusive representative of all employees in the appropriate unit, and embody any understanding reached in a signed agreement.

(b) Offer the discharged employees immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay they may have suffered by reason of the discrimination against them, in the manner set forth in the section in the Intermediate Report entitled "The Remedy."

(c) Upon request, make available to the Board or its agents, 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 right of reinstatement under the terms of this Order.

(d) Post at Respondent's premises in Philadelphia, Pa., copies of the notice attached to the Intermediate Report marked "Appendix A."[4] Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by Respondent, be posted by Respondent immediately upon receipt thereof, and be maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable

[4] This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" 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."

steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

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

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon charges and amended charges filed by Local 596, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent,[1] the General Counsel of the National Labor Relations Board issued a complaint dated March 7, 1958, against Vincent J. Miller and Ferdinand Leardi d/b/a Biltwell Trailer Company, herein collectively called Respondent, alleging that Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the complaint and charges were duly served upon Respondent, in response to which Respondent filed an answer denying the unfair labor practices alleged.

Pursuant to notice, a hearing was held on April 1 and 2, 1958, in Philadelphia, Pa., before the duly designated Trial Examiner. All parties were represented at the hearing and were given full opportunity to examine and cross-examine witnesses and to introduce evidence bearing on the issues; they were also given opportunity for oral argument at the close of the hearing and to file briefs as well.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a partnership engaged in the manufacture of boat trailers in Philadelphia, Pa. In 1957, Respondent's out-of-State sales exceeded $50,000. I find that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 596, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Sequence of events*

The General Counsel alleges and I find that all employees at Respondent's Philadelphia place of business, including drivers, but excluding office clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. There were 12 employees in this unit on May 10, 1958.[2]

Teamsters Joint Council No. 53, herein called the Joint Council, conducted an organizing drive in the spring of 1957. Joseph Sanders, a member of Local 596, is an organizer for the Joint Council's organizing committee; at Sanders' solicitation, 9 of Respondent's 12 employees signed cards on or about May 7, 1957, reading as follows:

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[1] The original charge was filed by this organization before its disaffiliation from the AFL–CIO. See *Louisiana Creamery, Inc.*, 120 NLRB 170.

[2] I find that Frank Alkins, Elwood Richards, and Peter Tyrel were supervisors at that time within the meaning of the Act. Alkins was in charge of welding operations on the day shift, Tyrel had charge of assembly operations, and Richards was in sole charge of the night shift. These foremen had authority to recommend hire and fire of employees.

TEAMSTERS JOINT COUNCIL NO. 53
ORGANIZING COMMITTEE

I, the undersigned, hereby make application for the membership in the I. B. T. C. W. and H. of A., and I hereby designate the Teamsters Joint Council No. 53 Organizing Committee as my exclusive representative for the purpose of collective bargaining with my Employer with respect to wages, hours, and working conditions. I hereby authorize the said Organizing Committee in its discretion to transfer my membership to any Local Union affiliated with the I. B. T. C. W. and H. of A.

On Friday morning, May 10, 1957, Respondent Miller received the following May 8 letter from Louis Bertucci, president of Local 596:

LOCAL 596, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, EASTERN CONFERENCE OF TEAMSTERS, AND TEAMSTERS JOINT COUNCIL NO. 53, 1174 NORTH THIRD STREET, PHILADELPHIA 23, PENNSYLVANIA, LOUIS BERTUCCI, PRESIDENT

BILT-WELL TRAILER CO.
8406 Lyons Ave.
Phila., Penna.

GENTLEMEN: This is to advise you that the Garage Parking and Service Station Employee's Union Local 596 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America A.F. of L. represents a majority of your employees and we wish to sit down at your earliest convenience to negotiate a Contract in regards to wages, hours and working conditions.

Please call this office within the next three days to set a time and place for this meeting.

Miller called Bertucci the same morning he received this letter and Bertucci said he would call back shortly. Bertucci did not do so, whereupon after an interval of approximately 1 hour, Miller testified that he convened his employees in the shop and read Bertucci's letter to them. Miller testified that he then asked the men "if this was their wishes" and that he inquired "which ones joined the Union" and "which ones did not join the Union." Nine of the twelve employees informed Miller that they had joined the Union.[3] The three employees who advised Miller that they had not joined the Union were Hubert Simmons, Charles Gieder, and Benjamin Sokowski.

Miller[4] approached employee William J. Thomas during that day and he asked whether Thomas had joined the Union. Thomas said he had, whereupon Miller said, according to Thomas' credible testimony, "You know that will cost you your job." When Miller handed Thomas his final check at the end of that day, Miller told Thomas, "See if the Union can get you a job making that much. And get out and don't come back no more." Miller made a similar inquiry of employee Samson Logan that day, according to Logan's credible testimony. Logan told Miller he had joined the Union, whereupon Miller said he would lay off Logan temporarily until he, Miller, "gets this Union matter straightened out." Upon Miller's inquiry, also that same day, and after first telling Miller that he had not joined the Union, employee DeWitt Jones informed Miller that he had done so. Miller then told Jones, according to Jones' credible testimony, that "at 5:30, you're fired." Jones replied that "if I am fired at 5:30, I might as well be fired now, because I ain't going to do no work." Miller told Jones to get out and to return for his money at 5:30. When Jones returned, Miller asked him, "How do you want your pay, physically or mentally?"

That same day, May 10, Miller terminated six of the employees who had informed him of their union membership and the dischargees thereupon advised Union Organizer Sanders to this effect. On Monday, May 13, the Union established and maintained a picket line at Respondent's plant and continued such activity for about 6 weeks.[5] On various occasions during the course of the picketing, Miller told Sanders and another union organizer, Edward Carroll, that

[3] The cards of eight of these nine were received in evidence.

[4] I do not credit Miller's general denial that he had individual conversations with employees concerning the Union.

[5] Respondent Miller addressed vulgar remarks with most offensive gestures to the pickets on the first day; it serves no purpose to recite such obscenities here.

he would move from Philadelphia before recognizing and negotiating with the Teamsters. Miller also told employee DeWitt Jones, who was picketing at the time, that he would close up and move from Philadelphia "before the Union would get in" and that "this Teamsters' Union wasn't any good and that he didn't want anything to do with them because they were goons." "If it were any other Union," Miller continued, "you might have a chance." Miller further told Jones that Jones would still be working for Respondent if "I [Jones] kept my nose clean."

The original unfair labor practice charges in this matter were filed on May 14, 1957, and charged, among other things, that Respondent had discriminatorily discharged DeWitt Jones and five other employees. Miller told Jones sometime later that "it might be worth $50" to Jones if Jones "washed [his] hands of this matter," referring to the instant action. Jones told Miller to give him "$25 now and $25 later"; Miller did not give anything to Jones. On either this or another occasion when Miller was speaking to some of the alleged discriminatees, Miller stated that "the most he would give us [the discriminatees] to withdraw our statements was $50"; the record does not disclose the full conversation on this occasion or how the conversation arose.

B. *Discrimination*

The answer filed in this case asserts that the termination of the six employees "was in the normal course of business because of cessation of orders requiring Respondent's productivity." At the hearing Respondent Miller added still another reason for the discharges by testifying that Respondent discharged all six men for incompetency as well. In the latter connection, Miller testified that he and his supervisors had reprimanded each of the six employees and had told them they would be laid off if their work did not meet Respondent's standards.

The dischargees were comparatively new employees, with seniority ranging from 3 to 13 days as of May 10.[6] They were not engaged in skilled work. William Thomas was under Foreman Alkins' supervision during his 13 days with Respondent. According to Alkins, some days Thomas' work was satisfactory and other days it was not. Alkins further testified that he had asked Miller to speak to Thomas at the outset of Thomas' employment in regard to "bouncing the trailers up and down." Charles Gieder, a rank-and-file employee, testified that he showed Thomas how to clean trailers. Gieder and Benjamin Sokowski, another rank-and-file employee, testified that Thomas did not perform this job satisfactorily and that they complained to Miller on such account. Thomas denied being criticized about his work.

Bernard Collins began working on Wednesday, May 8, and was released May 10. Respondent offered no specific testimony regarding Collins.

Samson Logan had been in Respondent's employ for 7 days when he was released. He was an assembler under Foreman Alkins. Alkins testified that he had observed the work to be too "heavy" for Logan, and the record establishes that Logan had so informed some of his fellow employees and told them he "might quit" for such reason. Respondent offered no other specific testimony regarding Logan.

Randall Carson had 6 days' seniority. Respondent offered no specific evidence respecting Carson except that Carson's application for State unemployment compensation states that he was unemployed for "lack of work/laid off."

DeWitt Jones and Percy Maddry each had 9 days' seniority. The only specific testimony adduced by Respondent regarding them was that of rank-and-file employee Sokowski to the effect that Jones and Maddry "banged up" trailers while stacking them. Miller had told Jones during the latter's employment, "Do more work and less talk."

Respondent Miller testified that he hired two or three employees on Wednesday, May 8, and that when he did so he informed the new employees that they would replace two employees whom he would let go. Miller testified that he did not have any particular two employees in mind at the time and that he would not know until Friday; he elsewhere testified that he had made arrangements by Tuesday, May 7, to lay off a certain group of employees; another time he testified that it was not until Thursday, May 9, that he had made up his mind to lay off the six alleged discriminatees. Foreman Alkins testified, on the other hand, that he knew the week before that the new employees would be laid off, that he was consulted "most of the time" in such connection, and that such practice was followed as to all the alleged discriminatees in this case. Upon cross-examination,

[6] The record does not establish a seniority practice.

Alkins testified that he could recall being consulted concerning only one of the six dischargees.

Respondent had as many as 15 employees (excluding supervisors) the week before the discharges herein, and the record shows this to have been the employment peak. It is recalled that one of the alleged reasons for the terminations was seasonal decline. On the other hand, Foreman Frank Alkins testified that Respondent's busiest season was from March until August, and Miller testified, as stated above, that he hired two or three new employees the same week as the discharges. Respondent witness Charles Gieder testified that Respondent was busy at that particular period and the record also shows that Respondent hired other employees in the following months.

C. *Refusal to bargain*

Respondent asserted at the hearing that one of its reasons for refusing to recognize the Union was its belief that the Union would not honor in good faith any agreements reached with it. Respondent Miller testified that the only reason he did not recognize the Union as the bargaining representative was that he was satisfied, as a result of his May 10 poll, that the Union did not represent a majority. His testimony, in explanation, was that he had already determined to terminate six of the men who said they were union members and that this would have left only a minority of the remaining employees.

Conclusions

It is clear, without further discussion or recapitulation, that Respondent's response to the Union's request for recognition was to interrogate the employees and then discharge a substantial number of the union members, thus seeking to destroy the Union's majority status. By so interrogating employees in this context and by advising employees they were being discharged and had been discharged for reasons of union membership, Respondent has violated Section 8(a)(1) of the Act; and by discharging employees because of their union membership, Respondent has also violated Section 8(a)(3) and (1) of the Act. *Harlan B. Browning et al. d/b/a Cottage Bakers,* 120 NLRB 841; *Gebhardt Chili Powder Company,* 120 NLRB 1502; *E. V. Prentice Machine Works, Inc.,* 120 NLRB 417.

Respondent advances as a legal argument the fact that the employees had designated the Joint Council as bargaining representative and that there has been no designation of Local 596, the charging union herein. Respondent further contends in effect that there was a question concerning the identity of the bargaining representative in view of the fact that the Teamsters Joint Council had apparently been engaging in a citywide organizational campaign with the IAM. The designation cards signed by employees authorized the Joint Council to transfer the signatories' membership to any Teamsters Local, and the recital of the facts herein discloses no confusion by Respondent Miller in this connection. Indeed, Miller made it perfectly clear that Respondent's actions were taken because the employees were affiliated with the Teamsters, of which affiliation his employees had advised him at his own instance.

I conclude that Teamsters Local 596 represented a majority of Respondent's employees in an appropriate bargaining unit on May 8 and 10, 1957, and that Respondent did not have a good-faith doubt of such status. I further conclude that, by attempting to destroy such statutory bargaining status, as recounted above, Respondent has violated Section 8(a)(5) and (1) of the Act. *Cottage Bakers, Gebhardt Chili Powder,* and *Prentice Machine Works* cases, *supra.*[7]

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and such of them as have been found to constitute unfair labor practices, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

[7] Respondent filed a representation petition in Case No. 4–RM–244 on May 14, 1957, after having discharged the six employees. The Regional Director determined that further proceedings were not warranted on such petition. Respondent's contention respecting such petition is groundless. There also is no merit in Respondent's contention respecting a then contemporaneous case under Section 8(b)(4)(A) of the Act.

V. THE REMEDY

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

I shall recommend, among other things, that the Respondent offer the aforementioned employees immediate and full reinstatement to their former or substantially equivalent positions[8] without prejudice to their seniority or other rights and privileges and make them whole for any loss of pay resulting from the discrimination against them, by paying each one a sum of money equal to the amount he would have earned from the date of his discharge to the date of offer of reinstatement, less his net earnings,[9] to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, 291–294. Earnings in one quarter shall have no effect upon the back-pay liability for any other such period. It will also be recommended that the Respondent make available to the Board, upon request, payroll and other records to facilitate checking the back pay due. *F. W. Woolworth Company, supra.*

The unfair labor practices engaged in by Respondent are of such a character that in order to insure the employees their full rights guaranteed by the Act it will be recommended that Respondent cease and desist from in any manner interfering with, restraining, and coercing its employees in their right to self-organization.

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of the Act.
2. Local 596 is a labor organization within the meaning of Section 2(5) of the Act.
3. All employees at Respondent's Philadelphia place of business, including drivers, but excluding office clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.
4. At all times since May 8, 1957, Local 596 has been and it continues to be the exclusive bargaining representative of all employees in the above-described unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.
5. By failing and refusing to bargain with Local 596 since May 10, 1957, as the exclusive representative of the employees in their aforestated unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
6. By discriminatorily discharging the aforementioned employees Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
7. By interrogating employees concerning their union membership and by stating it was taking and had taken economic reprisal for such reason, Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
8. 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.]

[8] *The Chase National Bank of the City of New York*, 65 NLRB 827.
[9] *Crossett Lumber Company*, 8 NLRB 444, 497–498.

APPENDIX A

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

WE WILL NOT discharge or otherwise discriminate against our employees because of membership or other activities in behalf of Local 596, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent.

WE WILL NOT interrogate employees concerning their union membership.

WE WILL bargain collectively upon request with Local 596 as the exclusive representative of all our employees, with respect to rates of pay, wages, hours

of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

WE WILL reinstate and make whole the following employees for any loss of pay suffered by them as a result of our discrimination against them:

Randall Carson	Samson Logan
Bernard Collins	Percy Maddry
DeWitt Jones	William Thomas

All our employees are free to become or remain members of Local 596 or any other labor organization or to refrain from such membership, except to the extent that this right may be affected by an agreement authorized by Section 8(a)(3) of the Act.

VINCENT J. MILLER and FERDINAND LEARDI
d/b/a BILTWELL TRAILER COMPANY,
Employer.

Dated_____ By_____
(Vincent J. Miller)

Dated_____ By_____
(Ferdinand Leardi)

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

Local 392, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO *and* Morton H. Baker *and* Schenley Distillers, Inc., Party to the Contract

Schenley Distillers, Inc. *and* Local 392, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO.
Cases Nos. 9–CB–304 and 9–CA–1045. December 19, 1958

DECISION AND ORDER

On October 25, 1956, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had 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. He also found that the Respondent Union had not engaged in certain other practices alleged in the complaint. Thereafter, the General Counsel 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 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 with the following modifications and additions.