thereby enabling them to bump employees of lesser seniority in the unit represented by the Respondent; and (2) make each of the said employees whole for any loss of pay they may have suffered by reason of Respondent's action in causing the Company to discriminate against them, according to the Board's usual formula for determination of back pay. *F. W. Woolworth Company,* 90 NLRB 289. The said back-pay liability shall be tolled 5 days after Respondent serves the written notices as required above.

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

CONCLUSIONS OF LAW

1. Menasco Manufacturing Company is engaged in commerce within the meaning of Section 2(6) of the Act.
2. The Respondent and Engineers, respectively, are labor organizations within the meaning of Section 2(5) of the Act.
3. By restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.
4. By causing Menasco Manufacturing Company to discriminate against employees in violation of Section 8(a)(3) of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.
5. 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.]

Thomas Morelli and Charles Morelli d/b/a Morelli Brothers and Capital Transport Co., Inc. ***and*** **Local 384, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent.** *Case No. 4-CA-1708. April 6, 1959*

DECISION AND ORDER

On January 9, 1959 Trial Examiner Thomas S. Wilson issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging 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. The Trial Examiner also found that the Respondents had not engaged in other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Charging Party and the General Counsel filed exceptions to the Intermediate Report and supporting briefs, and the Respondent filed a reply brief.

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].

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 briefs, and the entire record

in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

As the Trial Examiner found in effect that the witnesses testifying in support of the Section 8(a)(3) allegations of the complaint were not credible, we agree with his conclusion that the General Counsel has failed to sustain his burden of proof.

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 Respondents, Thomas Morelli and Charles Morelli, doing business and trading as Morelli Brothers, their agents, successors, and assigns, and Capital Transport Co., Inc., Malvern, Pennsylvania, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Warning their employees that any employee who assisted in the organization of a union would be discharged.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such rights 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) Post at Respondents' plant in Malvern, Pennsylvania, copies of the notice attached hereto marked "Appendix."[1] Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, upon being duly signed by the Respondents representatives, be posted by it, as aforesaid, immediately upon receipt thereof and maintained for at least 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Fourth Region in writing, within 10 days from the date of this Order, as to what steps the Respondents have taken to comply herewith.

[1] 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."

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that Charles F. Coffman was discriminatorily discharged in violation of Section 8(a)(3) and (1) of the Act, be, and it hereby is, dismissed.

APPENDIX

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, as amended, we hereby notify our employees that:

WE WILL NOT warn our employees that any one of them who becomes a member of or assists in the organization of a union will be discharged.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local 384, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Independent), or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

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 activities on behalf of any such organization.

MORELLI BROTHERS AND CAPITAL TRANSPORT CO., INC.,

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 a charge duly filed on April 24, 1958, by Local 384, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Union, the General Counsel of the National Labor

Relations Board, herein called the General Counsel [1] and the Board, respectively, by the Board's Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued its complaint dated September 19, 1958, against Thomas Morelli and Charles Morelli d/b and t/a Morelli Brothers and Capital Transport Co., Inc., hereinafter called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Labor Management Relations Act, 1947, as amended, 61 Stat. 136, herein called the Act. Copies of the charge, the complaint and the notice of hearing thereon, were duly served upon the Respondent and the Union.

The Respondent duly filed its answer admitting certain allegations of the complaint but denying the commission of any unfair labor practice.

Pursuant to notice a hearing was held before the duly designated Trial Examiner on November 13, 1958, at Philadelphia, Pennsylvania. The General Counsel, the Union, and the Respondent were represented at the hearing by counsel or representatives. Full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues was afforded all parties. The parties were advised of their right to argue orally at the hearing, which was waived, and to file briefs with the Trial Examiner thereafter. Briefs were received from the Respondent and the General Counsel on December 11, 1958.

Upon the entire record in the case, and from my observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Thomas Morelli and Charles Morelli are partners, doing business and trading as Morelli Brothers. They are engaged in the purchase, sale, and transportation of building and bulk materials and are located at Morehall Road, Malvern, Pennsylvania. The gross receipts of Respondent Morelli annually are in excess of $75,000.

Capital Transport Co., Inc., is a corporation duly organized under the laws of the Commonwealth of Pennsylvania and is engaged in the business of transporting oil and other petroleums in bulk. Its annual gross revenue in excess of $125,000 is derived from rendering services to enterprises which ship goods outside the State of origin, valued in excess of $50,000 annually, or to enterprises which are instrumentalities of commerce deriving in excess of $100,000 in revenue annually from interstate transportation.

Respondent Capital has its principal place of business at Morehall Road, Malvern, Pennsylvania, where it uses the same physical location, garages, office, and other facilities in common with Respondent Morelli. Thomas Morelli is president and vice president of Respondent Capital and Charles Morelli is secretary-treasurer of Respondent Capital. Thomas Morelli and Charles Morelli together own all of the capital stock of Respondent Capital. Respondents Capital and Morelli use common supervisory personnel for their drivers and other employees, have common payroll and clerical personnel, and control of labor relations is centralized and usually exercised by Thomas Morelli. Drivers and other employees employed by Respondents are used interchangeably by both Respondents.

It is found that Respondent Morelli and Respondent Capital constitute a single employer.

The complaint alleged, Respondent's answer admitted, and the Trial Examiner finds, that the Respondent is engaged in commerce within the meaning of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The facts*

Charles Coffman was reemployed for the third time by the Respondent in September 1957 and worked steadily thereafter until he was discharged by the Respondent for the third time on February 10, 1958.

During the last week of January 1958,[2] Coffman went to the union office in Norristown, Pennsylvania, and secured some union application cards from the

[1] This term specifically includes counsel appearing for the General Counsel at the hearing.

[2] All dates hereinafter are in the year 1958 unless otherwise specified.

organizer which, Coffman testified, he distributed to about 12 of Respondent's 23 drivers upon his return to the Respondent's plant.

During the month of January, Coffman participated in three relatively minor incidents at work for his part of which he was reprimanded by Thomas Morelli:

(1) On January 8 the Exton Paper Company to which Coffman had delivered a tank load of oil complained to the Respondent that Coffman had failed to replace the top on their oil tank and, when found, the cover was full of dirt, leaves, and other nonpetroleum materials.

(2) On January 18 while attempting to deliver a tank load of oil to Beloit Eastern [3] Company, the oil failed to run out of the oil tank properly even after Coffman had received instructions as to the proper procedure from Thomas Morelli so that Coffman had to leave the tanker on the Beloit premises with some undetermined loss of revenue to the Respondent.

(3) On January 20 when the Respondent's dispatcher ordered Coffman to relieve a night driver of a tanker which had suffered a broken axle, to wait with the truck until the axle was repaired, and then to make the delayed deliveries and return the tractor and tanker back to the Respondent's premises, Coffman returned to the Respondent's plant without either the tractor or tanker and without having made the deliveries.

On the evening of February 5 Coffman was headed from the taproom, to which he had repaired after work, back to the Respondent's garage when he was met by Thomas Morelli who inquired as to what Coffman wanted. Coffman informed Thomas Morelli about an automobile which the Respondent's mechanic had previously sold to him for $50 and that he, Coffman, was on his way to "have it out" with the mechanic who had made a fool of him in this deal. Thomas Morelli calmed Coffman down so that Coffman left the premises without seeing the mechanic.

On the evening of February 7 as per instructions employee Charles Waite telephoned the Respondent's office for orders for the following day for himself, Coffman, and employee Barr who were then with Waite. Waite learned, and informed his companions, that while there was a load for Waite to deliver the next morning, there were no loads for either Coffman or Barr but that they, Coffman and Barr, were to call the Respondent's office on Saturday for further orders. When Coffman called the office on Saturday as ordered, he was informed that he was to report to the Respondent's office on Monday, February 10, about 9 o'clock in the morning.

Up to this point all parties were in general agreement as to the facts but from this point on the evidence assumed a definite "did-didn't" quality.

Coffman's version is as follows: When Coffman arrived at the Respondent's office on Monday, February 10, as ordered, Thomas Morelli said:

> Charles, I am going to have to let you go. . . . Several of the drivers said you are trying to organize a union, and they were pretty disgusted with the idea. . . . I am not going to put you back to work until I find out if it was really you that was the organizer, but, if I am wrong, I will take money from my own pocket and make it up to you somehow.

Thomas Morelli denied that there was any mention of the Union during the Monday morning conference with Coffman and insisted that he had reminded Coffman of the three alleged derelictions, mentioned heretofore in this Report, which he said was the cause of Coffman's discharge.

Also, according to Thomas Morelli, after the episode of the evening of February 5, he had spoken to his brother and partner, Charles Morelli, about Coffman's attitude and belligerency that same evening and again on Saturday, February 8, when they decided that with Coffman's past history and his present attitude, they would have to discharge him. Both Morellis denied that they had any knowledge of Coffman's union activities or that they had heard any rumors, scuttlebutt or anything else about such activities until about a week after the discharge when they were served with papers about the discharge by the Pennsylvania Labor Relations Board. Both Morellis swore that these union activities of Coffman's were unknown to them and thus played no part in his discharge.

A former, as well as a prospective, employee of Respondent named Paul Barr testified that "about a week" before Coffman was discharged, Thomas Morelli asked him if he had signed a union card and said that he, Thomas Morelli, "thought he [Morelli] knows who the organizer is. He is just going to leave him play out his hand. When he finds out who he is, he is going to fire him."

[3] The name "Beloit" is misspelled throughout the transcript.

But on cross-examination Barr hesitantly admitted that only 10 days before the hearing, he had agreed with Thomas Morelli at the Respondent's office in the presence of a witness that Thomas Morelli had never made any such remarks to him about the Union until after Coffman's discharge.[4]

Employee Charles Waite testified that on Saturday, February 8, while discussing business with Thomas Morelli, Morelli had asked if Waite had signed a union card which Waite acknowledged having done and then, Thomas Morelli continued by saying that he "didn't know anything about who was putting the union in or anything else. He just heard rumors about it. And if he did find out, he would let him go, but not for union purposes, for doing things behind his back."[5]

B. *Conclusions*

1. The discharge of Coffman

This ultimately is a very simple case: if Coffman has told the truth, it is an open and shut case of discrimination; if Thomas Morelli has told the truth, it is equally open and shut against discrimination.

The only trouble is that the Trial Examiner saw and heard nothing at the hearing and has found nothing in rereading the transcript which causes him to have confidence in the truthfulness of any of the witnesses who appeared at the hearing. This is especially true as to the two main witnesses.

This case has no firm guideposts such as usually develop in these cases to ease the burden of the Trial Examiner. Here none developed. Here it is a naked controversy dependent upon one man's word against another's—and neither of them completely truthful.

The testimony of Paul Barr would appear on its face to corroborate Coffman. But its veracity became very questionable when Barr was forced to admit that only 10 days prior to the hearing he had acknowledged before a witness that Thomas Morelli had never spoken to him about the Union prior to the discharge of Coffman.

On the other hand, as pointed out in the General Counsel's brief, the testimony of presently employed Charles Waite remained totally undenied upon the record. But, as pointed out by the Respondent's brief, this testimony, while indicating that Thomas Morelli knew of the Union's attempted organizational drive, contrary to his denial of this fact as a witness, also appeared to corroborate Thomas Morelli in his testimony that, at the time of the decision to discharge Coffman, the Morellis did not know who was organizing for the Union.

As already indicated, the Trial Examiner is not of the opinion that the testimony of any witness in this proceeding could be given full credence without corroboration.

In this unhappy state of the record, the well-recognized rule that the burden of proof rests upon the General Counsel in these cases of alleged discriminatory discharges[6] requires that the Trial Examiner must recommend that the complaint be dismissed as to the discharge of Coffman because of the failure of the General Counsel to sustain the necessary burden of proof. This is an even more unfortunate result in a case like the present one than usual because the Trial Examiner has even less confidence in the testimony given by the Respondents.

2. Interference, restraint, and coercion

As noted heretofore, it is undenied on this record that Thomas Morelli told employee Charles Waite that he, Thomas Morelli "didn't know anything about who was putting the union in or anything else. He just heard rumors about it. And if he did find out, he would let him go, but not for union purposes, for doing things behind his back."

The intent of Thomas Morelli in making this undenied remark to an employee was so obviously to interfere with, restrain, and coerce his employees in their exercise of the rights guaranteed them by Section 8(a)(1) of the Act and to prevent them from becoming members of, or engaging in activities on behalf of, the Union that no citation of authorities is necessary here.

The Trial Examiner must find that the above remark was a violation of Section 8(a)(1) of the Act.

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[4] Thomas Morelli also denied this testimony.

[5] This conversation was not denied by Thomas Morelli.

[6] *N.L.R.B.* v. *Winter Garden Citrus Products Cooperative,* 260 F. 2d 913 (C.A. 5).

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

IV. THE REMEDY

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

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

CONCLUSIONS OF LAW

1. Local 384, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, is a labor organization within the meaning of Secton 2(5) of the Act.
2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has committed unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.
4. The Respondent did not violate Section 8(a)(3) of the Act by discharging Charles Coffman.

[Recommendations omitted from publication.]

Norfolk Coca-Cola Bottling Works, Incorporated, t/a Portsmouth Coca-Cola Bottling Works [1] *and* Teamsters Local No. 822, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner

Norfolk Coca-Cola Bottling Works, Incorporated, t/a Portsmouth Coca-Cola Bottling Works *and* Teamsters Local No. 822, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner

Norfolk Coca-Cola Bottling Works, Incorporated *and* Teamsters Local No. 822, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner

Norfolk Coca-Cola Bottling Works, Incorporated *and* Teamsters Local No. 822, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. *Cases Nos. 5–RC–2629, 5–RC–2645, 5–RC–2634, and 5–RC–2646. April 6, 1959*

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was

[1] The name of the Employers and Petitioner appear in the caption as amended at the hearing.