

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Certain of the activities of the Respondent, set forth in section III, 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.

V. THE REMEDY

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

It has been found that the Respondent has refused to bargain collectively as required by the Act with the chosen representative of its employees. It will therefore be recommended that it bargain collectively and in good faith, upon request, with the Union as the exclusive representative of its employees in the appropriate unit.

Since the violations of the Act which the Respondent committed are related to other unfair labor practices proscribed by the Act, and the danger of their commission in the future is reasonably to be anticipated from its past conduct, the preventive purposes of the Act may be thwarted unless the recommendations are coextensive with the threat. To effectuate the policies of the Act, therefore, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed by Section 7 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. United Papermakers and Paperworkers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. All production and maintenance employees at the Respondent's Houston plant, including plant clerical employees, tour bosses, and foremen, but excluding office clerical employees, truckdrivers, guards, the watchmen, cleanup men, the sampler, 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.

3. United Papermakers and Paperworkers, AFL-CIO, was on December 12, 1956, and at all times since then has been, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By refusing on and after October 9, 1957, to bargain collectively with the aforesaid Union as the exclusive bargaining representative of all employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

5. By interfering with, 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(a)(1) of the Act.

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

7. The Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

[Recommendations omitted from publication.]

Pease Oil Company; Evans Oils, Inc. and Local 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case No. 3-CA-1091. April 7, 1959*

SUPPLEMENTAL DECISION AND ORDER

On January 16, 1959, Trial Examiner Herbert Silberman issued his Supplemental Intermediate Report in the above-entitled proceeding,

finding that Respondent Pease Oil Company had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Supplemental Intermediate Report attached hereto. The Trial Examiner also found that Respondent Evans Oils, Inc., had not engaged in unfair labor practices and recommended dismissing the complaint as to this Respondent. Thereafter, Respondent Pease Oil Company filed exceptions to the Supplemental Intermediate Report, together with a supporting brief.

The Board¹ 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 Supplemental Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Pease Oil Company, Buffalo, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization, by laying off or discharging any of its employees or otherwise discriminating in regard to its employees' hire or tenure of employment or any other term or condition of employment.

(b) Threatening employees with reprisals or promising them benefits to discourage their affiliation with or support of the aforementioned Union or any other labor organization.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist the aforementioned Union or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, 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.

¹ 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 [Members Rodgers, Bean, and Fanning].

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

(a) Offer to Edward Place and Joseph Chirico immediate and full reinstatement to their respective former, or substantially equivalent, positions, without prejudice to their seniority and other rights and privileges and make them whole in the manner set forth in the section of the Supplemental Intermediate Report entitled "The Remedy" for any loss of earnings they may have suffered by reason of the discrimination against them.

(b) Preserve and make available to the Board and its agents, upon request, for examination and copying, all payroll records, timecards, personnel records and reports, and all other records necessary or appropriate to an analysis of the amounts of back pay due, and the rights of reemployment, under this Order.

(c) Post at its place of business in Buffalo, New York, copies of the notice attached to the Supplemental Intermediate Report marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Third Region in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply therewith.

IT IS FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges that Evans Oils, Inc., has engaged in unfair labor practices.

²This 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."

SUPPLEMENTAL INTERMEDIATE REPORT AND RECOMMENDED ORDER

The complaint herein alleges that Pease Oil Company has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act by having laid off or discharged employees Edward Place and Joseph Chirico and by having otherwise infringed upon its employees' statutory rights. Evans Oils, Inc., is named a party Respondent on the theory that Evans and Pease together constitute a single employer. On August 21, 1958, the duly designated Trial Examiner issued an Intermediate Report in this case finding that Evans and Pease are not a single employer within the meaning of Section 2(2) of the Act and recommending dismissal of the complaint because the business activities of Pease alone did not meet the Board's then applicable standards for the assertion of jurisdiction. The General Counsel filed exceptions to the Intermediate Report and the Board on December 8, 1958, issued its Decision and Order in the matter. The Board held that Pease's operations satisfied their revised

jurisdictional standards, issued after the hearing in this case, and that it would effectuate the policies of the Act to assert jurisdiction herein. Accordingly, the Board denied Respondents' motion to dismiss the complaint for jurisdictional reasons and remanded the case to the Trial Examiner for the preparation of a Supplemental Intermediate Report.

FINDINGS OF FACT

In their Decision the Board did not disturb my finding that Evans Oils, Inc., and Pease Oil Company are not a single employer. I have reviewed the evidence with regard to this issue and upon reconsideration adhere to my original conclusion that the operations and management of Pease and Evans are not sufficiently integrated to constitute them a single employer for jurisdictional purposes. As it is not alleged that Evans participated in the unlawful conduct described in the complaint, I shall recommend that the complaint against Evans Oils, Inc., be dismissed.

Sequence of Events

The material events in this case occurred within a period of 2 weeks following the date when Respondent Pease's drivers designated Local 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein referred to as the Union, as their collective-bargaining representative. At that time, Pease employed four truckdrivers, namely, Oscar Schurpf, Edward Place, Robert Strength, and Joseph Chirico. In addition, it employed a dispatcher, Leo A. Eckert, a pump and tank man, William Jones, who did no driving, a secretary and a book-keeper. George Frederick Bastian, who was appointed vice president and general manager on September 16, 1957, was the only representative of management regularly active in Respondent's operations.

Early in October 1957, Edward Place was told by Vincent MacVittie, Bastian's predecessor, with whom Place maintained friendly relations, that Respondent was going to lay off the older men one by one. Place discussed this information with some of the other drivers and on October 29, 1957, all four drivers went to the union hall where they signed applications for membership in the Union. The next day Oscar Schurpf received a telephone call from James O. Porter, Respondent's treasurer.¹ Porter inquired from Schurpf whether the latter knew the source of the rumor that the drivers were going to be laid off one after another. Schurpf answered that he had heard the rumor but did not know where it had come from. Porter responded that there was no truth to the rumor. In this conversation Schurpf told Porter that because of the rumor that they were going to be laid off the drivers had joined the Union in order to protect their jobs.

On Thursday morning, October 31, the four drivers had a meeting with General Manager Bastian.² Edward Place acted as spokesman for the drivers. The discussion centered about the employees' desire for a wage increase. Bastian remarked that he heard that the employees had joined a union and inquired why they did not speak to him first. Place responded that they did not think it would have done any good because they had made previous requests for wage increases, and even had directed such request to Mr. Porter himself, but nothing came of it. Bastian inquired as to how much of an increase the drivers wanted and Place replied that their representative would see him about the drivers' demands. Bastian said, in that case there was no need for any further discussion and left.

Oscar Schurpf testified that on Saturday, November 2, 1957, he had a telephone conversation with Bastian during which Bastian told him that Place was going to be laid off Monday morning because Mr. Porter felt that Place was responsible for the drivers having joined the Union. Place was laid off on Monday, November 4.

The morning after Place was laid off Bastian had a meeting with the three remaining drivers. He advised Schurpf and Strength that they were being given an im-

¹ Although James O. Porter does not concern himself with the day-to-day operations of Pease he is the spokesman for the corporation's stockholders and directors and has the authority to appoint and remove its general manager, who is neither a stockholder nor a director.

² All five participants in this meeting testified as to what was said. There are no significant conflicts among the various versions of what transpired at the meeting despite some variances as to details, as for instance, whether the drivers sought out Bastian or whether Bastian called the meeting. The above summary is based upon the testimony of Oscar Schurpf and Joseph Chirico who impressed me as having given the most reliable accounts of the event.

mediate increase of 10 cents per hour. However, Chirico was told that he had not worked long enough for Pease to receive an increase. Bastian excused Chirico from further participation in the meeting and, after Chirico left, Bastian discussed the Union with Schurpf and Strength. According to Schurpf, whose testimony I credit, Bastian told them that Mr. Porter would not go for a union and that before he would recognize a union he would subcontract the work. Bastian asked Schurpf and Strength whether they would withdraw from the Union. They did not give him an immediate answer so Bastian then asked them to leave a note on his desk with their answer, which they promised to do.³ Three days later, on Friday, November 8, Bastian reminded Schurpf that he had not received the note promised by the employees. Schurpf said that it would be given to him the next morning. The next day Schurpf and Strength left a note for Bastian in which they advised him that they had decided they would not withdraw from the Union.

The final incident in this case occurred on November 11 when Bastian discharged Joseph Chirico.

Conclusions

a. As to the discharge of Edward Place

Edward Place began working for the Respondent in June or July 1955. When he was laid off by George Bastian on November 4, 1957, he was the highest paid of the Company's four drivers and had the longest period of continuous service.⁴ Place testified that on Monday morning, November 4, Bastian called him aside and said "he had the hardest job to do that he ever had to perform." Bastian told Place he was being laid off for economic reasons, lack of work. Place took issue with this reason and, according to Place, Bastian said, "Why, this will blow over in a week or 10 days, and he will be able to call me back. If we hadn't gone to the Union this would never had been brought up."

Bastian testified that he laid off Place as an economy measure and advised Place that if business improved Place would be recalled. His explanation for the selection of Place for layoff is that Place drove a tractor-trailer used for delivery of gasoline and "our cost per gallon drop on this particular unit exceeded country average." However, not only did Respondent fail to introduce any figures or other corroborating evidence to support Bastian's testimony, but there are several factors present in the case which tend to impeach Respondent's asserted reason for laying off Place. First, Bastian testified that when he laid off Place he did not advise him that he was being selected because of his purported inefficiency, and had not at any previous time discussed with Place the alleged high cost per gallon drop for the vehicle Place was operating. It is not natural for an employer to lay off its most senior and highest paid employee in a particular classification without having criticized him for the way he was doing his work or without even telling him at the time of his layoff the reason for his selection. Second, inconsistent with Respondent's position that there was an economic necessity for laying off a driver on November 4 is the fact that about the same time Respondent hired additional drivers. Although the record is confused as to when various individuals were hired and for what periods they worked, it is reasonably clear that during all times material hereto the total number of drivers did not fall below four.⁵ Third, Schurpf testified without

³ Bastian denied that he asked any of the drivers to withdraw from the Union. In this regard he was corroborated by Strength. Bastian testified that he told Strength and Schurpf that he was interested in a union ballot and how they felt about such a return. They replied that they would think about it and leave their answers on his desk. Bastian further explained, "Well, we had notice that a ballot was to take place. . . . From the NLRB which, of course, didn't encourage my ideas of how the men felt. It was more personal reason than anything else. I wanted to know in my own mind whether they were really and directly for or against [the Union], and as a result that is what came about." Because the employees were unable to give him an immediate answer he asked them to leave a note indicating whether or not they wanted the Union to represent them. Thus, according to Bastian, at the same time that he informed Schurpf and Strength that they were receiving an increase in their wages, he interrogated them as to their union sentiments, despite the fact that only 5 days earlier he had been informed that they had applied for membership in the Union. Even were I to accept Bastian's version of the event, I would still find such interrogation infringed upon the employees' statutory rights.

⁴ Oscar Schurpf's total service with Pease exceeded that of Place, but there was a 4-year interruption in his service before his last period of employment.

⁵ Bastian testified that Patrick Quinn and Cudmore were hired as drivers within a period of days either before or after Place's layoff, and subsequently Chezniak and

contradiction that overtime work increased after Place was laid off. Finally, the day following Place's layoff, employees Schurpf and Strength were given wage increases of 10 cents per hour. Bastian explained his reason for these increases as follows: "Well, again, we go back again to cost per gallon drop, and the cost per gallon drop was exceedingly low at the time, plus the fact that they had asked me in prior conversations to see what I could do about getting them an increase. . . ." Thus, according to Bastian, while the cost per gallon drop of the unit Place had been driving was high, the Company's average was exceedingly low. This appears to be contradictory. Place drove the Company's tractor-trailer which had a capacity of 4,000 gallons whereas Respondent's other two gasoline delivery trucks had capacities of 1,500 and 900 gallons, respectively. It is difficult to understand how the Company's average cost per gallon drop could be exceedingly low if the vehicle which Place had been operating and which had a gasoline capacity almost double the combined capacity of the Company's other two trucks was being operated inefficiently. Bastian did not offer any explanation for this apparent contradiction.

While Respondent's asserted reason for laying off Place is unconvincing, there is direct evidence that it was Place's union activities which prompted the Company to terminate his employment. Place appears to have been instrumental in inducing Respondent's four drivers to apply for membership in the Union and somehow this came to Porter's attention. It was Place who first circulated the rumor among the drivers of an impending layoff and it was Place who acted as the employees' spokesman in their meeting on October 31 with Bastian. That Place was laid off in retaliation for these activities is directly evidenced by Schurpf's and Place's testimony. The former testified that on November 2, Bastian informed him that Place was going to be laid off because Porter believed Place instigated the other drivers to join the Union,⁶ and Place testified that Bastian admitted to him that he would not have been laid off if the employees had not gone to the Union.⁷ Accordingly, I find that Respondent laid off Edward Place on November 4, 1957, not for the reason asserted by it, but because of his membership and activities on behalf of the Union and thereby discriminated with regard to his tenure of employment to discourage membership in the Union. Furthermore, I find that Respondent has not offered Place reinstatement to his former, or an equivalent, position, despite the evidence that about 10 days after Place's layoff he was offered temporary employment by the Respondent.

b. As to the discharge of Joseph Chirico

Joseph Chirico was discharged on November 11, 1957. At that time he had been working for the Respondent for a period of from 5 to 6 weeks. Chirico testified that on November 5 Bastian called him into the office because the truck he had been driving that day broke down. According to Chirico, Bastian told him that if he withdrew from the Union he would not have to worry about a layoff and that if he did not withdraw he would be laid off. Bastian asked Chirico to sign a statement that he was withdrawing from the Union. Chirico replied that he would withdraw from the Union if the other drivers also withdrew. On Friday of the same week, November 8, Chirico had another conversation with Bastian about the

Kramer were also hired. Bastian testified that certain of these individuals were hired as part-time employees. However, Bastian defined a part-time employee merely as one designated as such. His definition does not preclude an individual who works in excess of 40 hours each week from falling within the category of a part-time employee. Thus, Bastian testified that Chirico was a part-time employee, despite the fact that the uncontradicted evidence shows that during the 5 or 6 weeks of Chirico's employment with Respondent he worked about 50 hours per week.

⁶Although Bastian testified that he alone made the decision to lay off Place, the uncontradicted testimony of Anthony Sorrentino, the Union's business agent, tends to corroborate Schurpf's testimony that Porter had concerned himself with Place's tenure of employment. According to Sorrentino, on the day Place was discharged, he spoke with Bastian about reinstating Place in his former job. Bastian advised Sorrentino that there was nothing he could do before he checked with his superior, Mr. Porter.

⁷Bastian denied having made the incriminatory statements attributed to him by Schurpf and Place. I do not credit his denials. Bastian impressed me as having been an unreliable witness. His testimony in many respects was vague where if he were a candid witness it would have been more specific. In general, he impressed me as endeavoring to direct his answers along paths most advantageous to Respondent's interest in this proceeding rather than to give forthright accounts of the events about which he was questioned.

matter. Bastian said he did not know whether or not Chirico was going to be laid off. He again told Chirico that if he would withdraw from the Union he "might still be working." Chirico replied that he would not withdraw unless the other drivers do. Bastian answered that he would advise Chirico over the weekend. Chirico was discharged on Monday, November 11.

Respondent contends that Chirico was discharged because he abused the Company's trucks. However, it is unnecessary to decide whether or not Chirico was responsible for the various mechanical failures attributed to him by the Respondent, because I credit Chirico's testimony set forth above. With respect to alleged violations of Section 8(a)(3) of the Act, the mere "existence of some justifiable ground for discharge is no defense if it is not the moving cause." *Wells, Inc. v. N.L.R.B.*, 162 F. 2d 457, 460 (C.A. 9). "Although the discharge of an inefficient or insubordinate union member or organizer is lawful, it may become discriminatory if other circumstances reasonably indicate that the union activity weighed more heavily in the decision to fire him than did dissatisfaction with his performance." *N.L.R.B. v. Whittin Machine Works*, 204 F. 2d 883, 885 (C.A. 1). Upon the basis of Chirico's testimony, referred to above, and the evidence, discussed in other sections of this Report, demonstrating Respondent's opposition to self-organization on the part of its employees, I find that the principal factor which motivated Respondent's decision to discharge Chirico was his refusal to abandon his union affiliations. Accordingly, I further find that Respondent Pease thereby discriminated against Chirico to discourage his and other employees' membership in the Union.

c. As to interference, restraint, and coercion

Since the layoff of Edward Place and the discharge of Joseph Chirico constituted infringements upon employees' rights protected by Section 7 of the Act, Respondent thereby violated Section 8(a)(1) of the Act as well as Section 8(a)(3). In addition, Respondent further unlawfully interfered with, restrained and coerced its employees in the exercise of their statutory rights by reason of the following:

(1) George Bastian's threat to employees Schurpf and Strength on November 5, 1957, that Mr. Porter would not go for a union and that he would subcontract the work before he would recognize a union.

(2) George Bastian's various requests directed to employees Schurpf, Strength, and Chirico that they withdraw from the Union.

(3) The granting of a 10-cent per hour increase in wages to employees Schurpf and Strength on November 5, 1957. In the same meeting that Bastian advised Schurpf and Strength that they were receiving the wage increase, Bastian told them that Respondent would never recognize the Union and requested that they withdraw from the Union. In the circumstances, the wage increase was in the nature of a bribe to induce Schurpf and Strength to withdraw from the Union.

(4) Bastian's threat to Chirico that he would be laid off if he did not withdraw from the Union, and promise that he would not be laid off if he withdrew.

THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent Pease Oil Company, set forth above, occurring in connection with the operations of the Respondent described in the Board's decision herein, reported at 122 NLRB 344, 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.

THE REMEDY

Having found that Respondent Pease Oil Company 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.

It has been found that Pease Oil Company unlawfully discriminated in regard to the tenure of employment of Edward Place and Joseph Chirico. It will be recommended that the Respondent offer them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges and make them whole for any loss of earnings they may have suffered by reason of Respondent's discrimination against them by payment to each of them of a sum of money equal to that which he normally would have earned from the date of his layoff or discharge to the date of Respondent's offer of reinstatement, less net earnings during said period, but excluding the period from

August 21 to December 8, 1958. Said loss of earnings shall be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. It will also be recommended that the Respondent make available to the Board, upon request, payroll and other records to facilitate the determination of the amounts due these employees under this recommended remedy.

Respondent's violations of the Act, herein found, are related to other unfair labor practices proscribed by the Act, and the danger of their commission in the future is to be anticipated from Respondent's conduct in the past. The preventive purposes of the Act will be thwarted unless the remedial order is coextensive with the threat. In order therefore to make effective the interdependent guarantees of Section 7 of the Act and to prevent a recurrence of unfair labor practices, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed employees by Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. Local 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating in regard to the tenure of employment of Edward Place and Joseph Chirico to discourage membership and activity in behalf of the Union, the Respondent Pease Oil Company has engaged in and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) of the Act.

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

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

5. Evans Oils, Inc., has not engaged in any unfair labor practices within the meaning of the Act.

[Recommendations omitted from publication.]

APPENDIX

NOTICE TO ALL EMPLOYEES

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

WE WILL NOT discourage membership in Local 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by laying off or discharging any of our employees or by otherwise discriminating in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL NOT threaten our employees with reprisals or promise them benefits to discourage their affiliation with, or support of, any labor organization.

WE WILL NOT in any other 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 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose 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.

WE WILL offer Edward Place and Joseph Chirico immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of their layoff or discharge.

All our employees are free to become or remain, or refrain from becoming or remaining, members of the above-named Union, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8(a)(3) of the Act.

PEASE OIL COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

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

United Transports, Inc. and Reece N. Smith and General Drivers, Salesmen and Warehousemen's Local Union No. 984, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Party to the Contract

General Drivers, Salesmen and Warehousemen's Local Union No. 984, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Reece N. Smith and United Transports, Inc., Party to the Contract. Cases Nos. 32-CA-596 and 32-CB-50. April 8, 1959

DECISION AND ORDER

On October 31, 1958, Trial Examiner Robert E. Mullin 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 certain other unfair labor practices as alleged in the complaint and recommended that these allegations of the complaint be dismissed. Thereafter, the General Counsel and the Respondent Union filed exceptions to the Intermediate Report and the latter filed a supporting brief.

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

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 these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications noted below.¹

¹In addition to the cases cited by the Trial Examiner in finding a violation of Section 8(b)(1)(A), we rely on *Bernhard-Attmann Texas Corporation*, 122 NLRB 1289, 123 NLRB No. 60.