

**Adley Express Company and Motor Transport Labor Relations, Inc. and Lillian Long and Margaret MacElroy****Local 161, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent and Lillian Long and Margaret MacElroy. Cases Nos. 4-CA-1734 and 4-CB-449. May 29, 1959**

## DECISION AND ORDER

On March 13, 1959, Trial Examiner C. W. Whittemore 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. Thereafter, the Respondent Union filed exceptions and 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 Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are here affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in these cases and hereby adopts the Trial Examiner's findings, conclusions, and recommendations with the modifications indicated in the Order.<sup>1</sup>

## ORDER

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

A. Adley Express Company and Motor Transport Labor Relations, Inc., their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Recognizing Local 161, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, as the representative of any of Respondent Adley's clerical employees for the purpose of dealing with either or both of them concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said labor organization shall have demonstrated its status as majority

<sup>1</sup> We specifically note our disagreement with the Trial Examiner's failure to include provisions for the reimbursement of any union dues, fees, assessments, or other moneys withheld or paid over. See footnote 7 of the Intermediate Report. Even in the absence of evidence that such moneys have been withheld or paid, the Board directs reimbursement.

representative of the aforesaid employees pursuant to a Board-conducted election.

(b) Giving effect to or performing the agreement effective June 23, 1958, or any modification, extension, or renewal thereof, or any supplemental or superseding agreement relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until Local 161 shall have demonstrated its majority status in the manner stated above, and then only if the agreement otherwise conforms to the provisions of the Act; but nothing herein shall be construed to vary or abandon the wages, hours, seniority, or other substantive provisions of any such agreement.

(c) Entering into, maintaining, renewing, or enforcing any agreement with Local 161, or any other labor organization, which requires employees to join or maintain their membership in such labor organization as a condition of employment, unless such agreement has been authorized as provided in Section 8(a)(3) of the Act.

(d) Encouraging membership in Local 161, or in any other labor organization, by conditioning hire or tenure of employment upon membership in, affiliation with, or dues payments to, such union, except where such conditions have been lawfully established by an agreement in conformity with the Act.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act, 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 by 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) Withdraw and withhold recognition from Local 161, as the representative of Respondent Adley's clerical employees for the purpose of dealing with either or both of them concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said labor organization shall have demonstrated its status as majority representative of the aforesaid employees pursuant to a Board-conducted election.

(b) Jointly and severally with Local 161 refund forthwith to all Respondent Adley's clerical employees from whose wages funds have been withheld or deducted for transmittal to Local 161, or from whom Local 161 has collected funds directly, the amount of any and all such funds,<sup>2</sup> to the end that each employee shall be promptly, fully, and completely reimbursed for any such moneys.

<sup>2</sup> Such liability for reimbursement shall not extend to any amounts deducted more than 6 months prior to the date of service of the respective charges herein.

(c) Post at their offices in Philadelphia, Pennsylvania, copies of the notice attached hereto marked "Appendix A."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by representatives of Adley Express Company and Motor Transport Labor Relations, Inc., be posted by them immediately on receipt thereof and be maintained by them for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions, as set forth in (c) above, as soon as forwarded by the Regional Director, copies of the notice attached hereto marked "Appendix B."

(e) Mail to the Regional Director for the Fourth Region copies of the notice attached hereto marked "Appendix A" for posting by the Respondent Union in its business office and union hall in Philadelphia, Pennsylvania, in places where notices to members are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being signed as provided above, be forthwith returned to the Regional Director for such posting.

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

B. Local 161, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Acting as the bargaining representative of any of the clerical employees of Respondent Adley Express Company for the purpose of dealing with said Company and/or Respondent Motor Transport Labor Relations, Inc., concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until it shall have demonstrated its status as the majority representative of the aforesaid employees pursuant to a Board-conducted election.

(b) Giving effect to, or performing, the agreement effective June 23, 1958, or any modification, extension, or renewal thereof, or any supplemental or superseding agreement covering Respondent Adley's clerical employees, unless and until it shall have demonstrated its majority status in the manner stated above, and then only if the agreement otherwise conforms to the provisions of the Act;

<sup>3</sup>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."

but nothing herein shall be construed to vary or abandon the wages, hours, seniority, or other substantive provisions of the agreement.

(c) Entering into, maintaining, renewing, or enforcing any agreement with Respondents Adley and MTLR which requires employees to join, or maintain their membership in, Local 161 as a condition of employment, unless such agreement has been authorized as provided in Section 8(a) (3) of the Act.

(d) Causing or attempting to cause Respondent Adley to discriminate against its employees in violation of Section 8(a) (3) of the Act.

(e) In any like or related manner, restraining or coercing employees in the exercise of rights guaranteed in Section 7 of the Act, 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 by 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) Jointly and severally with Respondents Adley and MTLR refund forthwith to all Respondent Adley's clerical employees from whose wages funds have been withheld or deducted for transmittal to it, or from whom it has collected funds directly,<sup>4</sup> the amount of any and all such funds, to the end that each employee shall be promptly, fully, and completely reimbursed for any such moneys.

(b) Post in conspicuous places in its business office and union hall in Philadelphia, Pennsylvania, and at all places where notices to members are customarily posted, copies of the notice attached hereto marked "Appendix B."<sup>5</sup> Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by a representative of Local 161, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, be posted by it immediately upon receipt thereof and be maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(c) Post at the same places and under the same conditions, as set forth in (b), above, as soon as forwarded by the Regional Director, copies of the notice attached hereto marked "Appendix A."

(d) Mail to the Regional Director for the Fourth Region copies of the notice attached hereto marked "Appendix B" for posting by Respondents Adley and MTLR at their offices in Philadelphia, Pennsylvania, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall,

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<sup>4</sup> See footnote 2, above.

<sup>5</sup> 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."

after being signed as provided above, be forthwith returned to the Regional Director for such posting.

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

## APPENDIX A

### NOTICE TO ALL EMPLOYEES

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

**WE WILL NOT** recognize Local 161, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, as the representative of any of Adley Express Company's clerical employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until said labor organization shall have demonstrated its status as majority representative of the aforesaid employees pursuant to a Board-conducted election.

**WE WILL NOT** give effect to or perform the agreement effective June 23, 1958, or any modification, extension, or renewal thereof, or any supplemental or superseding agreement relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until Local 161 shall have demonstrated its majority status in the manner stated above, and then only if the agreement otherwise conforms to the provisions of the Act; but nothing herein shall be construed to vary or abandon the wages, hours, seniority, or other substantive provisions of any such agreement.

**WE WILL NOT** enter into, maintain, renew, or enforce any agreement with Local 161, or any other labor organization, which requires employees to join, or maintain their membership in, such organization as a condition of employment, unless such agreement has been authorized as provided in Section 8(a)(3) of the Act.

**WE WILL NOT** encourage membership in Local 161, or in any other labor organization, by conditioning hire or tenure of employment upon membership in, affiliation with, or dues payments to, such union, except where such conditions have been lawfully established by an agreement in conformity with the Act.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the Act, 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 by Section 8(a)(3) of the Act.

WE WILL, jointly and severally with Local 161, refund forthwith to all Adley's clerical employees from whose wages funds have been withheld or deducted for transmittal to Local 161, or from whom Local 161 has collected funds directly, the amount of any and all such funds, as provided in the Order, to the end that each employee shall be promptly, fully, and completely reimbursed for any such moneys.

All employees of Adley Express Company are free to become, remain, or refrain from becoming members of any labor organization, except to the extent that such right may be affected by an agreement conforming to the applicable provisions of Section 8(a)(3) of the National Labor Relations Act.

ADLEY EXPRESS COMPANY,  
*Employer.*

Dated\_\_\_\_\_ By\_\_\_\_\_

(Representative)

(Title)

MOTOR TRANSPORT LABOR RELATIONS, INC.

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 EMPLOYEES OF ADLEY EXPRESS COMPANY AND TO ALL MEMBERS OF LOCAL 161, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, INDEPENDENT

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 you that:

WE WILL NOT act as the bargaining representative of any of the clerical employees of Adley Express Company for the purpose of dealing with said Company and/or Motor Transport Labor Relations, Inc., concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until we shall have demonstrated our status as the majority representative of the aforesaid employees pursuant to a Board-conducted election.

WE WILL NOT give effect to or perform the agreement effective June 23, 1958, or any modification, extension, or renewal thereof, or any supplemental or superseding agreement covering Adley's clerical employees, unless and until we shall have demonstrated our majority status in the manner stated above, and then only if the agreement otherwise conforms to the provisions of the Act; but nothing herein shall be construed to vary or abandon the wages, hours, seniority, or other substantive provisions of the agreement.

WE WILL NOT enter into, maintain, renew, or enforce any agreement with Adley and MTLR which requires employees to join or maintain their membership in our Local as a condition of employment, unless such agreement has been authorized as provided in Section 8(a)(3) of the Act.

WE WILL NOT cause or attempt to cause Adley to discriminate against its employees in violation of Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed in Section 7 of the Act, 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 by Section 8(a)(3) of the Act.

WE WILL jointly and severally with Adley and MTLR refund forthwith to all Adley's clerical employees from whose wages funds have been withheld or deducted for transmittal to us, or from whom we have collected funds directly, the amount of any and all such funds, as provided in the Order, to the end that each employee shall be promptly, fully, and completely reimbursed for any moneys so deducted or withheld.

LOCAL 161, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMERICA,  
INDEPENDENT,

*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

STATEMENT OF THE CASE

Charges having been filed in the above-entitled cases, an order consolidating cases, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and answers having been filed by the above-named Respondents, a hearing involving allegations of violation of Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and

(2) of the National Labor Relations Act, as amended, 61 Stat. 136, was held in Philadelphia, Pennsylvania, on January 27 and 28, 1959, before the duly designated Trial Examiner.

At the hearing all parties were represented and were afforded full opportunity to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings of fact and conclusions of law. Counsel for the Respondents argued orally. Briefs have been received from all parties except MTLR.

At the conclusion of the hearing ruling was reserved upon motions by the Respondents to dismiss. Such motions are disposed of by the following findings, conclusions, and recommendations.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF RESPONDENT ADLEY EXPRESS COMPANY AND RESPONDENT MOTOR TRANSPORT LABOR RELATIONS, INC.

The complaint alleges, and the answers of the Respondents concerned admit, the following facts which are adopted as findings:

1. Respondent Adley is a corporation duly organized under the laws of the State of Connecticut and is engaged in the transportation of freight by motor truck. It operates a number of divisions throughout the eastern part of the United States, including the Commonwealth of Pennsylvania, and the States of New Jersey and Connecticut. Its annual gross revenue is in excess of \$200,000, of which in excess of \$100,000 annually is derived from transporting freight between the States of the United States.

2. Respondent Adley is a member of Respondent MTLR. Respondent MTLR is a nonprofit membership organization under the laws of the Commonwealth of Pennsylvania, and is an association of employers who are engaged in freight transportation activities. Respondent MTLR negotiates and signs collective-bargaining agreements with Respondent Union on behalf of all its members including Respondent Adley, and is the representative of its members, including Respondent Adley, in dealing with unions. Members of the association annually receive revenue from interstate trucking operations which exceeds \$100,000. Members of the association annually receive a gross revenue in excess of \$100,000, which is derived from rendering services to enterprises which ship goods outside the State of origin valued in excess of \$100,000 annually.

3. Respondent Adley and Respondent MTLR, and each of them, at all times material herein have been and are now engaged in commerce within the meaning of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

Local 161, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, is a labor organization admitting to membership employees of Respondent Adley at its Philadelphia office.

##### III. THE UNFAIR LABOR PRACTICES

###### A. *Setting and major issues*

In preliminary summary, the salient facts are these. One day a number of Adley's clerical employees signed cards authorizing Local 161 to be their bargaining agent. The next day all but one of the same employees revoked their action by written notification to Local 161 and by sending a copy of such notification to their employer, Adley. A few days later the managerial representative of Adley met with representatives of Local 161 and of Motor Transport Labor Relations, Inc., an employers' association of which Adley was a member and to which Adley had previously given power of attorney to act for it in matters of collective bargaining. Despite Adley's protest that the authorization cards had been revoked, Local 161 insisted that the cards, not the revocations, must be honored. The Union also maintained that, under terms of its existing contract with MTLR, Adley, being a member, automatically became a party to the contract and was bound by it the moment a majority of Adley's clerical employees had designated "the Union, to the satisfaction of MTLR, as their lawful collective bargaining agency." MTLR agreed with Local 161, and notified Adley that because of Local 161's majority representation it must be included in the area agreement—a contract which contained union-shop provisions.

In substance, it is General Counsel's chief claim that the contract thus entered into by Adley was illegal because at the time it was executed Local 161 did not represent the employees within the meaning of the Act. By executing this illegal agreement, General Counsel further contends, the Respondents MTLR, Adley, and Union, and each of them, violated certain sections of the Act. The more detailed contentions, and findings relevant to them, will be set out below.

### *B. Relationship between the Respondents*

For a number of years Adley has been a participating member of MTLR in Philadelphia. John Batti, operating head of Adley's Southern Division, has been a member of MTLR's board of directors. Of the approximately 100 employees under him at the Philadelphia operation are about 17 clerical employees—and with these clerical employees only are the issues of this case concerned.

As noted above, MTLR is an association of certain employers. It functions chiefly by negotiating and signing collective-bargaining agreements with various labor organizations on behalf of its participating members. MTLR, at material times, has held Adley's power of attorney, which authorized MTLR "to include us as a party to the union contracts now in existence and/or any contracts that may be negotiated in the future, between your corporation and Local Unions."

In June 1958 there existed between MTLR and Local 161 a contract containing the following recognition provision:

MTLR recognizes the Union as the sole collective bargaining agency for the clerical employes, who are employed by any Operator whose name appears on Exhibit "A," at such operators' place or places of business in Philadelphia, Pennsylvania. MTLR further agrees to recognize the Union as the sole collective bargaining agency for the clerical employes, employed by any other Operator, member of MTLR, the majority of whose clerical employes may hereafter designate the Union, to the satisfaction of MTLR, as their lawful collective bargaining agency, in which event the terms of this agreement, except those governing wages, shall apply; in the matter of wages there shall be negotiations conducted thereon. The term "employee" or "employees" as used in this agreement, shall not be construed to extend to or effect in any way terminal managers, assistant terminal managers, office managers, salesmen or solicitors, dispatchers, assistant dispatchers, warehouse foremen, assistant warehouse foremen, dock foremen, assistant dock foremen, supervisory personnel, executive personnel, full-time telephone operators, confidential secretaries, confidential employes, and checkers.

The same contract contains the following union-shop clause:

All employes shall, within thirty-one (31) days after the execution of this agreement or within thirty-one (31) days of the date of their employment, whichever is later, become and remain members of the Union in good standing as a condition of employment.

As of June 12, 1958, Adley was not included among the employers listed on "Exhibit A," referred to in the recognition clause.

### *C. Events leading to inclusion of Adley in MTLR-Local 161 contract*

On June 12 there were about 17 clerical employees on Adley's Philadelphia payroll. On that date 10 of these 17 signed cards designating Local 161 as their "chosen representative in all matters pertaining to wages, hours and working conditions."<sup>1</sup>

During the afternoon of that day, and before signing a card, employee MacElroy informed Batti, identified above as head of the Philadelphia operations, that she had been told by the telephone operator that more than half of the employees had already signed cards. After declaring that she did not want to sign, MacElroy asked Batti's advice. He told her that he could not advise her, and said she must use her own judgement. She then signed a card later that day.

The next morning, June 13, employee Long went to Batti, and according to her credible testimony (corroborated by that of Batti), the following conversation took place:

. . . I said, "Mr. Batti, I'm in trouble." And he said, "What kind of trouble, Lillian? Did you join a union?" And I said, "Who told you about it?" He

<sup>1</sup> All parties conceded the authenticity of signatures and dates of signing appearing on 10 cards placed in evidence by Respondent Local 161.

said, "I knew before you ever got here." So I said, "Now I want out, Mr. Batti. Can you help me?" Mr. Batti said, "Did you sign a card?" I said, "Yes." He said, "There is nothing I can do for you, I'm sorry."

Also the same morning, according to Batti's uncontradicted testimony, he discussed the situation with employee Carol Pryjmski, who had not signed a card the day before. His testimony is quoted:

I discussed the situation with her, and in the course of our conversation, I took for granted which Mrs. MacElroy told me, that over fifty percent had signed up. So I said, "Under the circumstances, to avoid embarrassment, if you are approached, your best bet would be to sign up rather than to possibly be penalized."

Shortly after noon on June 13, Batti received a call from an MTLR official who told him that a union official, Mullen, had just telephoned and said he "had a majority of the Adley employees." Batti replied to the MTLR official, "Yes, I was told that."<sup>2</sup> Thereafter, apparently by arrangement of MTLR, a meeting was scheduled for June 18, the purpose of which "was a formal one to look at the signatures."<sup>3</sup>

Later in the afternoon of June 13, employee MacElroy and a group of other clerical employees discussed "getting out of the union," and decided that a letter of withdrawal be written. After the office manager left, about 7 o'clock, this employee went to the front office and drafted and typed the following letter:

JUNE 13, 1958.

LOCAL 161 TEAMSTERS AFOFL  
1174 N 3rd St.,  
Philadelphia, Pa.  
Attn: Mr. Lawrence Mullin (sic)

DEAR SIR: We wish to inform you that we have changed our minds, and do not wish to join Local 161. We would appreciate it if you would return our signed cards immediately.

Very truly yours,

The letter was signed that night by 10 employees and sent the next morning to Local 161, a signed copy being also mailed to Adley. Union Official Mullen and Batti received this letter of revocation Monday morning, June 16. The cards, however, were not returned by Local 161, as the employees requested.

Batti took with him his copy of the above letter to the conference of June 18 with MTLR and Local 161 officials. At this meeting Batti questioned the procedure of verifying signatures on cards which the Union produced in view of the letter of revocation, but he nevertheless did verify the authenticity of 9 of the 10 signatures on cards submitted to him. All nine, whose card signatures he verified, had signed the above-quoted letter of revocation 5 days earlier, on June 13. Batti still insisted that because of the revocations Adley should not be "made a party to the contract."

That afternoon a meeting of MTLR directors was held. They voted 14 to 1 that Adley was to be bound by the contract.

Two days later, on June 20, employees MacElroy and Long, as individuals, filed charges with the Board against both Adley and Local 161, claiming that their rights under the Act had been interfered with by being coerced into joining Local 161.

<sup>2</sup> In his brief, counsel for Local 161 urges that the Trial Examiner conclude that "the contract became firm about noon" (of June 13), when "Mr. Batti admitted to Mr. Gordon (the MTLR official) that the majority of Adley's clerical employees had signed authorization cards for the Union." The Trial Examiner finds insufficient testimony in the record to support the proposed finding that "Mr. Batti admitted, etc." Batti was the only witness to testify on the point—Gordon was not called and Mullen was not questioned about any call he may have made to Gordon—and Batti's testimony is clearly and unequivocally to the effect that he did *not* concede the majority claim, but merely admitted that he "had been told" that a majority of the employees had signed cards. Since there is no evidence that Batti had seen any signed cards up to this time, there is no ground for an inference that he might have conceded the majority claim in his talk with Gordon. Finally, had Batti actually conceded the majority on June 13, there would have been no reason for the meeting of June 18, described hereinafter, for the express purpose of inspecting the cards and signatures.

<sup>3</sup> The quotation is from a question by counsel for MTLR, which Batti answered in the affirmative.

Following this June 18 decision by his agent MTLR, Batti and another Adley representative met with Local 161 and MTLR officials on a number of occasions and finally agreed on wages and welfare benefits. Finally, on July 11, MTLR sent to Local 161 a letter stating that as of June 23 Adley had been added to the list of employees on "Exhibit A" of the contract heretofore described.

In mid-July, Batti convened the office employees, urged them to withdraw their charges filed with the Board, told them wage increases would be retroactive to June 23, and pointed out that under terms of the contract they must join Local 161 or be subject to discharge 31 days after June 23, the effective date of the contract.

On September 20 Local 161 sent the following letter to Adley's clerical employees:

The current contract between Motor Transport Labor Relations, Inc., and Transportation Checkers, Receivers and Clerical Workers, Local 161 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, covering the office employees of Adley Express Co., requires you to join Local 161 within thirty-one (31) days after the date of your employment, or the date of the contract, whichever is later. This Union security clause is strictly in accordance with existing law.

Some of you have not as yet paid the required initiation fee or dues to Local 161. Under the law, and pursuant to the contract, Local 161 has the right to request Adley to terminate your employment if, after seven (7) days' notice to Adley, you fail to make such payments.

Because of the pending case before the National Labor Relations Board, we are not taking such action at this time. However, we are sure that this case will ultimately be decided in our favor. You are, therefore, advised that when the pending case is concluded you will be required to pay not only your initiation fee into Local 161, but also all back dues for a period beginning either thirty-one (31) days after the date of your employment, or thirty-one (31) days after the date of the contract, whichever is later.

We believe that it is only fair to warn you of this fact at this time. Because of the possible risk to your job, we would suggest that you begin payment of your initiation fee of Five Dollars (\$5.00) and the regular monthly dues of Four Dollars (\$4.00) to Local 161 at its office, 1174 North 3rd St., Phila., Pa.

If you have any questions whatsoever, or if there are any inquiries that you would like to make, please do not hesitate to contact me, either by telephone (Walnut 3-1680), or in person.

Up to the time of the hearing it does not appear that Local 161, which claims to be their agent, has taken "such action" as threatened in the above letter to have "terminated" any of its claimed principals—the clerical employees of Adley.

#### D. Conclusions

As to the foregoing facts, General Counsel contends that execution of the contract was violative of the Act for the following reasons:

(1) Local 161 did not at any time represent a majority of Adley's clerical employees.

(2) Before the contract became effective, the employees had withdrawn their authorizations.

(3) Both Adley and MTLR had reason to doubt majority representation before Local 161 demanded recognition.

(4) Insufficient care was exercised by Adley and MTLR in recognizing Local 161 as representative of employees in a unit where they would be unable "to divest themselves of the Union through a decertification petition."

Local 161, on the other hand, in part claims in its brief:

(1) That the Union represented a majority of the clerical employees "at the time the contract became effective";

(2) That "any action taken by Adley's clerical employees on June 13, 1958, was the result of suggestion by Adley supervisors and was based upon promises of economic betterment made by Adley representatives";

(3) That "the recognition of the Union pursuant to the contract when it represented a majority is equivalent to a certification"; and

(4) That "the contract became firm about noon on June 13, 1958."

Respondent Adley, in its brief, after reviewing the evidence, claims, in effect that:

(1) It "not only did not interfere, coerce, intimidate or influence the employees" but acted quite laudably in its dealings with both the employees and the Union; and

(2) The sole question is whether employees who signed authorization cards one day and withdrew them shortly thereafter, are considered to have designated the Union as their collective-bargaining agent.

The Trial Examiner believes that point (2) of the above-summarized contentions of General Counsel and Respondents Local 161 and Adley should first be considered.<sup>4</sup> Affirmative resolution of the question of the revocation effectiveness would make it unnecessary, in the opinion of the Trial Examiner, to reach other points raised by General Counsel.

The preponderance of credible evidence, the Trial Examiner finds, refutes Local 161's claim that Adley caused the employees to prepare or sign the revocation letter or that their action "was instigated by Mr. Batti, the Division Superintendent, and by Mr. Lynch, a supervisor."

Lynch is, and then was, classified as a "rate clerk," on an hourly pay basis. While it does appear that he oversees or "supervises" the work of some other clerks, there is no evidence that he possesses or exercises sufficient authority to place him in the category of supervisors within the meaning of the Act. The claim of the Union is further depreciated by the fact that Local 161, which by contract excludes "supervisors," presented Lynch's signed authorization card to be counted on June 18, and according to Batti his card was counted. Furthermore, Lynch's part in the revocation procedure by his own testimony appears to have been merely to sign it. "I didn't know for quite some time, that there was going to be a letter until I signed it."

The credible, straightforward testimony of employees MacElroy, Long, and Plichter establish beyond question, in the Trial Examiner's opinion, that Batti had nothing to do with the letter of revocation.

The Trial Examiner concludes and finds that the letter of revocation, signed by the 10 employees, was not the result of coercion or promises of benefit on the part of management representatives. The Trial Examiner further concludes and finds that such revocations became effective as soon as the letter was received by Local 161, which by Union Representative Mullen's testimony was early Monday morning, June 16.

Thus, when representatives of Local 161, Adley, and MTLR met on June 18 to "verify" signatures, and *before* MTLR granted recognition on behalf of Adley, Local 161 plainly did *not* represent a majority of Adley's clerical employees.

The Trial Examiner believes there is merit in General Counsel's contention that the Board's statement of position in *Reeder Motor Company* (96 NLRB 831, 834) governs here. The Board said:

If a recently selected bargaining representative is to be divested of its authority, we believe it reasonable to require that the withdrawal of such authority be evidenced by clear and unambiguous conduct and with the degree of certainty required to establish the original designation, for surely the necessary standards of proof in both these situations should be the same.

In short, the Trial Examiner is convinced and finds that Local 161 was without authority to serve as the collective-bargaining agent for Adley's clerical employees on June 16 and thereafter. It follows, and is concluded and found, that by executing a contract containing the above-described union-security clause at a time when Local 161 was not the validly designated majority representative of Adley's clerical employees: (1) Respondents Adley and MTLR gave substantial assistance and support to a labor organization and discriminated in regard to terms and conditions of employment to encourage membership in a labor organization; (2) Respondent Local 161 caused and attempted to cause Adley and MTLR to discriminate against employees in violation of Section 8(a)(3) of the Act; and (3) Respondents Local 161, Adley, and MTLR restrained and coerced employees in the exercise of rights guaranteed by the Act.<sup>5</sup>

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

The activities of the Respondents set forth in section III, above occurring in connection with the operations of the Respondents MTLR and Adley, 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.

<sup>4</sup> No brief was received from counsel for MTLR. In oral argument, counsel said that not until the hearing had he been aware that there was any question about the Union representing "a valid majority." He urged vigorously, however, that the master agreement between MTLR and the Teamsters be not upset by any Board order, thus disturbing the industrial peace which has existed in this area since 1956.

<sup>5</sup> *Hibbard Dowel Co.*, 113 NLRB 28; *Northern California Chapter, The Associated General Contractors of America, Inc.*, 119 NLRB 1026.

## CONCLUSIONS OF LAW

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

1. Local 161, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, is a labor organization within the meaning of Section 2(5) of the Act.

2. By recognizing the above-named labor organization as sole bargaining representative of Respondent Adley's clerical employees, and executing a contract with said labor organization making membership therein an employment requirement, at a time when said labor organization did not enjoy majority status, Respondents Adley Express Company and Motor Transport Labor Relations, Inc., have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(3), (2), and (1) of the Act.

3. By executing and maintaining the aforementioned contract, Respondent Local 161 has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

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

## THE REMEDY

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

It will be recommended that Respondents Adley and MTLR withdraw all recognition from Respondent Local 161 as the representative of any of Respondent Adley's clerical employees for the purpose of dealing with them concerning grievances, labor disputes, wages, rates of pay, hours of employment, and 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 Respondent Adley's clerical employees.<sup>6</sup> It will also be recommended that Respondents Adley and MTLR cease and desist from giving any force or effect to the above-described contract of June 23, 1958. However, nothing herein shall be construed as requiring Respondent Adley to vary any wage, hour, seniority, or other substantive feature of its relations with its clerical employees which Respondent Adley has established in the performances of this contract.

It will also be recommended that Respondent Local 161 cease and desist from acting as the collective-bargaining representative of any of Respondent Adley's clerical employees unless and until the said labor organization shall have demonstrated its exclusive majority representative status pursuant to a Board-conducted election among said employees. It will be further recommended that Respondent Local 161 refrain from seeking to enforce the collective-bargaining agreement herein described and entered into on June 23, 1958.

[Recommendations<sup>7</sup> omitted from publication.]

<sup>6</sup> *Bernhard-Altman Texas Corporation*, 122 NLRB 1289.

<sup>7</sup> In the absence of any evidence that any initiation fees, dues, or other moneys have actually been paid by any of the clerical employees here involved, the customary recommendation as to reimbursement is not included in these recommendations.

**McFarling Bros. Midstate Poultry & Egg Co. and Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case No. 35-RC-1529. May 29, 1959**

SUPPLEMENTAL DECISION AND CERTIFICATION  
OF REPRESENTATIVES

Upon an investigation of the Employer's objections to conduct alleged to affect the results of the election held herein, the Regional  
123 NLRB No. 165.