

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

CONCLUSIONS OF LAW

1. Lumber and Sawmill Workers Local 2791, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Sweet Home Veneer, Inc., is an employer within the meaning of Section 2(2) of the Act.

3. By invoking and enforcing a rule preventing employees from engaging in union activities during nonworking time, thereby interfering with, restraining, and coercing employees in the exercise of the rights guaranteed by Section 7 of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

5. Respondent has not discriminated against Vernon Fagan and Grover Morris within the meaning of Section 8(a)(3) of the Act.

[Recommendations omitted from publication.]

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**Lakeland Bus Lines, Incorporated and Robert Gibson.** *Case No. 22-CA-178. July 16, 1959*

DECISION AND ORDER

On April 2, 1959, Trial Examiner Thomas A. Ricci issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent 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 Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.<sup>1</sup>

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions and modifications.<sup>2</sup>

The Trial Examiner found that the discharge of Gibson on June 6, 1958, was due to his refusal to waive his claim for back pay under a

<sup>1</sup> The Respondent's request for oral argument is hereby denied because the record, including the exceptions and the brief, adequately presents the issues and the positions of the parties.

<sup>2</sup> The Respondent contends that the Board should reverse the Trial Examiner's resolutions of credibility which were adverse to Respondent. However, under the rule of *Standard Dry Wall Products, Inc.*, 91 NLRB 544, we find insufficient basis in the record for overruling the Trial Examiner in this respect. Nor do we find any prejudicial error in the various rulings by the Trial Examiner on admissibility of evidence, to which Respondent takes exception in its brief. Finally, we do not believe that the other matters raised by the Respondent with regard to the Trial Examiner's alleged lack of objectivity establish a basis for corrective action by the Board.

Trial Examiner's recommended order in a prior Board proceeding against the Respondent (see *Lakeland Bus Lines, Incorporated*, 122 NLRB 281). The Respondent contends that such finding does not support the Trial Examiner's conclusion that the discharge violated Section 8(a)(4) of the Act. It is true that that provision of the Act prohibits discharges only for filing charges of unfair labor practices or for testifying in a Board proceeding, and does not in terms outlaw discharges for demanding compliance with a back-pay award. However, in our opinion, the controversy over back pay, which, as the Trial Examiner found, precipitated Gibson's discharge, was inextricably intertwined with and derived from his original filing of charges against the Respondent and the resultant giving of testimony in support thereof. Consequently, Gibson's discharge violated Section 8(a)(4) of the Act. Further, it independently violated Section 8(a)(1) of the Act. Regardless of whether the violation is of Section 8(a)(4) or 8(a)(1), we would apply the same remedy.

### 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 the Respondent, Lakeland Bus Lines, Incorporated, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening to discharge, or discharging, employees or otherwise discriminating against them in their employment, because they have filed charges or given testimony under the Act.

(b) Requiring as a condition of employment that employees waive any claim for back pay in a Board proceeding.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

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

(a) Offer to Robert Gibson immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and make him whole for the discrimination against him, as provided in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and make available to the Board or its agents, upon request, for examination and copying, all payroll records, reports, and all records necessary to analyze the amount of back pay due under the terms of this Order.

(c) Post at its office and garage terminal in Dover, New Jersey, copies of the notice attached hereto marked "Appendix."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of 60 days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

CHAIRMAN LEEDOM and MEMBER RODGERS took no part in the consideration of the above Decision and Order.

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<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."

## 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 Act, as amended, we hereby notify our employees that:

**WE WILL NOT** threaten to discharge, or discharge, or otherwise discriminate against our employees in their employment, because they have filed charges or given testimony under the National Labor Relations Act.

**WE WILL NOT** require as a condition of employment that employees waive any claim for back pay in a Board proceeding.

**WE WILL NOT** in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, or to engage in 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 to Robert Gibson immediate and full reinstatement to his former or substantially equivalent position without prejudice to any seniority or other rights and privileges enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

All our employees are free to become or remain members of any labor organization.

LAKELAND BUS LINES, INCORPORATED,

*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

### STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before the duly designated Trial Examiner in Newark, New Jersey, on various dates between February 5 and 12, 1959, on complaint of the General Counsel and answer by Lakeland Bus Lines, Incorporated, herein called the Company or the Respondent. The main issue litigated was whether the Respondent had violated Section 8(a)(4) and (1) of the Act. The Respondent filed a brief after the close of the hearing.

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

### FINDINGS AND CONCLUSIONS

#### I. THE BUSINESS OF THE RESPONDENT

Lakeland Bus Lines, Incorporated, a New Jersey corporation with its principal place of business at Dover, New Jersey, is engaged in the business of operating an interstate public transit system. During the past year the Respondent, in the course and conduct of the operation of its interstate public transit system, received gross revenues from said operations in excess of \$200,000. I find that the Respondent is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

#### II. THE UNFAIR LABOR PRACTICE

Robert Gibson, a busdriver in the employ of the Company since 1952, was discharged in June 1957. He filed a charge against the Company with the National Labor Relations Board, alleging that the discharge constituted a violation of Section 8(a)(3) of the statute.<sup>1</sup> In November 1957, he testified at a hearing before a Trial Examiner in support of a complaint issued in that case. The Trial Examiner found against the Company, and pursuant to his recommendation, Gibson was restored to work on January 28, 1958. He worked until June 6, 1958, when the Company again discharged him. The present complaint alleges that the Respondent discharged him a second time because he had filed the first charge and testified in the earlier hearing.

To prove unlawful motivation in the second discharge, the General Counsel introduced evidence intended to establish, among other things, that the Company took steps to fabricate a false record of incompetence against Gibson immediately after his January recall, that it strongly resented his unaltered determination to compel the Respondent to comply with the back-pay feature of the Trial Examiner's recommended remedial order in the earlier proceeding, and that company representatives deliberately conspired to build up a false pretext for Gibson's discharge.

<sup>1</sup> *Lakeland Bus Lines, Incorporated*, 122 NLRB 281.

While denying that the total evidence warrants an inference of unlawful motivation in the discharge, the Respondent affirmatively defends on the ground that it discharged Gibson because of an act of insolence and insubordination on June 6, 1958.

The Company's buses run between New York City and Dover, New Jersey. On January 31, 1958, 3 days after he resumed work, Gibson was told by another employee that the bus he was about to take out of New York should not bear a sign direct to Dover but only to an intermediate point. New on the job after a 7-month absence, Gibson complied. Miss Churm, a regular passenger, boarded the bus believing it destined for Dover. Gibson advised her of the error, and told her to take the next bus. She testified that she only "waited a few minutes" and continued her journey. While waiting for her bus the next morning, Miss Churm chanced to mention the changed destination of her usual bus to another busdriver, Billy Grois. That evening, upon her return to Dover at her regular hour, as she was walking to her car parked at the bus terminal, Billy Grois and his brother Martin, the company manager, walked towards her and asked her if she would write a complaint about Gibson. They invited her to come upstairs into the office. She told them she had never written a complaint before and did not know how to go about it. The manager then told her how to write it; he furnished her the name of the driver, and the number of the bus. After she had left the office, Billy Grois followed her and gave her a complimentary book of 10 free tickets on the Dover-New York run.

Billy Grois did not testify. The plant manager testified that he did not urge Miss Churm to write the complaint. He admitted, however, having told his brother to bring the lady into the office if she had a "legitimate" complaint; he told her to set down the date, the time of departure, the bus number, and the name of the driver; he checked the records of the day before to obtain this information; and he caused his brother to deliver the complimentary tickets.

In my opinion, Miss Churm was an absolutely credible witness. Her acquaintance with the Company's employees is limited to her riding on the buses. She thought so little about the minor inconvenience to her that, a week later, she apologized to Gibson for having written any complaint and offered to write another letter withdrawing it. Flinn, the Company president, attempted to explain away his manager's conduct in encouraging a passenger to file a complaint against an employee, on the ground that it is the Company's policy to require that complaints be in writing. He said this was the policy if the complaint was "worthwhile," and that the Company usually gives complimentary tickets to regular passengers whenever there is "a complaint of considerable inconvenience." I can understand such a rule used to discourage trivial or unfounded complaints. It hardly explains encouragement of clearly indifferent passengers to come forward and magnify their passing inconveniences. The manager in turn explained his part in the incident by testifying that he told Miss Churm there was no way to "penalize" a driver unless a complaint was in writing. But there was no suggestion in her words or conduct to warrant the manager's voluntary suggestion of extreme measures. In the end, all the Company ever did about the whole thing was tell Gibson not to take instructions from other drivers. Considering the relative insignificance of the entire incident at the New York depot, Miss Churm's unmistakable indifference toward the affair, and the plant manager's admission of having gone out of his way to assist her to create a record of misconduct by Gibson, I accept completely Miss Churm's version of the event. She also testified, without contradiction, that while she was writing the complaint, one of the two brothers said "they were having trouble with this fellow, they wanted to get him out." The manager did not deny that the statement was made; Billy Grois did not testify. Regardless of which of the two brothers voiced the sentiment, the manager's silence at that time, as a minimum, takes on significance.

Flinn took Gibson to a restaurant for a talk on the day of his recall. They discussed the matter of back pay due Gibson under the Trial Examiner's report. According to Gibson, Flinn said that in his opinion the Company should not be liable for back pay, and Gibson suggested that the employees be made to contribute.<sup>2</sup> Early in February, Gibson had another conversation with Flinn, in which the back-pay amount again was discussed. Flinn said he wanted "to get this here back pay business straightened out," and that he would decide the amount due, if any. Gibson said the matter was out of his hands. Flinn then added that Gibson should not "insult his intelligence," and (from Gibson's testimony) "if I started this com-

<sup>2</sup> The earlier proceeding named Lakeland Bus Operators' Association, a labor organization limited to employees of this Respondent, as a respondent also, and the back-pay element of the Trial Examiner's report, later adopted by the Board itself, made both the Company and this Association jointly liable for payment of lost earnings.

plaint, I could stop it." Still according to Gibson's version of the conversation, Flinn then said that if Gibson persisted in demanding the back pay, he would find himself out of a job.

Flinn denied having made the direct threat of loss of employment. He recalled having had conversations with Gibson, however, and his total testimony is not a denial of having at least discussed the matter of back pay with him. His testimony was confused with conversations he said he had had with York, the company vice president, concerning other conversations York had had with Gibson, discussed below.

I credit the testimony of Gibson as against that of Flinn as to these conversations. For one thing, Flinn did not deny having expressed resentment over the imposition of back-pay liability upon the Company, nor having told Gibson that, having started the original proceeding, Gibson also could, if he so wished, put an end to it. Further, as will appear below, York, also acting on behalf of the Company, attempted to obtain a release from Gibson with respect to the back-pay liability. Equally important on the subject of Flinn's reliability as a witness in this case is the fact that his testimony on other, perhaps more important matters reveals a clear tendency to color facts to an extreme degree.<sup>3</sup>

After his return to work, Gibson voiced his intention of suing the Company and individual fellow employees for damages which he felt he had suffered in consequence of the 1957 discharge. When York spoke to him about these plans, Gibson admitted he had consulted a lawyer to bring suit for defamation of character and to recover a sum of \$1,000 which the loss of his home had cost him during the period of unemployment. York counseled him against further litigation, in order that Gibson might live peaceably with his fellow workers and with the Company. On reconsideration, Gibson decided to abandon any thought of further suits and told York of his decision. There is nothing in the testimony of either Gibson or York, relating to their conversations up to this point, indicating that the matter of Gibson's claim for back pay was ever mentioned or was at all involved in Gibson's intended litigation.

A week after their discussions, York presented Gibson with a general release and a check for \$100, asking Gibson to sign the release. According to Gibson, York told him that the release included the matter of the back-pay claim. Gibson refused to sign and York became upset and tore up the papers.

York first testified that when he asked Gibson to sign the release, there was no specific reference to back pay. Later he said he did not recall whether it was mentioned. The \$100 check was admittedly his idea and he explained it by saying he thought it would make the release legal. Because I find York's testimony as to later events inherently incredible, and because the voluntary offer of a \$100 payment fits more logically into an attempt to buy off Gibson's back-pay claim than as part of a release for a claim which York never recognized as having any substance at all, I credit Gibson's testimony that when asking Gibson to sign the release, York explicitly stated it involved complete satisfaction of the back-pay claim. Gibson also testified that at the time of the release attempt, when York offered him the \$100, he added that there would be something more for Gibson at the end of the year. York countered this by saying that he had merely advised Gibson that the Christmas bonus would not be prejudiced by the events of the past. I consider this a weak attempt to evade the direct testimony of Gibson.

The chain of related events which led directly to Gibson's discharge on June 6 started with an incident that occurred while Gibson was driving a regular run from Dover to New York in the latter part of May 1958. Gibson testified that while on his run he felt ill because of a "hangover" and made a stop on the way to get himself an Alka Seltzer. After he had driven the bus about 18 miles, more than half the distance to New York, he decided, for the sake of safety, it would be best not to continue with a bus full of passengers. He signaled a returning empty bus

<sup>3</sup>For example, although the Respondent made no substantial claim that Gibson was discharged for past derelictions of duty, Flinn offered testimony relating to alleged violations of rules by Gibson sometime before his first discharge in 1957. He spoke of "chronic shortages" in Gibson's money at the end of the runs. Explaining, Flinn said: "It means that every day when he turns in his money he would be short 5, 6, 7, \$10, and which causes not only the shortage it disrupts the bookkeeping in the Company." He added that the manager on many occasions recommended that Gibson therefore be discharged, but that Flinn never did anything about it. Recalling the manager's suggestions of disciplinary action, Flinn added "he [Manager Grois] knew I was not going to be persuaded by suggestions and after a while he ceased making them to me."

and asked the driver, Carey, to continue Gibson's run while Gibson returned the empty bus to Dover. When Gibson reached the garage, he checked in sick and went home. He returned to work the next day as usual.

According to both Carey and Manager Grois, Carey reported the incident to the manager within a few hours. Grois told Vice President York about it 2 days later, and explained his delay by saying he was "a little bit lax, to tell you the truth." Flinn testified that the matter was finally brought to his attention "several weeks, or 10 days" later. He went on to testify that he was very much disturbed about the thing, and therefore spoke to Carey for details "immediately," and then explained that by immediately he meant "a day or two later." In any event, the Company decided it was important to have Gibson examined by a physician in order to ascertain his fitness for continued driving.

About June 2, the Company arranged for Dr. Friedland, an internist, to examine Gibson. Gibson was told on Tuesday morning, June 3, and he was given the rest of the day off to see his own doctor, which he requested he be permitted to do.<sup>4</sup> On Wednesday, June 4, by appointment, Gibson appeared at Dr. Friedland's office and was given, according to the doctor, a thorough examination lasting between 1½ and 2 hours. The doctor told him immediately after the examination that there was nothing wrong with him, that he was "O. K.," and that the doctor would advise the Company.

From the doctor, Gibson returned to the bus terminal and found that his name was not listed on the board for a run. He asked Manager Grois to explain; the latter said he could tell him nothing, but would check with York and Flinn, and advise Gibson by phone. He never did. On Thursday, Gibson, not working and uncertain of the Company's intentions, telephoned York, who said he planned to speak to the doctor about 4 p.m., and would call Gibson back in the evening and let him know "what was what." At 6 p.m. he did so, and advised him to telephone Flinn at the latter's home at 7 o'clock. Gibson telephoned Flinn's home several times that evening, but Flinn, who was home, refused to speak to him. Asked by Mrs. Flinn why so many calls, Gibson explained his anxiety to know about the medical report. She told him Flinn had already received it.

The next day, June 6, Gibson appeared at the bus terminal office, and asked to speak to York. York and Flinn were in an upstairs office working. An office girl went to the office once or twice to report Gibson's request and each time returned to advise that York was busy, and that Gibson should return later. Gibson waited a period of time and insisted he wished to speak to York. Finally, Flinn descended and told Gibson he had no time then; that Gibson should return an hour or two later. Gibson insisted that the Company tell him what its position was, that it explain whether he was discharged or not. In his excitement, Gibson suggested other employees might need medical attention more than he. With hot words, Flinn said he had reached no decision, and insisted he had not yet received a report from the doctor, and Gibson insisted that Flinn had been advised of the results of the examination. He added Mrs. Flinn had told him so. With tempers rising, Flinn accused Gibson of calling him a liar. One word leading to another, their voices growing louder, Flinn seized Gibson's lapel and impelled him towards the door; Gibson raised his hands in defense. By this time both York and Manager Grois had descended from the office; Grois stepped between the two, and turned Gibson towards the door and advised him to leave. The last words out of Flinn's mouth as he argued with Gibson were: "Get out of here . . . you're fired."

The principal facts in these related events, which the Respondent's witnesses kept saying were born of the "blockout" incident, are not disputed. Gibson felt ill while at work; the Company decided to have him examined; he was examined. As to what was said at the discharge conversation there is also virtually no dispute. The Respondent's strict defense is a discharge for personal effrontery toward Flinn. Complete appraisal of the record as a whole, however, including particularly certain details in the testimony of the company representatives, reveals persuasively that the Respondent was determined to rid itself of Gibson in any event, and that any professed indignation by Flinn at Gibson's adamant insistence on June 6 was but a pretext seized upon to discharge the man.

<sup>4</sup>Gibson testified he was not suspended when told of the arrangement for a medical examination. Flinn said that he and York had decided Gibson should not drive; he added, however, that Gibson was given the balance of Tuesday off when he asked for time to see his own doctor, and was given the time "for this purpose." Thus, there is no evidence Gibson was ever told he was suspended pending the results of Friedland's examination.

Gibson said he had a "hangover" and there is no evidence to contradict his statement. Somehow, essentially by repetitive use of adjectives, Carey, who completed Gibson's run that day, and Flinn and York, who heard the story indirectly through Carey or Manager Grois, it became the "blockout" incident. Carey gave a colorful description of Gibson that day. His words were parroted by the officers. But none of the passengers who, according to Carey, told him that Gibson had stopped many times "to get air," and looked as though he were about "to pass out," were produced as witnesses. Carey's testimony, therefore, is mostly hearsay. The manager's and York's apparent indifference at the time of the event—they waited "several weeks or 10 days" before telling Flinn or doing anything about it—strongly indicates that at the time, at least, they attached little importance to the event. The doctor's complete examination showed Gibson to be perfectly well. And finally, when retaining Dr. Friedland, Flinn admitted that he used the word "blockout" for lack of a better word. I believe Gibson's testimony that he had a hangover, and that was all.

Equally revealing of the Respondent's determination to paint Gibson in undesirable colors are Flinn's and York's attempts to make him appear as a possible psychiatric case requiring extensive further medical examination before it would be safe to permit him to drive. They did their best to say that the doctor's report gave rise to these suspicions. In the attempt, they warped beyond recognition the doctor's testimony of his telephone conversation after examining Gibson. Gibson told the doctor he had been discharged from the army for refusing to permit a surgical operation on himself. The doctor testified that in his opinion, Gibson might have concealed something. He stated unequivocally that this was pure speculation on his part, that he knew nothing of army regulations or procedures. In any event, in reporting to Flinn on the telephone the day after the examination, and the day before Gibson was discharged, he said only that Gibson's story of the army discharge gave indication of possible concealment. There is nothing in the doctor's testimony of his having voiced any opinion that the matter suggested mental disturbance or of advising further medical examination. Flinn's and York's versions of their talk with the doctor (both spoke to him on June 5 although the doctor only mentioned having spoken to Flinn) would make it appear that the doctor advised psychiatric tests. A close look at the entire testimony, however, shows that in each instance it was they who injected the idea of a psychiatrist at all.

The doctor was completely objective and an absolutely credible witness. He testified he told Flinn on the telephone that Gibson was fit; he added he thought Flinn also asked whether it was safe to permit Gibson to drive, and that he answered yes.

According to Flinn, the doctor said only that he had made the examination but had not yet made up his report. Flinn continued he then told the doctor: "I'm quite concerned about whether or not to use the man pending a complete physical examination, a complete research into his condition." Flinn then testified: "He [the doctor] told me under the circumstances he thought I should wait, as I recall, until the examination was complete, the work was in." Repeating his story, Flinn phrased it: "He [the doctor] had not made up his complete conclusions, he had not dictated, he had not done any work on it yet, he had not made his final determinations."<sup>5</sup>

York said that he called the doctor "to ask him when the report would be forthcoming." His testimony of the doctor's words is an almost unbelievable attempt to befuddle the other's words. "He told me he had checked the general condition of Gibson, his heart, his reflexes, and such, mentioned a few medical terms which I was not aware of, also indicated that he could not get the patient to cooperate with him to the extent of determining whether there was anything in his past that could be examined in regard to this case. In any case, he said, 'it's all in my report and if you'll read that you'll probably be able to better come to a conclusion.'" In the end, York admitted the doctor told him Gibson was in good physical condition.

Flinn hired the doctor to find out whether Gibson was fit to drive; he called the doctor to learn the results of the examination; the doctor said he reported his findings as satisfactory. In these circumstances, I can only conclude that both Flinn and York learned that day that there was no physical impediment to Gibson's continued

<sup>5</sup> A third version by Flinn of the conversation:

... he told me that he made the examination and he said physically, insofar as his determination has been, he found no trouble with heart, no trouble with this, that, and then he used the certain medical phrases. I said, "wait a minute, Doctor, I have lost you. I can't follow you there." I said, "I had better wait until I can read and digest your report and I hope that when you make it, you will explain to a layman what some of these medical terms mean."

employment. I do not believe their story about calling only to inquire whether a report would be forthcoming, or about the doctor confusing them with unintelligible scientific language.

More significantly, all this adds up to is that the Respondent did not like the favorable report. York evaded Gibson's inquiry as to "what was what" by shunting him off to Flinn. Flinn refused to answer Gibson's phone calls. Meanwhile, without any definitive expression of position from his employer, Gibson was kept off balance—neither suspended nor scheduled for any run on the assignment board. And the next day, when Flinn was offended by Gibson's insistence that the Company keep him or fire him, and by his assertion that Flinn did have the doctor's report, Gibson was telling the truth—and Flinn knew it!

I find that the Respondent did not discharge Gibson on June 6 because of the way in which he spoke to Flinn. I am convinced instead, on the entire record, including the Company's attempt to create a record of complaints against its own employee, its attempt to buy off his claim for back pay, Flinn's direct threat to Gibson that he would lose his job if he insisted on the full letter of the Board's remedial order in the previous complaint case, and the patent determination to get rid of him without regard to cause, that the Respondent in fact discharged him in retaliation for his having brought the original charge against the Company and having testified in support of that case.

In reaching this conclusion, I have given no weight to Gibson's claim that after reinstatement he was not restored to his full seniority, or his testimony that certain privileges accorded others were denied him. The record as a whole does not support these assertions. I have considered the fact that the Respondent recalled him to work shortly after the Trial Examiner recommended his reinstatement in the earlier case, a fact upon which the Company relies strongly as proof of its good intentions. In the light of the affirmative evidence, set out above, pointing to unlawful motivation in June 1958, I seriously doubt that when the Respondent restored him to work on January 28, 1958, it ever intended in good faith to comply with the reinstatement recommendation of the Trial Examiner.

In conclusion I find that by discharging Gibson on June 6, 1958, the Respondent violated Section 8(a)(4) and (1) of the statute.

### 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 thereof.

### IV. THE REMEDY

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

Having found that the Respondent discriminated against Robert Gibson with respect to his hire and tenure of employment, I will recommend that it be ordered to offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered because of the discrimination against him, by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of the discharge to the date of the offer of reinstatement, less his net earnings during said period, with back pay computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth*, 90 NLRB 289. I will also recommend that the Respondent make available to the Board, upon request, payroll and other records to facilitate the determination of the amount due under this recommended remedy.

In view of the nature of the unfair labor practices committed, both in this case and in the preceding unfair labor practice proceeding, the commission of similar and other unfair labor practices reasonably may be anticipated. I shall therefore recommend that the Respondent be ordered to cease and desist from in any manner infringing upon the rights guaranteed to its 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. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By discharging Robert Gibson the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(4) of the Act.

3. By the foregoing conduct the respondent has interfered with, restrained, and coerced employees in the rights guaranteed in Section 7 of the Act and thereby 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.

[Recommendations omitted from publication.]

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**Jud L. Sedwick, doing business as Armstrong County Line Construction and International Hod Carriers', Building and Common Laborers' Union of America, Construction General Labor & Material Handlers' Local Union No. 1058, AFL-CIO.** *Case No. 6-CA-1254. July 16, 1959*

### DECISION AND ORDER

On April 13, 1959, Trial Examiner Eugene F. Frey issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent 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 Intermediate Report attached hereto. He found further that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended dismissal of such allegations. Thereafter, the General Counsel filed exceptions to the Intermediate Report, and a supporting brief.

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>1</sup>

### 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

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<sup>1</sup> As no exceptions were filed to the Trial Examiner's findings that the Respondent violated Section 8(a)(1) by interrogating employees as to their union activity and threatening them with reprisals therefor, or to his findings that the Respondent did not violate Section 8(a)(3) in discharging Dietrick, Myers, Toy, and the two Heplers, we adopt such findings, *pro forma*.