

**Petroleum Carrier Corporation of Tampa, Inc. and Local Union No. 9-656, Oil, Chemical and Atomic Workers International Union, AFL-CIO. Case No. 12-CA-812. March 8, 1960**

DECISION AND ORDER

On October 2, 1959, Trial Examiner John F. Funke issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent has engaged 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed with respect thereto. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and the General Counsel a supporting brief.

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

The Board has reviewed the rulings 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.<sup>1</sup>

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, Petroleum Car-

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<sup>1</sup> We agree with the Trial Examiner that the Respondent interrogated and threatened employees in violation of Section 8(a)(1) of the Act, and also adopt his recommendation that the complaint be dismissed insofar as it alleges the discriminatory discharges of employees Warren and Singletary. In the latter connection, we find on the basis of the entire record, which is adequately reflected by the Intermediate Report, that the complainant's allegations have not been established by the General Counsel by a preponderance of the evidence.

Inasmuch as the record does not show that the Respondent threatened its employees for testifying in Board proceedings but merely informed one of them, Jordan, that he, too, would be subject to discharge if he admitted breaking State law (it appearing that the actual discharge of two other employees, Singletary and Warren, for that very reason was not violative of Section 8(a)(3)), Member Bean would omit section 1(c) from the Order and paragraph numbered 4 from the notice.

Chairman Leedom and Member Jenkins, however, agree with the Trial Examiner that counsel's threat was designed to deter the witness from testifying truthfully concerning matters relevant to the complaint. As such, it was in derogation of the Board's processes and a violation of Section 8(a)(1) of the Act. They find, accordingly, that the paragraphs of the Order and notice objected to by Member Bean are necessary in order to effectuate the policies of the Act. Cf. *California Footwear Company*, 122 NLRB 1388.

rier Corporation of Tampa, Inc., Tampa, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union membership in a manner constituting interference, restraint, and coercion in violation of Section 8(a)(1) of the Act.

(b) Threatening its employees that it would reduce the workweek to 40 hours, or would engage in other forms of reprisal, if the Union became the designated bargaining agent.

(c) Threatening its employees with discharge for testifying in Board proceedings.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

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

(a) Post in the Respondent's terminal in Tampa, Florida, copies of the notice attached hereto marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its 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.

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

IT IS HEREBY ORDERED that the complaint herein be and it hereby is dismissed insofar as it alleges that Respondent discharged Eldon L. Warren and Eric B. Singletary in violation of the Act.

<sup>2</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 National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT interrogate our employees concerning their union membership or activity in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

WE WILL NOT threaten our employees that the workweek will be reduced to 40 hours or that we will engage in other forms of reprisal if the Union becomes the designated collective-bargaining agent.

WE WILL NOT threaten our employees with discharge for testifying in Board proceedings.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed by Section 7 of the Act.

PETROLEUM CARRIER CORPORATION OF TAMPA, INC.,  
Employer.

Dated----- By-----  
(Representative) (Title)

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

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before the duly designated Trial Examiner on August 4 and 5, 1959, at Tampa, Florida, upon the amended complaint of the General Counsel and the answer and amended answer of the Respondent. The issues litigated were whether or not Petroleum Carrier Corporation of Tampa, Inc., herein called Respondent or the Company, violated Section 8(a)(1) of the National Labor Relations Act, herein called the Act, by interrogating employees with respect to their union membership and threatening their job security because of their union membership, and by threatening an employee that he was subject to discharge if he testified that he had broken a company rule; and whether or not the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Singletary and Warren. The General Counsel presented oral argument and briefs were received from the General Counsel and the Respondent on September 9.

Upon the entire record, and from my observations of the witness, I hereby make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Florida corporation having its principal place of business in Jacksonville, Florida. It is engaged in the transportation of petroleum and like products and during the calendar year 1958 it derived revenue in excess of \$50,000 from services for employers engaged in interstate commerce. The Company concedes and I find that it is engaged in interstate commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local Union No. 9-656, Oil, Chemical and Atomic Workers International Union, AFL-CIO, herein called the Union or the Oil Workers, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The facts

Sometime in December 1958, the Teamsters made effort to organize Respondent's employees and a rival campaign was initiated by the Oil Workers shortly thereafter. Both unions were rejected in an election conducted July 16, 1959. There is, in this record, evidence of systematic interrogation of employees but no other evidence of a concerted or vigorous campaign upon the part of Respondent to defeat the organizational activities of the rival unions during times material herein.

Respondent effected the discharges of two employees on February 5 and 6, 1959. It is these discharges and the attendant circumstances which provoked the charge and led to issuance of complaint. The dischargees were Eric B. Singletary and Eldon L. Warren, drivers employed by the Company.<sup>1</sup> Both had signed cards authorizing the Oil Workers to represent them for purposes of collective bargaining. Now to the evidence.

Singletary was employed by the Company on May 13, 1953. His own testimony was that he not only signed an authorization card for the Oil Workers but that he attempted to interest other employees and directed them to either Ennis or Young, two other drivers who had cards for distribution. On February 4, 1959, 2 days before his discharge, Singletary testified that he had a conversation with J. L. Guthrie, assistant manager of Respondent's Tampa terminal. The conversation took place after Singletary had logged out on that day and, after some discussion of hunting and fishing, Guthrie asked Singletary to come into his office. After the usual opening inquiry as to how Singletary was getting along with his work Guthrie told him that he had heard that some union cards were being passed about, but that nobody had been in with a card for him (Guthrie) to sign. Guthrie wanted to know who was passing them out. Singletary denied any knowledge of union activity and also told Guthrie that if he had such knowledge he would not divulge it to Guthrie since it was his business to find it out.

Singletary worked the next day and after he had returned home called the Tampa dispatcher to find out what his run would be for the following day. He was told that Guthrie wanted to see him. On the morning of the 6th he reported to Guthrie as directed and was told he was through because he had "run" the railroad crossings between the terminal and Port Tampa. (There were 15 such crossings.)<sup>2</sup> Singletary was not told what tracks he had run nor did he ask but he did remonstrate that all of the "boys" were running tracks and it was unfair to pick on him. This, in substance, was the conversation and Singletary waited for his check, received it, and left.

Eldon L. Warren was employed by the Company on January 1, 1956. Warren testified that during December 1958 when the Teamsters started an organizational campaign he contacted W. W. Waters, president of Local 9-656 at Tampa. He told Waters he would be interested in joining the Oil Workers and gave him the names of other employees of the Company whom Waters might solicit. Warren signed a card about January 15 and testified that he spoke to about 15 or 20 other employees in an effort to interest them in the Oil Workers. On the morning of February 2 Warren was called into the office by Guthrie. According to Warren, Guthrie asked him if he had heard anything about union activity. Warren admitted he had heard rumors

<sup>1</sup> Another driver, Patrick A. Ennis, was also discharged on February 6, 1959, but the complaint was amended at the hearing to drop the allegation that this discharge was discriminatory. The reason for this amendment does not appear and Ennis was not a witness at the hearing.

<sup>2</sup> A great deal of testimony was offered by the General Counsel with respect to these crossings and the variance in their nature since the General Counsel was not advised by Respondent which specific tracks the dischargees had been observed "running" and were the loci of the violations. The Trial Examiner toured a portion of the route and observed those crossings between the Texas Company depot and those shown on the Hyde Park section of General Counsel's Exhibit No. 2, a map of the city of Tampa. Fifteen intersecting tracks are shown on this map, one of which, the 13th Street and Adamo crossing (General Counsel's Exhibit No. 3), includes three separate crossings and is controlled by an overhead traffic signal. These 15 crossings include both "spur" or "switch" crossings which are not marked by "railroad crossing" signs and regular grade crossings which are so marked. As to the unmarked spur tracks, these are so imbedded in the road or street as to be indiscernible until actually reached. Unless their position was known to the driver from habitual or frequent use of the route the driver could cross them unawares. All traffic observed by the Trial Examiner passed these crossings without stopping or slowing, and workers' cars were seen parked on one of these spurs. As to the crossings which were marked, all passenger cars passed without stopping but some commercial vehicles were seen making a full stop. At the 13th Street and Adamo crossing traffic moved and stopped according to the light.

General Counsel presented the testimony of not only the dischargees but also that of three other employees of the Respondent to show that drivers habitually ran all or almost all of these crossings, the clear and specific rules of the Company to the contrary notwithstanding. (All these employees knew of the Company's rule requiring a full stop at all crossings and the rule is not in dispute.) To the extent that either their testimony or the observations of the Trial Examiner are relevant to issue, specific reference will be made hereafter.

and told Guthrie he did not want anything to do with the Teamsters. He did not mention the Oil Workers. Guthrie told him that the Company was trying to get the men a raise but had to go through the Manpower Board in Washington. (This did not impress Warren who suspected there was no longer any freeze on wages.) About 5 o'clock in the afternoon of that day Warren was again called into an office by Guthrie who told him he had heard that Warren had gone to an employee and asked him to sign a card. Warren denied this and challenged Guthrie to name the informant so it could be determined who was lying. Guthrie refused but did tell Warren that if the Union did get in they would work 40 hours a week and then "wait until next time." He also stated, according to Warren, that he would work anybody he could, "nigger, cajun, wop or whatnot." Warren also testified that Guthrie stated he would quit if he could not run the terminal the way he wanted to.

On February 5 Warren returned from the St. Petersburg run and was told Guthrie wanted to see him. He went to the office and was told by Guthrie that he was discharged for running tracks downtown. Warren replied that he was, in fact, being discharged for his union activity and that if he was fired for running tracks he could have been fired 3 years ago or 30 days ago. Guthrie made no comment and the conversation terminated.

Ernest Green, a witness called by the General Counsel to testify that drivers generally ignored the Company's orders to stop at railroad crossings in Tampa,<sup>3</sup> also testified that sometime after Warren had been discharged Guthrie asked him if he had seen Warren and that when he replied that he had Guthrie asked him if he had signed a union card for Warren. It was Green's testimony that Guthrie was called away before the question was answered.

Young, another witness called by the General Counsel for the same primary purpose as Green, testified that on the day Warren was discharged Guthrie called him into the office and asked him if he (Young) had signed a card and that he admitted he had. Guthrie did not ask him why he had signed but told him that Ennis (an employee discharged February 6) had informed him that Young had signed. Sometime after Warren had been discharged Guthrie asked Young if he had seen Warren that day and when Young said he had not Guthrie told him he would have rehired Warren if he had not been out signing up employees. Young then told Guthrie that Warren had not had anything to do with the Union while he was employed and Guthrie replied that "three men told me he did."

Druard Jordan, the other employee called by General Counsel to establish habitual violations of the Company's rule, testified that he had a conversation with Manager Green of the Tampa terminal about the time Singletary was discharged. He testified that he was asked by Green if he had been approached by anyone to sign a union card and that, without waiting for an answer, Green told him that he probably would not be approached. Jordan agreed that it was unlikely because he did work around the office and was too close to management.

Except for emphasis and minor discrepancies the testimony of the Respondent's witnesses is not contradictory. Assistant Manager Guthrie testified that he was in charge of enforcement of the Company's rules and its safety provisions, together with Manager Ben L. Green and Safety and Personnel Director Frank W. Johnson. Guthrie testified that in early February he was informed by Manager Green that a Mr. Mesada, identified as a Railroad and Public Utility Commissioner of the State of Florida, had warned Green that the commission was about to start a drive to enforce its railroad crossing regulations, which included a requirement that vehicles carrying explosive substances and liquids make a full stop at such crossings. (Whether or not this advance warning was consonant with the commission's policy or was merely a gesture of friendship is not disclosed.) As a result of this information Guthrie decided to have Johnson start checking the Company's drivers for breaches of State law and the company rule. (The obvious action of giving the drivers warning before checking them does not appear to have been considered and the commission seems to have been more benign toward the Company than the Company was to its employees.) Without forewarning Johnson started making a check from secluded posts of observation. On the morning of February 5 he reported that Warren had run the two crossings on 19th Street immediately north of the Texas depot, and in the afternoon he reported that Singletary had run tracks at Port Tampa. Both employees were discharged by Guthrie as a result of these reports. (The fact that these tracks had been run by the employees in question was not denied.)

Respecting the testimony of Singletary and Warren as to interrogation by Guthrie prior to their discharge, Guthrie admitted asking Singletary if he had heard any

<sup>3</sup> See footnote 2.

rumors about a union and if he felt efforts were being made to organize a union. He did not testify to what, if any, response was made by Singletary. Guthrie also testified that he met with Warren in the dispatcher's office and asked Warren if there was dissatisfaction. It was at this time that Warren inquired about the chances of a raise. Guthrie testified that later that same day he told Warren that he had heard that Warren had given a union card to another employee to sign and also that he had heard that Warren had been given a card to sign but had refused to sign it. He testified that Warren seemed worried at this time and that, in answer to his question, Warren told him he did not know of any union activity. Guthrie's testimony as to these conversations with Singletary and Warren was vague and Guthrie was obviously making the effort to portray a situation in which he was attempting to discover if there was dissatisfaction among the employees and to ascertain its cause rather than to inquire as to union membership or activity. To the extent, which is not too substantial, that Guthrie's versions of these conversations differ from those of Singletary and Warren, I credit the latter two. It is not without significance that Guthrie testified that he spoke to many employees about their union sentiments and activity and that he did not deny the testimony of Young and Green respecting interrogation. Neither did he deny the threat to Warren to reduce the week to 40 hours and to employ "nigger, cajun, wop or whatnot."

Frank W. Johnson, safety and personnel director, testified to the company rules with respect to drivers, the emphasis placed upon the full-stop rule at company safety meetings, the ordinances of the city of Tampa, and the rules of the Florida Railroad and Public Utility Commission. He testified that a company vehicle had been involved in a serious crossing accident in the fall of 1958 and that this led to special warnings to the drivers.<sup>4</sup> Johnson testified that he made a check on February 5 at Guthrie's request and observed Warren fail to make a stop at the 19th Street crossings just north of The Texas Company depot and that Warren failed to make any stops until he came to the crossing at Platt Street. He further testified that he observed Singletary running the multiple track crossings at Port Tampa and then run the crossing at West Shore and Prescott. These are regular grade crossings marked by "railroad crossing" signs. He reported these violations to Guthrie and the men were discharged. His testimony is uncontradicted.

This summarizes the evidence relating to the discharges of Singletary and Warren and that relating to interrogation of and threats to employees.

The complaint was amended at the hearing to include an allegation that the conduct of Respondent's counsel violated Section 8(a)(1). Jordan, one of the witnesses called by the General Counsel to establish that the Company's rule against running crossings was not generally observed, was still in the employ of Respondent at the time of the hearing. The witness was asked if he had run the tracks at Adamo and 13th, where traffic was controlled by a traffic signal light. Counsel for the Respondent asked that the witness be warned that he was being asked to testify to a violation of the law of the State and that he had the right to plead his constitutional privilege. Mr. Bowden then made the following statement:

I have no objection to this witness answering, provided he understands he has the right to refuse to answer, and (2) that he is subject to being discharged if he under oath admits that he has crossed the tracks without stopping.

The hearing was recessed at this time to give counsel an opportunity to study the constitutional issue. When the hearing was convened the following morning the Trial Examiner ruled that Section 11(3) of the National Labor Relations Act required the witness to testify and he answered all questions. The 8(a)(1) issue is confined to the threat of discharge made by counsel.

## B. Conclusions

### 1. Interrogation and threats

In the *Blue Flash Express* case<sup>5</sup> the Board overruled *Standard-Coosa-Thatcher*<sup>6</sup> and reversed the holding, rather consistently rejected by the courts,<sup>7</sup> that interroga-

<sup>4</sup> Miss A. K. Grass, president and general manager of both Petroleum Carrier Corporation and of the Respondent, also testified to the general rules and regulations of the companies and the means taken to see that they were enforced. Neither her testimony nor that of Johnson and Guthrie with respect to the full-stop rule was contradicted. General Counsel's witnesses merely testified that the rule was generally ignored.

<sup>5</sup> *Blue Flash Express, Inc.*, 109 NLRB 591, Members Murdock and Peterson dissenting.

<sup>6</sup> *Standard-Coosa-Thatcher Company*, 85 NLRB 1358.

<sup>7</sup> See *N.L.R.B. v. Protein Blenders, Inc.*, 215 F. 2d 749 (C.A. 8), and cases cited.

tion of employees as to their union activity or membership was unlawful *per se*. In *Blue Flash* the employer received a claim from the union that it represented a majority and a demand for recognition, and interrogated each of its employees for the purpose of establishing the truth of the claim and framing its answer to the union. The employees were told that they need fear no reprisal. The Board majority held that such interrogation, conducted for a proper purpose and under proper safeguards, was not a violation of the Act. It noted that the Respondent communicated its purpose to the employees, assuring them no reprisal would take place, and that the questioning took place in a background free of employer hostility to union organization. The Board, however, expressly disclaimed establishing a rule that interrogation must be accompanied by other unfair labor practices before it could constitute a violation of the Act. The new test was stated:

In our view, the test is whether, under all the circumstances, the interrogation reasonably tends to restrain or interfere with the employees in the exercise of rights guaranteed by the Act.

It added this caveat to employers who might seek to amplify the scope of decision:

Therefore, any employer who engages in interrogation does so with notice that he risks a finding of unfair labor practices if the circumstances are such that his interrogation restrains or interferes with employees in the exercise of their rights under the Act.

The rule which we adopt will require the Trial Examiners and the Board to carefully weigh and evaluate the evidence in such case, but that is what we believe the statute requires us to do. The only alternatives, both of which we reject, are either to find all interrogation *per se* unlawful, or to find that interrogation under all circumstances is permissible under the statute.

The majority went on to note that under a *per se* rule casual, friendly, or isolated instances of interrogation by a minor supervisor would subject the employer to a finding that he had committed an unfair labor practice and the possible consequences under contempt proceedings. The intimation was clear that in such cases a violation would not be found.

The *Blue Flash* decision is a clear and lucid statement of the law on interrogation, and its caveat as to what it does *not* permit is equally as important as its exemptions. Nowhere in that decision is there any implication that the Board did not continue to recognize that interrogation inherently involved restraint.<sup>8</sup> What it did recognize was what the courts had been pointing out: that legitimate interests of an employer might be in conflict with the right of employees to be free from this type of restraint and that in those cases it was the obligation of the Board to balance the conflict and reach an equitable verdict.<sup>9</sup> This conflict is resolved in favor of the employer when he has a proper reason for making the inquiry, the atmosphere is free from antecedent hostility and animus toward the union, and the employees are assured reprisals will not be effected. That is the clear holding of *Blue Flash* and, its limitations included, a statement of what I conceive to be present Board law.

The interrogation in the instant case does not meet the *Blue Flash* test. The Employer had no legitimate purpose which would be served by identification of union adherents nor did Guthrie minimize the coercive effects of the interrogation by assurances against reprisal. While no animus or hostility toward the unions had been established by other conduct on the part of the Employer, the circumstances under which the questioning was accomplished, including the use of company offices, the privacy of the interviews, and the initiation of each interview by Guthrie,<sup>10</sup> could only indicate hostility toward union advocates.<sup>11</sup> The interrogation was in the usual

<sup>8</sup> That the employees in *Blue Flash* regarded the interrogation as coercive may be inferred from the fact that each of them denied affiliation although a majority had signed cards. Cases involving interrogation are myriad but their study reveals that the average workman confronted with interrogation as to union activity, like the average husband confronted with interrogation as to infidelity, instinctively resorts to blanket denial. Intuitively he senses the question has not been prompted by idle curiosity.

<sup>9</sup> For a thorough analysis of the rationale which led the courts to reverse the Board in previous cases and to direct the Board's attention to the frequent existence of a conflict of legitimate interests which required balancing, see the Trial Examiner's Intermediate Report in *General Industries, Inc.*, 121 NLRB 1608

<sup>10</sup> The testimony of Guthrie that Warren asked to see him is rejected and Warren's statement that Guthrie requested to see him is accepted

<sup>11</sup> This hostility is subsequently evidenced by Guthrie's statement to Young that he would have rehired Warren had Warren not been passing out union cards since his discharge.

form—secret but systematic, and for the usual purpose: identification of union leaders and an exploration of the strength of union sentiment. Even unaccompanied by other unfair labor practices or antecedent hostility I find such interrogation presumptively coercive. The Board has, in such decisions as *Mid-South Manufacturing Co., Inc.*,<sup>12</sup> and *American Furniture Company, Inc.*,<sup>13</sup> placed a perhaps unintentional ambiguity upon the clear holding of *Blue Flash* by relying, in those cases, upon a context of other unfair labor practices to find the interrogation unlawful. But, as has been noted, the majority in *Blue Flash* made an express disavowal of such evidence as a prerequisite to finding interrogation unlawful. Since the Board has, in both *Mid-South* and *American Furniture*, cited *Blue Flash* with approval, it can only be assumed that the other unfair labor practices were a factor in making the finding but not a necessary factor. I do not believe the Board could reject the proposition that interrogation is presumptively unlawful without disregarding evidence running through all 124 volumes of its decisions,<sup>14</sup> and substituting for its acknowledged expertise an unprofessional naivete. It might also be noted that by banning interrogation only when accompanied by other unfair labor practices the Board would be engaged in an exercise in redundancy since the employer, by desistance from his other practices, immunizes interrogation. Nor, I believe, could the Board find easy reconciliation between its consistent holding that espionage for the purpose of determining the identity of union leaders and adherents is unlawful and a holding that interrogation for the same purpose is sanctioned. The dialectical dilemma so posed is an awkward one.

In *obiter dicta* in *Blue Flash* the Board also recognized a second class of cases in which a cease-and-desist order against interrogation might not serve the purposes of the Act. That class embraced those situations where the circumstances under which the interrogation was conducted indicated it was free from restraining or coercive impact. The Board acknowledged that employees and minor supervisors frequently engage in friendly and casual conversations related to unions and indicated that a realistic appraisal might well establish that interrogation occurring in such a context was free from suggestion of interference or restraint. Where, too, the interrogation is confined to isolated incidents involving few employees and is unaccompanied by threats, the Board will indulge the employer. Again, however, the conduct under scrutiny here cannot be so described. Guthrie not only admitted questioning many employees but I credit the testimony of Singletary that Guthrie admitted it was his business to find out about the Union. The already credited testimony of Singletary, Warren, and Young is that Guthrie not only initiated the conversations respecting union activity, but called them into his office to conduct the interrogation. (Singletary was discussing hunting and fishing with Guthrie when Guthrie called him into his office and closed the door before questioning him.) To characterize such interrogation as either casual or friendly is to abort the meaning of the words. I therefore find that the interrogation of employees Singletary, Warren, Young, and Green by Assistant Manager Guthrie violated Section 8(a)(1) of the Act. I do not find the interrogation of Jordan by Manager Green to have been consummated, although the testimony relating to their conversation is further indication of systematic interrogation on the part of management.

Constant with the above, I find that the statement made by Guthrie to Warren suggesting a limitation of the workweek to 40 hours if the Union succeeded in its campaign to be unlawful. Had this statement stood alone it and the accompanying threat to hire anybody would have been covered by the shield of isolation, but it occurred in a context of coercive and restraining interrogation. Under these circumstances I include it in the pattern of unlawful conduct established by the Company's systematic questioning of its employees. I regard Guthrie's promise to hire anybody as a threat that working conditions would not be as pleasant after the advent of a Union. There are large areas and many localities in this country where those of Anglo-Saxon stock regard themselves as an elite segment of society with the same arrogance and as little reason as Hitler so regarded Nordics. I cannot read into Guthrie's statement that he would hire a "nigger, cajun, wop or whatnot" an expression of dedication to principles of democracy or fair employment practices. It was, rather, a direct threat that the employees would suffer enforced association with

<sup>12</sup> 120 NLRB 230

<sup>13</sup> 118 NLRB 1139, Member Rodgers dissenting

<sup>14</sup> A diligent search would have to be made to find cases in which an employee admitting to joining a union in response to interrogation has been either rewarded or congratulated by his employer. (There are cases, however, in which he has been praised for joining one union rather than another, particularly where the former is company sponsored.)

persons of supposedly inferior origins if they accepted the Union and the falsity of the premise does not negate the threat. I therefore find that by threatening to reduce the workweek and to hire anybody the Respondent violated Section 8(a)(1) of the Act.

One further allegation of interference, restraint, and coercion requires resolution. That is Mr. Bowden's threat to Jordan that he would be subject to discharge if he testified that he had broken the Company's rule against running crossings. Clearly this was an effort to prevent a witness in a Board proceeding from testifying freely by a threat of the most severe form of economic reprisal, discharge. The rights guaranteed by Section 7 of the Act of necessity include the right to seek vindication in Board proceedings when they have been denied by an employer. The freedom of employees to testify truthfully and fully is essential to that right. To permit an employer to silence his employees by threats would effectively nullify the statutory guarantee and preclude redress. The Board has consistently and properly held that any interference with its process at any stage by an employer is a violation of Section 8(a)(1).<sup>15</sup> I so find it here.

## 2. The discharges

Singletary and Warren were discharged for violation of a company rule which required them to make a full stop at all railroad crossings.<sup>16</sup> This was also required by the Railroad and Public Utility Commission of the State of Florida (rule 11-a), and by the traffic laws of the city of Tampa (section 36.57), with respect to vehicles, such as those herein, which carried explosive substances and liquids. The rule of the Company and the laws of the Commission and city therefore bore a direct relation to the safety of company employees and the public and the protection of company and public property. The discharged drivers not only did not deny that they had breached the rule in question but testified that they customarily ignored it and made such stops only at their own election. They admitted receiving repeated warnings at safety meetings with respect to the rule and understanding that the penalty for violation was discharge. No lesser penalty was suggested. Other employees called by the General Counsel testified to the same effect.<sup>17</sup> In the face of this uncontradicted evidence the General Counsel alleges and asks me to find that the summary discharge of Singletary and Warren, following detected violation of the rule, was in violation of Section 8(a)(3).

The General Counsel argues, as he must, that the situation here is no different from those where an employer discriminatively invokes a rule to discharge union members for violations which it had, in the past, ignored or condoned. I am not convinced. The violations here were not of ordinary rules for maintaining plant discipline. Infractions of such rules relating to tardiness, absenteeism, loafing and talking on the job, leaving work without permission, etc., do not, unless repeated or flagrant, ordinarily result in discharge. Where the punishment imposed is more stringent because of discriminatory considerations the Board will find it, to that extent, discriminatory.<sup>18</sup> Similarly, the Board has been alert to find discrimination where a rule, long dormant, has been suddenly invoked against union adherents, or where the evidence that a violation in fact occurred is so meagre as to establish pretext. This is no such case.

The rule against running crossings directly and substantially affected the safety of lives and property. It was considered vital by the Company, the State, and the city. It and the penalty for violation had been publicized and stressed and the General Counsel's own witnesses testified they knew they would be fired if caught.<sup>19</sup> In the face of this I cannot rule that the Company must grant immunity to these

<sup>15</sup> See *Lloyd A. Fry Roofing Company*, 123 NLRB 647; *Jackson Tile Manufacturing Company*, 122 NLRB 764, *Allure Shoe Corp.*, 123 NLRB 717; *Jackson Chair Company, Inc.*, 110 NLRB 651

<sup>16</sup> As heretofore found, the crossings which the employees were observed "running" on February 5 by the safety director were marked grade crossings, not spur or switch crossings. The running of unmarked crossings could conceivably have presented a different problem.

<sup>17</sup> Young testified that he recalled that a driver had been discharged for running lights and that after a safety meeting following the accident in the fall of 1958 he stopped running lights because he did not want to be fired. Green testified that he was warned personally by Guthrie that any man would be fired if he ran crossings and that he believed Guthrie

<sup>18</sup> See *Eastern Massachusetts Street Railway Company*, 110 NLRB 1963 *Id.*, 113 NLRB 298

<sup>19</sup> Footnote 17, *supra*

employees because they joined the Union. This record is void of evidence that the rule would not have been applied had they not joined the Union<sup>20</sup> and there is uncontradicted evidence that other drivers and/or lease operators were terminated for violation of the rule. It may be that the Company was anxious to rid itself of Singletary and Warren because of their suspected union activity and sympathy but that is irrelevant in the circumstances of this case. In *R. J. Oil & Refining Co., Inc.*,<sup>21</sup> the Respondent discharged two employees found sleeping on the job at its refinery. In reversing the Trial Examiner's finding that one of them was discharged in violation of Section 8(a)(3), the Board said:

Even assuming, as the Trial Examiner believed, that [Plant Superintendent] Fuller—when he left home in the middle of the night—hoped to discover a good reason to rid himself of union adherents, we are not prepared to say, in view of the clear and present danger resulting to the refinery from employees sleeping on the job, that Chandler's and Sollman's sleeping was only a pretext for their discharges. On the contrary, the record clearly shows and we find that they were discharged for sleeping on the job, a ground that would warrant the discharge of any employee whether prouunion or antiunion.

Recently, in *Yutana Barge Lines, Inc.*,<sup>22</sup> there was clear evidence that the company was out to get rid of a longshoreman (Qualle) because of his union activity. He was discharged for violation of a company rule against broaching, i. e., the unauthorized, original breaking open of a package or case. Although the testimony established that Qualle did not break the case but merely widened the break to ascertain, according to his testimony, the extent of damage or loss, a majority of the Board reversed the Trial Examiner's finding of a violation, stating:

While we recognize that Qualle was known to have been active in the Union and that Respondent may well have welcomed the opportunity of dispensing with his services, neither Qualle's activities nor the Respondent's attitude toward him, warranted Qualle performing an act for which we are convinced that any other employee would have and should have been discharged.

The dissent of Chairman Leedom and Member Jenkins was not directed to the proposition of law but to the majority's interpretation of the facts, which, to them, did not indicate that Qualle had actually committed an act of broaching. This case is to me conclusive evidence that the Board will sustain the discharge of an employee even if discrimination is an acknowledged factor, where he has violated a company rule directly affecting the protection of company property. The case is even stronger when the safety of persons is at stake.

Relying on the foregoing cases<sup>23</sup> I find the Respondent herein did not violate Section 8(a)(3) of the Act.

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

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 obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action which will effectuate the purposes of the Act.

<sup>20</sup> It may well be urged that such evidence of disparate treatment is frequently impossible to obtain. This is not, however, the first case in which a litigant may have suffered defeat because evidence essential to his cause was not available. I have considered the testimony of Singletary respecting a run he made about 3 months before his discharge but consider it too insubstantial to disturb the above finding. Singletary testified that while he was with Johnson, who was checking him, he observed two drivers in Respondent's employ run spur tracks. It is not clear that Johnson saw the drivers run the tracks nor is it clear that the crossings were marked. I have already indicated that a different question might have been presented had the tracks been spur tracks.

<sup>21</sup> 108 NLRB 641.

<sup>22</sup> 123 NLRB 1073.

<sup>23</sup> See also *R. C. Delavan, et al., d/b/a Texas Consolidated Transportation Company*, 101 NLRB 1017; *Mike Persia Chevrolet Co., Inc.*, 107 NLRB 377; *Laddie Coal & Mining Co.*, 122 NLRB 553.

Upon the basis of the above findings of fact and upon the entire record in this 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. Local Union No. 9-656, Oil, Chemical and Atomic Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, as above found, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act as alleged in the complaint.

[Recommendations omitted from publication.]

J. M. Lassing, H. A. Thompson, Sr., Marshall O. Thompson, Mrs. J. R. Hanson, Mrs. Richard C. Patrick, Sr., and H. A. Thompson, Jr., d/b/a Consumers Gasoline Stations<sup>1</sup> and Teamsters, Chauffeurs, Helpers & Taxicab Drivers Local Union No. 327, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. *Cases Nos. 10-CA-3973, 10-CA-3974, and 10-CA-3975. March 8, 1960*

DECISION AND ORDER

On July 20, 1959, Trial Examiner Thomas F. Maher 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 Respondents filed exceptions to the Intermediate Report with a supporting brief.

The Board<sup>2</sup> 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 this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications set forth below.<sup>3</sup>

We agree with the Trial Examiner that the Respondents discriminated against drivers Head, Warren, and Wyatt in violation of

<sup>1</sup> The caption of this case is hereby corrected to identify all the Respondent partners by name in conformity with the evidence, which consists of the direct testimony of H. A. Thompson, Jr.

<sup>2</sup> Pursuant to Section 3(b) of the National Labor Relations Act, the Board has delegated its powers herein to a three-member panel [Chairman Leedom and Members Bean and Jenkins].

<sup>3</sup> The Respondent has requested oral argument. This request is hereby denied as the record, exceptions, and brief adequately present the issues and positions of the parties.