

3. All employees of members of the Association, except foremen and supervisory personnel as defined in Section 2(11) of the Act, office help, maintenance men, and outside salesmen and members of Local 230 of the New York Writers Union and members of Local 65 of classifications now in the Union shall remain in the Union, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since March 1, 1956, the Union has been and now is the exclusive representative of all the employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing to execute and abide by the terms of the contract executed with the Union on its behalf by the Association, dated April 20, 1959, and by unilaterally granting wage increases and other benefits to the employees, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By sponsoring and sanctioning the circulation of a petition to decertify the Union and by making promises of benefits to discourage membership in the Union, the Company thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

8. 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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**Alterman Transport Lines, Inc. and Jack E. Pope and Edward M. Hawks and Truck Drivers, Warehousemen and Helpers Local Union No. 512, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases Nos. 12-CA-939, 12-CA-964, and 12-CA-1104. May 18, 1960**

#### DECISION AND ORDER

On February 24, 1960, Trial Examiner Eugene Dixon 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 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. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs.

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 Rodgers 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 briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modification.

The Trial Examiner refused to find, on the basis of insufficient evidence, that the Respondent restrained Jerry W. Jones, its employee, from testifying in the instant proceeding, in violation of Section 8(a)(1) of the Act. However, the Trial Examiner credited the testimony of Jones to the effect that on the return date of the subpoena, when Jones was scheduled to appear and testify on behalf of the General Counsel, he was told by Boyer, his supervisor, who had full knowledge of the subpoena and its import, that Boyer had no one else to make Jones' Daytona run; that Boyer wanted Jones to take the run; and that in his (Boyer's) opinion, the Respondent did not want Jones to appear at the hearing. Moreover, when Jones returned from the Daytona run and was informed that a Board agent was looking for him, he was given the phone number of Respondent's counsel and told not to worry about the bill; that the Company would pay for it. It is well established that the act of seeking to persuade an employee to forego participation in a Board proceeding constitutes interference, restraint, or coercion within the meaning of Section 8(a)(1) of the Act.<sup>1</sup> Accordingly, and in view of the evidence above set forth, we find, contrary to the Trial Examiner, that the Respondent sought to dissuade Jones from participating in the instant proceeding, and that the Respondent thereby violated Section 8(a)(1) of the Act.<sup>2</sup>

### ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Alterman Transport Lines, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees as to their union activities, interests, or affiliations, in a manner constituting interference, restraint, or coercion.

(b) Threatening its employees with reprisals, including loss of employment, for engaging in union or concerted activities or for joining a union.

(c) Soliciting employees to report on the union activities or sympathies of their fellow employees.

(d) Seeking to persuade employees to forego participation in Board proceedings.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, including Truck Drivers,

<sup>1</sup> For example, see *Allure Shoe Corporation*, 123 NLRB 717.

<sup>2</sup> The Trial Examiner inadvertently states that Boyer "admitted" telling Jones that he did not have to honor the Board subpoenas. It is clear from the context of this finding that Boyer in fact denied so advising Jones. This error is hereby corrected.

Warehousemen and Helpers Local Union No. 512, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Post at all its terminals, copies of the notice attached hereto marked "Appendix."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter, in conspicuous places, where notices to employees are customarily posted. Respondent shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.

(b) Notify the said Regional Director in writing, within 10 days from the date of this Order, what steps it has taken to comply therewith.

<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 National Labor Relations Act, as amended, we hereby notify our employees that:

**WE WILL NOT** interrogate our employees as to their membership, interest in, or activities on behalf of the above or any other labor organization in a manner constituting interference, restraint, or coercion.

**WE WILL NOT** threaten our employees with a loss of their jobs or other reprisals, if they join, become interested in, or engage in activities on behalf of the above or any other labor organization.

**WE WILL NOT** solicit our employees to report on the union activities or sympathies of their fellow employees.

**WE WILL NOT** seek to persuade employees to forgo participation in Board proceedings.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to engage in or refrain from engaging in union or concerted activities for the purposes of collective bargaining or other mutual aid or protection.

All our employees are free to become or remain, or refrain from becoming or remaining, members of the Truck Drivers, Warehousemen and Helpers Local Union No. 512, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, except as provided under Section 8(a) (3) of the Act, modified by the Labor-Management Reporting and Disclosure Act of 1959.

ALTERMAN TRANSPORT LINES, 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, brought under Section 10(b) of the National Labor Relations Act as amended (61 Stat. 136), herein called the Act, was heard at Orlando, Florida, on various dates between August 17 and September 1, 1959, pursuant to due notice with all parties represented by counsel. The consolidated complaint (as amended at the hearing) issued on July 29, 1959, by the General Counsel of the National Labor Relations Board herein called the General Counsel and the Board and based on charges duly filed and served, alleged that Respondent had engaged in unfair labor practices proscribed by Section 8(a)(1) of the Act.

The substance of the charges against the Respondent was that various of Respondent's officials interrogated its employees about their union activity or the union activity of their fellow employees, requested employees to inform on the union activities of their fellow employees, threatened employees with discharge for engaging in union activities, threatened the loss of benefits if the Union came in, promised pay raises and reduced working hours if the Union did not come in, restrained and prevented an employee from giving testimony as a witness for the General Counsel, and promised a pay raise if an employee persuaded other employees to abandon the Union.

Respondent in its answer, besides denying the commission of the alleged unfair labor practices, set forth numerous defenses pertaining to the compliance of the Union and various branches of it with Section 9(f), (g), and (h) of the Act.

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

##### FINDINGS OF FACT

###### I. THE COMPANY'S BUSINESS

Respondent is a Florida corporation with principal offices and place of business located at Miami, Florida, and is engaged in the business of motortruck transportation. During the year ending December 31, 1958, Respondent realized the gross annual revenue in excess of \$50,000 directly from interstate shipments. I find that Respondent is engaged in commerce as defined in Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

Truck Drivers, Warehousemen and Helpers Local Union No. 512, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

An organizational campaign was undertaken by the Union at Respondent's Orlando terminal in the spring of 1959. Out of this campaign came the allegations of the various incidents of interference, restraint, and coercion on the part of Respondent against its employees as described *supra*. Of the five company officials named in this connection in the complaint,<sup>1</sup> three are contended by Respondent not to have been shown by the General Counsel to have been supervisors or agents of Respondent within the meaning of the Act. These three are Robert Beatty, Ralph Blake, and Henry Greenwald. On the facts and for the reasons to follow, I find that the record establishes the supervisory status of Beatty and Blake but as to Greenwald I find that the necessary preponderance of the evidence is lacking to establish any supervisory or agency connection on his part with Respondent.

The only evidence to connect Greenwald to Respondent is his statement to one employee that he was night foreman at Respondent's Miami terminal and his giving a card to another stating that he was operations supervisor for Respondent. True, he appeared on the scene at Orlando the day after a walkout occurred and talked to the employees about their problems and the Union and told them to get in touch with him at Miami if they felt the need to do so. But there apparently was no attempt to subpoena Greenwald and no attempt to interrogate Boyer (the only one of Respondent's officials to testify) about his status. This evidence is insufficient to establish Respondent's liability for Greenwald's conduct.

As for Beatty and Blake the result is different. These two employees at the time pertinent each had the title of "dock foreman." As such they were stipulated by Respondent in the R hearing held on May 8, 1959 (unpublished), to be supervisors within the meaning of the Act. Actually, the most strenuous efforts of Respondent are directed to the status of Blake who, Respondent contends, was simply a dock foreman trainee at all times pertinent, having taken the place of Dock Foreman Carl Ward. At this time Beatty was the other foreman.

Blake had been a driver before taking Ward's place. When he ceased being a driver, his method of payment changed. In his new capacity he "was always giving somebody hell about something" according to Donald E. Givens' undenied and credited testimony and he was also then in position to and did countermand other people's orders regarding work assignments. As foreman, in addition to responsibly directing the work of the rank-and-file employees, Blake at times was in sole command of the terminal. I find that Blake was a supervisor within the meaning of the Act. That he was expected to call his superiors for instructions pertaining to any unusual situations does not negate his status as a supervisor. Furthermore such a requirement was not unique to his supposed trainee period but has applied to him at all times. Since Beatty was a full-fledged foreman when Blake was supposedly a foreman-trainee, I find that he too was at all times material a supervisor within the meaning of the Act.

As for the 8(a)(1) matters Edward Hawks testified: Both Blake and Beatty commented to him about the Union during the week prior to April 3. When he and Beatty were unloading a truck Beatty asked him if he "knew anything about the Union activities around there. . . ." Hawks' answer was, "No." On a different occasion during this period Blake said to him, ". . . they were going to find out who was trying to organize the Union there, and anybody that tries to bring the Union in this place is for sure going to get fired. . . . I will damned sure run over anybody that tries to stop me from taking a truck out of here."

On April 3 in the office Boyer and Wasserman questioned him about the Union. He was asked (1) if he knew anything about the union activities; (2) if he had overheard any of the drivers discussing the Union; (3) if he had heard anything about other drivers signing union cards; and (4) if Jack Pope (a former employee) had said anything about the Union before he left. He was also asked "if . . . any union representative had been to [his] house at night."<sup>2</sup> As Hawks was going out

<sup>1</sup> These people were Wasserman, Boyer, Beatty, Blake, and Greenwald.

<sup>2</sup> Hawks first testified that Boyer had asked this question then testified that it was Wasserman who asked

the door on this occasion he overheard Boyer say that he was going to find out who was behind the Union.

Neither Blake, Beatty, nor Wasserman testified. Boyer did, however, and denied Hawks' testimony, explaining that he did ask Hawks if a "Wage-Hour" man had been to his house. He admitted he may have made the statement about finding out who was behind the Union to Wasserman but only "in his confidence, but certainly not, apparently where anyone could overhear it." I credit Hawks' testimony.

The day after Pope was discharged (which was about March 30) Blake came to driver Donald E. Givens, according to the latter's undenied and credited testimony, and asked him if he knew anything about the Union and added that anyone who signed a union card would be discharged. About a week later Beatty came in one morning and told the employees "everybody lay their union cards on the table this morning." The remark was made in a joking manner and everybody laughed.

About a week after Pope's discharge, according to Vernon Henley's credited testimony,<sup>3</sup> Boyer told Henley, "I told Mr. Wasserman whenever he hired [Pope] that he would make trouble." When Henley asked what he meant Boyer replied, "Hell, didn't you know they have started a union?" At this same time, according to Henley's further undenied and credited testimony, Beatty told him he had heard that the employees were trying to start a union and asked if he knew anything about it.

According to the undenied and credited testimony of another driver, Jerry W. Jones, on April 3 Blake asked him if he "had heard that they were trying to get a union down in the colored quarters" of the Miami operation.<sup>4</sup> Shortly after this in the driver's room Beatty asked him "in a joking way" where his union card was.

About April 15 (according to Jones' further credited testimony)<sup>5</sup> Boyer asked him, in the office, if he belonged to the Union or if he knew anything about the Union, or anybody who belonged to the Union. When Jones replied in the negative Boyer told Jones "to keep [his] eyes and ears open, and find out if anybody had signed a union card. . . ." Boyer also said he was sure that Pope had joined the Union but "wasn't positive about Jarrett."

Jones further testified that when he received a subpoena to appear in this proceeding he could not understand it and took it to the Company. This was on Thursday or Friday night. Wasserman told him that he did not want to get involved and that he had nothing to say . . . that Jones had to make up his own mind. On the dock he told Boyer that he had a subpoena to appear on the 17th. Boyer made no comment. On Sunday, August 16, he saw that he was scheduled for his regular Daytona run the next day. He told "Mac" who was in charge at the time<sup>6</sup> that he "was scheduled to go to the hearing the next day." Mac said that neither Boyer nor Wasserman were at the dock and that he would get in touch with Boyer at the latter's home. Thereupon Jones left.

The next morning Jones took his dress clothes to the dock intending to work until 8 or 9 and then go to the hearing. When he arrived at the dock at 6 a.m. Boyer still had him scheduled for the Daytona run. He told Boyer he "had to go to that hearing." Boyer said that "since it was not a Federal subpoena" he did not have to go.<sup>7</sup> He also told Jones that he had no one else to take the run and wanted him to take it and further that in his opinion the Company did not want him to appear at the hearing but that it was up to him. On his return from the run he learned that a Board agent had been looking for him. Wasserman gave him the telephone number of Respondent's counsel to call and told him not to worry about the bill that the Company would pay it.

<sup>3</sup> Despite Boyer's denial, I credit Henley. Boyer impressed me as an unreliable witness and I believe his testimony on its face reflects that unreliability. In addition to being evasive, equivocating, and argumentative, his implied meticulousness in observing the Act's mandate of neutralism and *laissez faire* regarding the employees' exercise of the rights guaranteed in Section 7 of the Act is in direct conflict with his statement to Wasserman that he was going to find out who was the Union's instigator.

<sup>4</sup> This was corroborated by Henley in his testimony.

<sup>5</sup> Again I do not credit Boyer's denial.

<sup>6</sup> This was the office and personnel manager who at the time was taking the place of a foreman who was on vacation.

<sup>7</sup> On cross-examination Jones admitted in part that Boyer said, "If the NLRB wants you to come the company doesn't care, but it is your decision. The subpoena you were served with is not a court subpoena that the NLRB can force you to appear with. No fine can be made against you, but it is up to you." Just what part of the above Jones admitted being told does not appear.

In his testimony, Boyer admitted telling Jones that he did not have to honor the subpoena because of its character or that he told him "anything like that." He also denied telling Jones that he had no one else to take the run testifying that he had an extra man available, for the run at the time. I credit Jones.

Jones further testified that when Respondent's counsel took a statement from him (recorded by a stenographer) he asked Jones if he belonged to the Union or knew anybody that belonged to the Union. On cross-examination Jones, confessing confusion and uncertainty on the matter, admitted that the inquiries may have been whether or not any officials of the Company had asked him those questions. Respondent's counsel testified that he merely questioned Jones as to whether or not Respondent's officials had asked him the pertinent questions.

Of the foregoing I find the following are violations of Section 8(a)(1) of the Act by Respondent:

1. The interrogation of Hawks about the Union by Beatty, Blake, Boyer, and Wasserman.
2. Similar interrogation of Givens and Jones by Blake and of Henley by Boyer and Beatty.
3. Boyer's interrogation of Jones about the Union and who belonged to it and his solicitation of Jones to "find out if anybody had signed a union card."
4. Blake's statement to Hawks finding out who was behind the union movement and his threat of discharge for the guilty person or persons.
5. Blake's statement to Givens that anyone who signed a union card would be discharged.

Whether or not the above interrogation standing by itself would be deemed to be coercive is unnecessary to decide since it occurred in the context of other acts of interference. *Punkerton Folding Box Company*, 121 NLRB 1308; *I. C. Sutton Handle Factory*, 119 NLRB 951.

In view of Jones' uncertainty about the questions asked him by Respondent's counsel and his admission on cross-examination, I am of the opinion that the necessary preponderance is lacking to prove that allegation. I am also constrained to find that the proof is not sufficient to establish that Respondent restrained and prevented Jones from honoring the Board's subpoena. While I believe that Respondent's conduct here is not above approach, I do not think that it is such as to amount to an actual violation of the Act.

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

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

#### V. THE REMEDY

It having been found that Respondent interfered with, restrained, and coerced its employees within the meaning of Section 8(a)(1) of the Act, it will be recommended that it cease and desist from such action. While the conduct referred to occurred only with respect to employees at the Orlando terminal, the General Counsel seeks a remedy which will encompass all of Respondent's Florida terminals. In support of this position the General Counsel points to a previous charge (Case No. 12-CA-134) filed against Respondent on September 20, 1957, involving similar conduct which was disposed of by settlement. The General Counsel further maintains that the Respondent's corporate structure and method of operation requires that any order herein apply to all its terminals.

These terminals, the evidence shows, are located at Miami, Tampa, Orlando, and Jacksonville. As indicated Miami is Respondent's principal office and place of business. It is the central point of authority and control for all terminals operating through a teletype system. Miami, in addition to keeping all records, paying all bills, handling all claims, and doing all maintenance (trucks are brought in once a month to Miami by various drivers) makes all decisions on personnel policies and procedures. All hiring must be approved in Miami. All employees are on the same payroll. Hours and wages are established in Miami. All training is determined in Miami. All vacations, promotions, replacements, and transfers are determined in Miami. All discharges are made or directed by Miami. Employees are subject to transfer from terminal to terminal on 24-hour notice. When Orlando learned of the Union driver on April 3, Boyer immediately notified Miami of that

fact and received instructions not to discuss union activity with any of the employees and "to just see what happen."

In view of the foregoing, it seems to me that the remedy sought by the General Counsel is appropriate and necessary to effectuate the policies of the Act. Accordingly it will be recommended that the order herein apply to all terminals of Respondent. *Public Service Corporation of New Jersey, et al.*, 77 NLRB 153. *Ben Kostel, d/b/a Kostel Shoe Company, etc.*, 124 NLRB 651.

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. Truck Drivers, Warehousemen and Helpers Local Union No. 512, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

2. Alterman Transport Lines, Inc., is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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

[Recommendations omitted from publication.]

**Guerdon Industries, Inc. and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO and Local Union #3204, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.** *Cases Nos. 12-CA-315, 12-CA-989, 12-CA-1200, 12-CA-1225, 12-CA-1226, and 12-CA-1227. May 18, 1960*

#### DECISION AND ORDER

On February 15, 1960, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceedings, 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 also found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and recommended dismissal of those allegations concerning the dismissal of Foreman Witt. Thereafter the Respondent and the General Counsel filed exceptions to the Intermediate Report.

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

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 the entire record in the case,