

Cutter Boats, Inc. and Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case No. 25-CA-1145 (formerly 35-CA-1145). June 29, 1960*

DECISION AND ORDER

On March 24, 1960, Trial Examiner Thomas N. Kessel 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. The Trial Examiner further found that the remaining allegations of the complaint were not supported by the evidence and recommended that they be dismissed. Thereafter, exceptions were filed by the Respondent and the General Counsel, and a brief was filed by the Respondent.

The Board¹ 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,² and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications.

We agree with the Trial Examiner's conclusion that the Respondent violated Section 8(a)(1), (3), and (5) of the Act. However, we find merit in the General Counsel's exception to the Trial Examiner's further conclusion that the Respondent rescinded the discriminatory layoffs with no resultant loss of working time or earnings for any employee. The evidence presented at the hearing does not clearly establish that this conclusion is warranted. The testimony shows only that a few days after the layoffs the Respondent's representative, Feix, said that the Respondent would assign work to the laid-off employees as quickly as possible, and work was thereafter assigned to them. Moreover, the record does not support the Trial Examiner's finding that the General Counsel attempted to prove the amount of working time discriminatorily lost by the laid-off employees, or that he relied upon the logbooks of employee William E. James as proof thereof.³ Accordingly, we shall issue our customary reinstatement

¹ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Bean, and Fanning].

² The Respondent's request for oral argument is hereby denied, on the ground that the record adequately presents its position.

³ The record is clear that James was *not* advised and did not believe that he was laid off; and his logbook does not show any *discriminatory* loss of working time.

and backpay orders, and leave the question of the Respondent's compliance with these provisions to the compliance stage of this proceeding.

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, Cutter Boats, Inc., Tell City, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, by discriminating in regard to the hire, tenure, terms, or conditions of employment of its employees.

(b) Interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; or to refrain from engaging in any or all such activities, except as authorized in the Act.

(c) Refusing to bargain collectively with the above-named labor organization as the exclusive representative of all its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(d) Instituting changes in the terms and conditions of employment of employees in the appropriate unit without first consulting and bargaining with the above-named labor organization concerning such matters.

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

(a) Upon request, bargain collectively with Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the appropriate unit, and embody any understanding reached in a signed agreement.

(b) Offer the employees unlawfully laid off on or about March 10 and 11, 1959, immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of

pay suffered as a result of the discrimination against them, in accordance with the Board's customary practices.⁴

(c) Preserve and, upon request, make available to the Board or its agents, for examination or copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful to an analysis of the amount of backpay due under the terms of this Order.

(d) Post at its plant in Tell City, Indiana, copies of the notice attached hereto marked "Appendix."⁵ Copies of such notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall be duly signed and posted immediately upon receipt thereof, and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twenty-fifth Region, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that all allegations of the complaint not specifically found to constitute violations be, and they hereby are, dismissed.

⁴For example, *Gulf Bottlers, Inc.*, 127 NLRB 850; *E & B Brewing Co.*, 122 NLRB 354, 356

⁵In 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, we hereby notify you that:

WE WILL bargain collectively upon request with Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of all our employees in the appropriate unit described below with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, and embody any agreement reached in a signed contract. The appropriate unit is:

All over-the-road truckdrivers employed at our Tell City, Indiana, plant, excluding all other employees, guards, professional employees, and supervisors as defined in the Act.

WE WILL offer the drivers unlawfully laid off on March 10 and 11, 1959, immediate and full reinstatement to their former or

substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay suffered as a result of the discrimination against them.

WE WILL NOT unilaterally institute changes affecting the terms and conditions of employment of employees in the bargaining unit described above without first consulting and bargaining with Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as their exclusive representative.

WE WILL NOT discourage membership in Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization of our employees, by discriminating in regard to their hire, tenure, terms, or conditions of employment.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any or all such activities, except as authorized in the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of any labor organization.

CUTTER BOATS, 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 AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge and amended charges filed by Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Teamsters, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for the Ninth Region, issued his complaint dated October 15, 1959, against Cutter Boats, Inc., herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3) and (5) and Section 2(6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the complaint, the charges, and a notice of hearing were duly served upon the parties. The Respondent's answer to the complaint in essence denies the averments of statutory violations set forth therein.

Pursuant to notice a hearing was held at Tell City, Indiana, on January 19, 1960, before Thomas N. Kessel, the Trial Examiner duly designated to conduct the hearing.

All parties were represented by counsel or other representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded all parties. After the close of the hearing the General Counsel and Respondent filed briefs which have been carefully considered.

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

FINDINGS OF FACT

I. PERTINENT COMMERCE FACTS

The complaint alleges and the answer admits that the Respondent is an Indiana corporation engaged at its plant in Tell City, Indiana, in the manufacture of fiber glass boats, and that during the 12 months preceding issuance of the complaint the Respondent shipped products which it manufactured valued in excess of \$100,000 to destinations outside the State of Indiana. From these facts I find that the Respondent is engaged in commerce within the meaning of the Act and that exercise of the Board's jurisdiction over its operations will effectuate the purposes of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Charging Party is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The relevant evidence*

On March 9, 1959, a group of the Respondent's truckdrivers who had that day failed to receive satisfaction from the Respondent when they sought certain monetary adjustments invited a Teamsters representative to come to a meeting that night at the home of one of the drivers. At that meeting and the next day 11 of the Respondent's 18 truckdrivers signed cards authorizing the Teamsters to represent them in collective bargaining with the Respondent. The complaint alleges that the Respondent in violation of Section 8(a)(5) of the Act refused to recognize and bargain with the Teamsters after it had made proper demand therefore as the representative of the truckdrivers who by themselves comprised an appropriate bargaining unit, and instead bypassed the Teamsters by unilaterally bargaining with the truckdrivers and by granting them an adjustment of travel expense allowance and certain fire insurance benefits. The complaint further alleges that the Respondent sought to prevent unionization of its drivers by threatening them with economic reprisals in violation of Section 8(a)(1) of the Act, and by laying off certain drivers because of their union activities in violation of Section 8(a)(3) of the Act.

William T. Feix at the time of the alleged misconduct was the Respondent's traffic manager and supervisor over the truckdrivers. It was from him that the drivers on March 9, 1959, had unsuccessfully sought adjustments in their expense allowances. When the drivers met that same night with the Teamsters representative, one of them made a report to Feix and revealed the identity of each driver who attended the meeting. By the next morning Feix had this information. According to the General Counsel's witnesses, Feix by word and deed quickly took action to forestall the unionization of the drivers by the Teamsters.

James Howe testified that he had attended the meeting and had signed an authorization card for the Teamsters. He related that about 2 or 3 days later he had called Feix about a driving assignment and in turn had been asked to report to the office. When he reported Feix took him to a back room and revealed that he knew about the meeting and exhibited a list of all who had attended. Next, Feix told Howe that according to his information he and drivers August Claise, Herbert Claise, and Cletus Kreisle had been the instigators of the union activities and had contacted the Teamsters. He asserted he was going to lay off the drivers as they reported until he found out who were the instigators and declared that he would sell the trucks before he would have the Teamsters in the plant. Howe deemed Feix's statement to him as meaning he was then laid off. Although he did not receive a driving assignment until 7 or 8 days later, he attributed this delay to the fact that through no fault of the Respondent the truck which he customarily drove was during this period being operated away from the plant by another driver. He conceded that lapses of 4 to 6 days between trips was not unusual. Howe maintained that Feix had laid off three drivers, but that 2 or 3 days after the conversation with him, Feix had told the drivers in a meeting that the laid-off drivers could return to work and it was thereupon believed by all that their differences with Feix were completely resolved.

August Bolin had also attended the March 9 Teamsters meeting and had signed an authorization card. He testified that he had a conversation with Feix a day or two later at which time Feix told him he would have to lay him off because of the meeting. Bolin did not, however, believe he lost any working time because of his layoff.

Maurice Shepard had not attended the March 9 Teamsters meeting but had signed an authorization card the following day. He had that day returned from a trip and when he checked in at the office Feix asked him whether he had been at the meeting of the preceding night. Shepard explained that he had just returned from a trip and had no knowledge of the meeting, whereupon Feix told him that the drivers had met with the Teamsters and added that he could not "tolerate the Union and wouldn't put up with it." He had a list of those who had attended the meeting and named August Claise, Cletus Kreisle, and James Howe as the ones responsible for arranging it. Furthermore, he threatened to fire those who attended the meeting and had accepted the Union, and threatened also to sell the trucks. In addition he stated that if the drivers joined the Union he would cancel the order for the new trucks which had been placed.

August Claise testified that a day or two after the meeting with the Teamsters which he had attended and at which he also had signed an authorization card Feix told him he would have to lay off some of the drivers. In response to Claise's query Feix told him he was included in this group. Nevertheless, Claise did not believe he lost any working time because of his layoff. He recalled that at a March 13 meeting with the drivers at which their monetary demands were finally adjusted Feix told them that they would go out on the road as quickly as the Respondent could assign them.

On March 12, 1959, the Teamsters directed the local Western Union Telegraph Office to send a telegram to the Respondent containing the following message:

Notifying you the majority of your truckdrivers made application for membership in our Union. Authorize us to bargain for them relative to wages and working conditions. Would like appointment for purpose of reaching an agreement. Early reply appreciated.

While the Respondent's answer admits that this telegram was received by it on or about March 12, 1959, it now takes the position that the date of receipt is questionable. Counsel for the Respondent represented at the hearing that the telegram received by the Respondent cannot be found. At the hearing the Respondent stipulated that it had received the above message but would make no concession as to the actual time of receipt. There is in evidence a confirming copy of the message sent by the Teamsters which the local Western Union Office mailed to the Teamsters pursuant to its request. On this document appears the date, March 12, 1959, and the time, 1026 A, on which the message was either received by Western Union from the Teamsters, transmitted, or delivered to the Respondent. I can conceive of no other meanings to ascribe to this data. In this circumstance, I shall impute to it the meaning most favorable to the Respondent, and shall regard the message as having been received by Western Union at 10:26 in the morning of March 12, 1959. Common experience requires me to presume that a telegram filed with Western Union for transmittal is communicated by it to the person for whom the message is intended within a few hours at most from the time when the message is filed by the sender. I therefore presume that the message was communicated to the Respondent at some time during the day of March 12, 1959.¹

Irvin Glenn Wilkinson, the Teamsters business representative who had attended the March 9 meeting with the Respondent's drivers, testified that on March 13, 1959, he had communicated with Feix by telephone and had told him that as representative of the majority of the Company's truckdrivers he was entitled to be present at the meeting which Feix had scheduled for that evening with the drivers. According to Wilkinson, Feix denied his request and told him that the matter was strictly between

¹ Appearing on the confirming copy of the message in evidence appears the rubber stamp notation RECEIVED AUS 17 1959. The Respondent suggests that this unexplained notation may be related to the date of delivery of the telegram. The General Counsel on the other hand explains that the letters AUS probably refer to the month of August and that the date August 17, 1959, probably was stamped on the document when it was received by the Board's Subregional Office together with the filing of the amended charge in this case. I do not believe that the stamped date was placed on the document by Western Union, particularly as everything else contained therein is in typed lettering. More likely the stamp reflects the date when the document was received by the Board's subregional office in connection with the filing of the amended charge.

him and the drivers and that he had nothing in common or anything to talk about with the Teamsters. Later that day Feix did meet with the drivers without a Teamsters representative present and granted the drivers of sleeper cabs an adjustment in their travel expense allowance.

Feix denied that he had ever threatened reprisals against the drivers for their activities in behalf of the Teamsters or that he had ever laid them off for these activities. He further denied ever threatening to sell the Respondent's trucks, to cancel the order for new trucks, or to farm out the Respondent's trucking operations to outside trucking firms in order to avoid recognizing or bargaining with the Teamsters. He was admittedly discouraged when the drivers contacted the Teamsters on March 9, 1959, just after they had spoken to him about the sleeper cab allowances and acknowledged disappointment over the speedy resort of the drivers to the Teamsters for help in securing the adjustments they had failed to get from him.

Feix related that by the morning of March 10 he had been informed by a driver in attendance about the meeting held the preceding night, and that he had secured from him a list of the drivers who had been present. He admitted that in his conversation with driver James Howe, which he recalled took place on March 11, he had exhibited the list of names and permitted Howe to glance at it. He insisted he had not intended this action to be a threat. He further conceded the possibility that he might have mentioned to Howe knowing the instigators of the Teamsters' activity, but denied telling him he would fire them. He further disputed Howe's testimony that he had told him he would discharge the drivers who had attended the meeting. He claimed that he had instead told Howe that if he had been in charge and had the authority he would prefer to get rid of the trucks or lease them to an outside carrier. He maintained that he had advocated this policy before this occasion because of his belief the Respondent could do its trucking faster though not necessarily cheaper by such procedure.

Feix denied that he had told driver August Bolin that he was laid off. He recalled that he had informed Bolin only about the new trucks which the Respondent had ordered and had explained to him how these new and the old trucks would be assigned to the drivers.

Feix could not recall the conversation on March 10 with Maurice Shepard about which the latter had testified. He denied however having made the threatening and coercive remarks ascribed to him by Shepard. This denial he based on his belief that he would have remembered such utterances had he made them.

In explanation of his direct dealings with the drivers on March 9 and 13, 1959, concerning the adjustment of sleeper cab allowances, Feix testified that he had met with them twice on March 9. When he was approached by them in the morning of that day, he told them he had no authority to grant their request but would see what could be done. Later that afternoon he was again contacted by the drivers who wanted to know what had been done about their request. Feix told them nothing had yet been accomplished, that he would have to speak to Mr. Eugene Casey, the plant manager, and to the Respondent's Baltimore office to seek approval. He had not had an opportunity to speak to Mr. Casey that day, and these things, he told the drivers, took time. On March 12 Feix told driver Bolin that he would like to confer with the drivers the next morning. On March 13, before the meeting took place, Feix received the call from Teamsters Business Representative Wilkinson. According to Feix, Wilkinson told him the purpose of his call was "to attend the meeting and to discuss the differences," and that he replied to Wilkinson in effect that he saw no reason for such discussion or his attendance at the meeting and that the matter should be settled through the Board. Directly after this conversation Feix told Bolin that so far as he was concerned there would be no meeting and that if the drivers wanted to see him he would be in his office. Nevertheless, Feix did hold the meeting from which he had excluded Wilkinson in his office the next day, March 13, and on this occasion granted an increase in the expense allowance for sleeper cab drivers. Only three of the Respondent's total complement of truckdrivers operated sleeper cabs.

Feix claimed at the hearing that his refusal to grant Wilkinson permission to attend the March 13 meeting and to confer with him was based upon his doubt that the Teamsters represented the majority of the truckdrivers. This doubt he predicated upon the fact that he had learned via the grapevine that some plant employees had contacted the Industrial Union of Marine and Shipbuilding Workers of America and had assumed that this union was going to organize all of the Respondent's employees including truckdrivers. He maintained that at this time he did not know that the Board permitted representation by different labor organizations of more than one unit in a single plant. Although in his direct testimony Feix implied knowing before Wilkinson's telephone call that some of the truckdrivers had signed cards for the Shipbuilders and that this influenced his refusal to meet with Wilkinson, in cross-

examination he conceded first he could not honestly state when he was informed that these cards had been signed and finally admitted he had not known of such card signing before he spoke to Wilkinson. He then explained that rumors had come to him from employees to the effect that the Shipbuilders were "going to get the whole organization" and from this formed the impression that the truckdrivers were encompassed by the organizing drive of that union. He declared he could not under these circumstances grant the Teamsters permission to attend the March 13 meeting with the drivers without granting such permission to the Shipbuilders. In cross-examination Feix further revealed that his refusal to permit Wilkinson's appearance at the meeting and his insistence that Wilkinson go through the Board was pursuant to the advice of counsel and had so informed Wilkinson. He added that he had contacted the Respondent's attorney after learning of the meeting of the drivers with the Teamsters representative. This he had been instructed to do by Mr. Casey after Feix had told him on March 10 about the meeting the night before.

On March 13, 1959, the Teamsters filed a petition with the Board for certification as representative of a unit of the Respondent's truckdrivers. On July 16, 1959, the Board issued its Decision and Direction of Elections in Cases Nos. 35-RC-1643 and 35-RC-1661 finding two units of all the Respondent's employees appropriate for separate representation and ordered an election among the employees of each. One unit in which the employees were to vote to decide whether they wished to be represented by the Teamsters consisted of all the Respondent's over-the-road truckdrivers. The other unit in which the employees were to vote to determine whether they desired representation by the Shipbuilders consisted of all the Respondent's production and maintenance employees with certain exclusions including the over-the-road truckdrivers. No election was held in the truckdrivers unit, the Teamsters having elected to proceed with the unfair labor practice charge in this case subsequent to its filing. Upon request of the Teamsters for withdrawal of its petition the Board on December 30, 1959, issued an order dismissing the petition.

B. Findings

As noted, the testimony of employees Howe, Bolin, Shepard, and Claise is in direct conflict with the account by Feix of the things said by him in his conversations with these employees on March 10 and 11, 1959. I have resolved this conflict in favor of the General Counsel's witnesses because they impress me as the more truthful. Feix's version of these conversations are not convincing. His denial of threatening conduct is unpersuasive in the face of his admitted exhibition of the list of names supplied by his informer and his identification of the instigators which I am satisfied was revealed and stated to the drivers for the purpose of intimidating them. His version of the remarks about the orders for new trucks and the farming out of the trucking is implausible. No logical explanation was offered by Feix for the introduction of these subjects in conversations initiated by him concerning the drivers' union activities. I do not believe that Feix aimlessly raised these matters without intentionally connecting them to the union activities of the drivers which prompted him to speak to them. Nor do I believe that he spoke of these matters in the innocuous vein he described. I am satisfied that the insertion of Feix of his comments about the trucks and the Respondent's trucking operations in a context of coercion was motivated by the same unlawful purpose which, as I am finding, led to his other threats and acts of discrimination in the course of his several conversations with the drivers. The reliability of Feix's testimony is further diminished by his unpersuasive and vacillating explanation for doubting the Teamsters majority and refusing to permit Wilkinson's attendance at the March 13 meeting and to confer with him about the drivers. I formed the impression while he was testifying that he was merely improvising explanations to conform to his claim of doubt. I find from the aforementioned credited testimony that the Respondent violated Section 8(a)(1) of the Act by Feix's threats to the drivers to lay off or to discharge them for instigating or supporting their organization by the Teamsters, his intimidation of them in the exercise of their rights to engage in these activities by revealing to them knowledge of their attendance at a union meeting and singling out the instigators of this activity, his threat to sell the Respondent's trucks and to farm out its trucking operations, and to cancel an order for new trucks in reprisal for their continued adherence to the Teamsters, and his declaration that he would not tolerate the union or put up with it which meant simply that he would not recognize or bargain with the Teamsters as the representative of the drivers.

The Respondent also violated Section 8(a)(3) of the Act by the layoff by Feix on March 10 and 11 of drivers for instigating or supporting unionization by the Teamsters, notwithstanding Feix's subsequent rescission of this action by March 13 with no resultant loss of working time by any employee. In this connection I have

examined the logbooks of driver William E. James relied upon by the General Counsel as proof of his loss of working time and am not convinced from the record as a whole that such loss of time has been proved.

Finally, I find that the Respondent violated the Act by refusing without good-faith reason to recognize and bargain with the Teamsters as the representative of a majority of the over-the-road truckdrivers in a unit limited to such employees. That a separate unit of such employees is appropriate for bargaining has already been determined by the Board in its Decision and Direction of Election in Case No. 35-RC-1643 adverted to above. That the Teamsters by March 10, 1959, had been authorized by a majority of the employees in this unit is evident from the testimony of Business Representative Wilkinson showing he had by that date secured the signed authorization cards of 11 of the 18 drivers in such unit. These cards are part of the record. The Teamsters made a clear and unequivocal demand for recognition in bargaining which was communicated to the Respondent on March 12, 1959, and any doubt as to whether the Respondent was informed of such demand by March 13 is eliminated by Wilkinson's request to Feix on that date for permission to attend a scheduled bargaining meeting as a representative of the drivers and to confer with him in such capacity concerning their differences with the Respondent which obviously meant concerning their terms and conditions of employment. In the circumstances the Respondent was statutorily obligated to honor this demand and to refrain from bypassing the Teamsters through direct bargaining with the drivers absent a showing of justification for such conduct. The Respondent has failed to make such showing.

The Respondent's contention that the Teamsters' demand was deficient because it was not backed up with an offer to prove its majority is without merit. Such contention would be valid had the Respondent entertained a good-faith doubt as to the Teamsters' claim of majority. See *Automotive Supply Co. Inc.*, 119 NLRB 1074, at 1094. Feix's refusal to permit Wilkinson's attendance at the March 13 meeting was unrelated to such doubt. He never expressed it to Wilkinson or requested any proof from him to back up his claim. Moreover, he knew from his informant that nine of the drivers had attended the meeting and I reject his testimony as incredible that the informant who had accurately revealed the identity of these drivers had told him they had not signed cards at the meeting. In view of Feix's pipeline to the activities of the drivers I have no doubt that he also learned that drivers Shepard and Howe signed cards on March 10, the day following the meeting. But whether Feix had the actual count of card signers is not the governing consideration. What controls is whether he had a bona fide doubt that they constituted less than a majority when he spoke to Wilkinson. His bad-faith conduct before then belies such honest doubt for he had before then by acts of unlawful coercion and discrimination set out to destroy that majority. Had his reasons for refusing the request to recognize and bargain rested upon such doubt it is to be expected that upon assertion of that reason alone he would have withheld recognition, and would not without such assertion have proceeded to dissipate the claimed majority.

I do not believe that because Feix may have heard rumors of any impending drive by another union a couple of weeks before the Teamsters organized the drivers he doubted the Teamsters majority claim. All that he had was rumor and no evidence at all of organizing activity. His good faith in this respect is impaired by his troubled effort at the hearing, from which he ultimately receded, to support his doubt with testimony that drivers had told him before March 9 that they had signed cards for the other union. But most important he had clear evidence of the strength of the Teamsters and none that the other union had any support.

If Feix directed Wilkinson to go through the Board, as he claimed he was told to say by the attorney he consulted, I do not believe this was motivated by a genuine doubt as to majority which Feix wished settled by a Board election.² In-

² Although not clearly spelled out either in its answer or brief, I sense that the Respondent deems the filing by the Teamsters of its representation petition with the Board so close in point of time to its demand for recognition and bargaining on March 12 or 13 as requiring the Teamsters to determine its representative status through a Board-conducted election, and that the Respondent should therefore be exonerated in this proceeding for its refusal to recognize and bargain with the Teamsters. Had the Teamsters also included in its demand for recognition and bargaining a notification that it was filing a petition with the Board for an election to ascertain whether the Respondent's employees desired it as their representative the Respondent might reasonably have construed this notice as a proposal for determination of the Teamsters' status by a Board election, and might justifiably have awaited the outcome of such election before recognizing the Teamsters and bargaining with it. See *Joseph Solomon, an individual, d/b/a*

stead, I regard it as a tactical maneuver to forestall recognition of the Teamsters and bargaining for the drivers. It was a delaying tactic consistent with Feix's hasty adjustment of the drivers' demands which less than 4 days before he had declared "took time" and would require authorization from Baltimore. It was an action growing out of his unconcealed vexation with the drivers for turning to unionization to settle their differences with him, and was part of a consistent pattern of opposition to the Teamsters as evidenced by the unlawful threats and discriminatory conduct which I have found were committed by him and his declaration to the drivers that he would not tolerate or put up with the Teamsters. By the Respondent's refusal on and after March 13, 1959, to recognize and bargain with the Teamsters as the representative of its over-the-road drivers and by unilaterally granting the drivers on March 13, 1959, an adjustment in their expense allowances in disregard of its obligation to bargain with the Teamsters the Respondent violated Section 8(a)(5) of the Act.³

The record does not support the allegation of the complaint that the Respondent violated the Act by granting on May 22, 1959, free insurance to its employees on their homes and household effects. The contention that these benefits were unilaterally conferred at a time when the Respondent was statutorily obligated to bargain with the Teamsters is refuted by the uncontroverted testimony of the insurance broker, John W. Evrard, that the Respondent had ordered a blanket insurance policy for its employees from him in January 1959, and that these insurance benefits were not immediately conferred because of the broker's administrative difficulties in writing and placing an appropriate policy with an underwriter. So far as the Respondent was concerned it had decided to confer these benefits long before the advent of the Teamsters, and this action was in no way connected with the Respondent's opposition to the Teamsters. I shall recommend dismissal of the allegation that the grant of these benefits was unlawful.

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 thereof.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices violative of Section 8(a)(1), (3), and (5) of the Act I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It has been found that the Respondent has refused and still refuses to bargain collectively with the Teamsters as the exclusive representative of the employees in the appropriate unit described herein. It will therefore be recommended that the Respondent bargain collectively, upon request, with the Teamsters as the exclusive representative of the employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement. It will also be recommended that the Respondent cease and desist from unilaterally instituting any changes affecting wages or other terms or conditions of employment of its employees without first consulting with and bargaining with the Teamsters concerning these matters. While it has been found that the Respondent unlawfully laid off certain employees because of their union activities it has also been found that these employees were restored to employment by the Respondent without any loss of earnings. Accordingly, it is not necessary to recommend the usual reinstatement and backpay action required in cases of discriminatory layoff or discharge.

Because the Respondent by its several acts of unlawful conduct violated fundamental rights guaranteed employees by Section 7 of the Act, the commission of

The Solomon Company, eto, 84 NLRB 226, and *John H. McCann et al., d/b/a McCann Steel Company*, 106 NLRB 41, 50. The Teamsters' demands, both in the March 12 telegram and in the March 13 telephone request from Wilkinson to Feix, said nothing about filing a petition and the Respondent did not have any knowledge of the Teamsters' intention to file a petition before either of these demands was communicated to it. The Respondent's refusal to bargain therefore occurred in the face of a clear and unequivocal demand for bargaining. There is consequently no merit to the Respondent's position as I understand it

³ *P. M. Reeves and Sons, Inc.*, 121 NLRB 1280.

other unfair labor practices may reasonably be anticipated. It will therefore be recommended that the Respondent cease and desist from in any manner infringing upon the rights guaranteed 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. Cutter Boats, 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.

2. Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All over-the-road truckdrivers employed by Cutter Boats, Inc., at its Tell City, Indiana, plant excluding all other employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. On March 11, 1959, and all times thereafter Local 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, was, and now is, the representative of the majority of the Respondent's employees in the appropriate unit described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on March 13, 1959, and thereafter to bargain collectively with the above-mentioned labor organization as the exclusive representative of all its employees in the above-described appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By unilaterally instituting the changes in the terms and conditions of employment of employees in the above-described appropriate unit as herein related, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By discriminating with respect to the tenure of employment of its employees by laying them off in order to discourage the free exercise of rights guaranteed by Section 7 of the Act and to discourage membership in behalf of the above-mentioned organization, the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

8. By the commission of other independent acts of interference, restraint, and coercion of its employees in the exercise of the rights guaranteed in Section 7 of the Act, as herein related, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

10. Any allegations of the complaint as to which specific findings of violation have not been made in this proceeding have not been sustained.

[Recommendations omitted from publication.]

Frosty Morn Meats, Inc.¹ and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO. *Case No. 15-CA-1508. June 29, 1960*

DECISION AND ORDER

On March 18, 1960, Trial Examiner Reeves R. Hilton 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

¹The name of the Respondent appears as amended at the hearing.