

Cincinnati, 10 were transferred to the Sharonville warehouse and 1 employee has retired.⁵

On the basis of the foregoing, we find merit in the contentions of the Employer and Intervenor and we shall accordingly dismiss the petition. As there are no longer any employees employed at the Cincinnati warehouse, we find it unnecessary to consider the petition insofar as it sought such employees, and we shall therefore treat the petition as seeking all warehouse employees at Sharonville who were formerly employed at Cincinnati, and, in the alternative, all warehouse employees at Sharonville. As the warehouse employees previously employed at Cincinnati have been permanently transferred to Sharonville and as these employees, like the other Sharonville employees, are employed as production and maintenance workers at the warehouse, we find that the transferred employees have lost their separate identity and have become integrated with the other Sharonville warehouse employees and for this reason do not constitute a separate appropriate unit.⁶ With respect to the Petitioner's alternative unit request, as the contract between the Employer and the Intervenor, effective from January 4, 1960, until September 30, 1962, covers all warehouse employees at Sharonville, we find that this contract constitutes a bar to the petition, filed on August 5, 1960, insofar as it seeks warehouse employees at Sharonville.⁷ We shall accordingly dismiss the petition.

[The Board dismissed the petition.]

⁵ The employees transferred subsequent to the hearing were, like those transferred prior to the hearing, production and maintenance employees at the Cincinnati warehouse and they presumably are also employed as production and maintenance employees at the Sharonville warehouse.

⁶ See *Continental Can Company, Inc.*, 127 NLRB 286. As the warehouse employees transferred from Cincinnati are now an integral part of the Sharonville warehouse, we also find, for the reasons stated below, that the petition insofar as it seeks such employees is barred by the current contract between the Employer and the Intervenor.

⁷ In view of the fact that the present operations at Sharonville are substantially the same as its operations at the time this contract was entered into, and as it does not appear from the record that there has been a substantial increase in personnel at Sharonville, we find that the changed circumstances within the contract term are not of such a nature to remove the contract as a bar. *General Extrusion Company, Inc., General Bronze Alwintite Products Corp.*, 121 NLRB 1165, 1167.

Northern Motor Carriers, Inc. and Fort Edward Express Co., Inc. and Lawrence C. Mattison. Case No. 3-CA-1427 (formerly Case No. 2-CA-7179). February 15, 1961

DECISION AND ORDER

On July 5, 1960, Trial Examiner Thomas N. Kessel, issued his Intermediate Report in the above-entitled proceeding, finding that Northern Motor Carriers, Inc. and Fort Edward Express Co., Inc.,

herein jointly referred to as Respondent, 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 General Counsel and Respondent filed exceptions to the Intermediate Report and supporting briefs.

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 the case, and finds merit in Respondent's exceptions to the Intermediate Report.

The Trial Examiner found, based principally upon statements in an affidavit executed by Respondent's Vice President Relyea, that Mattison was regarded by Relyea as a "labor agitator" whom he "didn't want around [to] complicate the situation" and that Respondent's motive in discharging Mattison was thus to prevent him from filing grievances on his own behalf or encouraging other employees to file grievances. The Trial Examiner therefore found that Mattison's discharge violated Section 8(a) (1) of the Act. We do not agree that a preponderance of the evidence supports the Trial Examiner's conclusion. Relyea's affidavit also stated Relyea had been informed by Mattison's former employer that Mattison had "openly declared that he was going to give Beatty [his former employer] a bad time." Further, in his uncontradicted testimony, Relyea stated that Beatty had told him that if Mattison could not "find problems himself to give [Beatty] a hard time with, he went around to the men to see if they had any problems to work against Beatty"; that Mattison had deliberately found fault with equipment to give Beatty "a hard time"; and that Beatty had finally discharged Mattison for refusing to obey an order to drive a particular type of truck. This evidence supports and gives credence to Respondent's assertions that Respondent had cause to be, and was, concerned with the effect on its business of the continued employment of an individual who had deliberately harassed his prior employer with the filing of complaints. We find the evidence insufficient to warrant an inference that Respondent discharged Mattison to prevent the filing of legitimate grievances, especially since there is no evidence of prior animus against the Union or against any filing of grievances. We shall therefore dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

MEMBER JENKINS took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge filed by Lawrence C. Mattison, an individual, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region, issued his complaint dated February 29, 1960, against Northern Motor Carriers, Inc. and Fort Edward Express Co., Inc., herein jointly 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) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint, the charge, and a notice of hearing was duly served upon the parties. The Respondent's answer denies the allegations of statutory violation as set forth in the complaint and as explicated at the hearing by the General Counsel.

Pursuant to notice, a hearing was held at Glens Falls, New York, on April 18, 1960, before Thomas N. Kessel, the Trial Examiner duly designated to conduct the hearing. The General Counsel and Respondent were represented by counsel. 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 his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. COMMERCE FACTS

Northern Motor Carriers, Inc. and Fort Edward Express Co., Inc., are engaged in the trucking business in Fort Edward, New York. The stock of these companies is wholly owned by four brothers. In addition to their common ownership, both companies have common directors and a substantially common labor policy. Both companies operate from the same facilities, have the same business office where their affairs are administered by the same personnel, and interchange personnel in the conduct of their trucking operations. The complaint alleges and the answer admits that both companies constitute a single integrated enterprise. The complaint further alleges that Northern Motor Carriers, Inc., during the year ending December 31, 1959, had a gross revenue exceeding \$600,000, of which \$300,000 was derived from interstate commerce between New York and other States. From the foregoing I find that Northern Motor Carriers, Inc. and Fort Edward Express Co., Inc., are for purposes of this proceeding a single employer engaged in interstate commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction over their business operations.

II. THE LABOR ORGANIZATIONS INVOLVED

Local 232, Petroleum Drivers, Helpers and Allied Employees, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are labor organizations admitting to membership employees of the Respondent. These organizations are hereinafter called Local 232 and Local 294.

III THE UNFAIR LABOR PRACTICES

Charging Party Mattison was hired as a truckdriver by the Respondent on October 19, 1959, and was discharged on December 10, 1959. The General Counsel contends that the Respondent discharged him because of his former activities in behalf of Local 294 while working for another employer. Alternatively, the General Counsel argues in his brief that Mattison was unlawfully discharged by the Respondent because he had, while working for another employer, "assisted other employees in filing and processing grievances and in protesting the fact that [their employer] was not living up to his contract with Local 294." The General Counsel maintains that Mattison's discharge for either reason violated Section 8(a)(3) of the Act. The Respondent asserts that it justifiably discharged Mattison merely because it regarded him as a potentially troublesome employee who could impair the efficiency of its trucking operations by repeated personal complaints unrelated to union activities and by his uncooperative tendencies.

Mattison had been hired by the Respondent at a time when, according to Executive Vice President Fred Relyea, it had a considerable increase in its cement hauling

business and consequently was compelled to hire drivers at random without first securing applications from them and conducting investigations. Sometime before Mattison's employment, and afterward, there had been a number of misdeliveries and accidents involving the Respondent's drivers. In early December Relyea decided to take action about these conditions. He secured a list of the most recently employed drivers which included Mattison's name. A check was made to determine whether these drivers had been involved in any of the accidents. Mattison had a clean record. Next Relyea contacted former employers of these drivers to secure information about their past experience. Mattison had worked as a driver from 1948 to 1955 for an Albany, New York, trucking company, herein called Monarch, whose president is Clifford Beatty. From the latter Relyea secured information concerning Mattison which induced his discharge.

Relyea testified that in his conversation with Beatty the latter told him that Mattison during his entire 7 years' employment with Monarch had caused trouble for this employer by his constant personal complaints that in its operations Monarch was not abiding by its contract with the labor organization (Local 294) representing its employees, and that he presented numerous grievances for himself and other employees. By example, as related by Beatty to Relyea, these complaints or grievances involved questions of fitness of trucking equipment which necessitated time-consuming inspections. This, as reported by Beatty to Relyea, continuously threw his dispatching into a "muddle." In the course of their conversation Beatty referred to Mattison as an "agitator" which Relyea in context understood as "labor agitator." To Relyea this term connoted "a person who continually stirs up problems among other labor employees, regardless of what the problems may be." He explained this meant to him the sort of person who may object to driving the type of trucking equipment which is assigned to him and who by such lack of cooperation produces delays which in the trucking business are extremely damaging. In further explanation, Relyea testified that the term "agitator" also meant to him "a chronic troublemaker," who "would stir up problems whether or not they did exist within the organization and also commit acts which might make it very difficult in order to successfully operate a business" such as the trucking business in which the Respondent engages. Relyea also understood Beatty to have meant when he referred to Mattison as an "agitator" as a person "who wanted the Company to live up to the terms of their agreement with the Union."

Elaborating further on his discussion with Beatty, Relyea related that the Respondent's trucking operations require prompt adherence to schedules, and close coordination by management with its drivers and with the use and maintenance of equipment. He interpreted Beatty's account of Mattison's employment experience to mean that Mattison would disrupt the Respondent's finely meshed operating scheme. The success of this scheme is dependent upon the flexible attitude of the Respondent's drivers. Thus, with seasonal fluctuations in the kind and quantity of the various products hauled by the Respondent, there must be a shifting of drivers from their accustomed assignments to other driving duties. This permits the Respondent to employ a minimum labor force and at the same time, Relyea stated, is "good" for the employees. Relyea concluded from Beatty's information that Mattison did not have the cooperative attitude necessary for this sort of operation, and this impression was reinforced by Beatty's report that Mattison quit his job or was finally discharged by Monarch when he refused to drive a "straight" truck rather than the type truck he customarily drove.

The General Counsel challenges Relyea's testimony that he discharged Mattison only because he regarded him as a threat to the efficiency of the Respondent's trucking operations. At the time of Mattison's discharge the Respondent was confronted by the opposing claims of Locals 294 and 232 for jurisdiction over certain of its work. The General Counsel asserts that in this circumstance Relyea decided to get rid of Mattison after he learned of his "Pro-294 activities." In explication, the General Counsel argues that Mattison's history at Monarch as a filer of numerous grievances for himself and other employees, coupled with his demand for strict adherence by Monarch to its contract with Local 294, stamped him in Relyea's estimation as an adherent of Local 294 who in the jurisdictional dispute between Locals 294 and 232 would brew trouble. The General Counsel supports this position by reliance upon statements of Relyea given by him to a Board agent in prehearing affidavits. The most cogent of these statements in Relyea's February 4, 1960, affidavit are the following:

Beatty reported that Mattison had caused him no end of trouble during his employment and was a continual agitator of personal problems involving his pay and the labor agreement of Monarch. Beatty said that Mattison by him-

self and with other employees complained many times that Monarch was not living up to the terms of the contract the Company had with Local 294. He said also that Mattison had openly declared that he was going to give Beatty a bad time. As a result Beatty had numerous grievances filed by or at the request of Mattison, who was then a member of Local 294.

* * * * *

Local 232 and Local 294 have been having a jurisdictional dispute since last April. While Local 232 has been representing the Company's cement drivers, Local 294 has been claiming them. Based on the report from Monarch that Mattison was a labor agitator and the jurisdictional dispute, I didn't want anybody around who would complicate the situation.

Relyea affirmed at the hearing the truth and accuracy of his prehearing affidavits.

The jurisdictional dispute between Locals 294 and 232 is obviously the "situation" referred to by Relyea which he did not wish complicated by the continuation of Mattison's employment. These are the circumstances relative to the dispute. In March 1959 the Respondent contracted with Local 232 as the exclusive representative of all its truckdrivers. Cement is one of the several products transported by the Respondent in its trucks. From about April 1959, and continuing beyond the date of Mattison's discharge, Local 294 disputed with Local 232, notwithstanding the latter's contract, jurisdiction over the Respondent's cement-hauling operations. In June 1959 Relyea, as representative of the Respondent, attended a contract negotiating meeting in Philadelphia between certain local Teamster unions within the Teamsters Eastern Conference and certain employers hauling cement within that area. Ultimately, the conferees agreed upon a labor contract designated the Eastern Conference Area, Cement-Haul Agreement, providing for representation by the participating locals of the employees working for employers within the jurisdiction of these locals. In September or October 1959 Local 232 filed an unfair labor practice charge with the Board against the Respondent claiming that its negotiations with other labor organizations in the face of its existing contract with Local 232 was unlawful. That charge was dismissed by the Board's Regional Office. The Respondent had not signed the Cement-Haul Agreement despite the pressure of James R. Hoffa of the Teamsters International and the threats of the Eastern Conference to compel it to live up to the contract. Relyea's position was that the Respondent was under contract with Local 232 and could not have simultaneous contractual relations with any other union. His declared position was one of neutrality between the disputants for the Respondent's cement hauling. So far as he was concerned it was inconsequential which Union had jurisdiction over this work, for the terms and conditions of an agreement with either Local 294 or 232 would have been the same. He had heard in October 1959, that as part of an arrangement between these two locals together with the Teamsters International and the Eastern Conference, Local 232 was "going to give" Local 294 five cement drivers, but knew of no signed agreement between the two locals as of December 10, 1959. On January 22, 1960, the issue appears to have been resolved by the Respondent's signing of the Cement-Haul Agreement, Local 232 having before then been admitted as one of the participating locals of this agreement.

Relyea testified that when he spoke to Beatty concerning Mattison he assumed that Monarch had a contract with Local 294 and that Mattison was therefore its member when employed by Monarch. Relyea further testified that he had no way of knowing and did not know whether Mattison upon terminating his employment with Monarch remained a member of Local 294. Mattison's testimony establishes that he was in fact a Local 294 member during the time that he had worked for Monarch, and when he left this employer he remained a member in withdrawal status, but that when he was employed by the Respondent he transferred his membership to Local 232.

ANALYSIS AND CONCLUSIONS

I find no support in this record for the General Counsel's contention that the Respondent discharged Mattison because it regarded him as an adherent or supporter of Local 294. His penchant for filing grievances or for encouraging others to file grievances while employed as a Local 294 member by Monarch may not logically be equated with distinction as an adherent or supporter of Local 294. There is nothing in these activities by Mattison to warrant an inference that he was seeking thereby to advance the cause of this union rather than to promote his personal interests or those of fellow employees with whom he was aligned in filing grievances. Certainly, there is nothing in his activities which reflects any special loyalty from

Mattison to Local 294, or that his grievances or encouragement of them by others would have been less numerous or less vigorously pursued had another labor organization represented Monarch's employees. Beatty's report to Relyea about these activities did not, therefore, in my opinion influence a belief by Relyea that Mattison would as an employee of the Respondent show any greater adherence to or sympathy for Local 294 than for any other union. I therefore do not believe that Relyea ordered Mattison's discharge because, as the General Counsel contends, he wanted to get rid of a "potentially active 294 member."

I do, however, believe and find that Relyea was motivated by Mattison's record as a filer of grievances for himself, and as one who encouraged other employees to file grievances, to discharge him, and that the discharge was ordered not just to eliminate a potential disrupter of efficiency, but to get rid of Mattison before he stirred up activities among employees which in some way, perhaps not clearly defined in Relyea's mind, would complicate the jurisdictional dispute confronting the Respondent. While there is no reason to doubt Relyea's claim that he didn't care how that dispute was settled, because it was immaterial whether one local or another represented the Respondent's employees, he undoubtedly had an awareness of the harm which could result to the Respondent were the dispute of the locals to assume more aggressive proportions by the labor organizations pressuring the Respondent to live up to the Cement-Haul-Agreement, and which could have tied up the Respondent's operations through picketing and boycotts, albeit such conduct might have been unlawful.

I am persuaded that what Relyea had in mind when he referred in his affidavit to Mattison as a "labor agitator" whom he "didn't want around [to] complicate the situation," was his desire to avoid conduct by Mattison which would have encouraged employees to take sides in the jurisdictional dispute in such manner as to disturb the delicacy of the situation and to incite a more aggressive attitude by the disputing unions to the Respondent's disadvantage. However, it is needless in this case to speculate just how Relyea feared that Mattison by repetition of his conduct at Monarch would complicate the dispute between Locals 294 and 232. It is sufficient that I find, as I do, that he discharged Mattison to prevent him from filing grievances and to encourage other employees to file grievances.

Mattison's activities while employed by Monarch were protected by Section 7 of the Act, whether they consisted of grievances filed in his own behalf (*H. Muehlstein & Co., Inc.*, 118 NLRB 268; *Gibbs Corporation*, 124 NLRB 1320), or whether they consisted of encouragement to fellow employees to file grievances to compel adherence to their employer's labor contract. (*Chemical Construction Corporation*, 125 NLRB 593.) His discharge by the Respondent to prevent him while in its employ from engaging in these activities was in derogation of rights guaranteed him by Section 7 of the Act in violation of Section 8(a)(1) of the Act. Whether such conduct by the Respondent was also violative of Section 8(a)(3) of the Act is inconsequential, for in either event the remedy required to cure the effect of the unlawful conduct would be the same (*Salt River Valley Water Users Association, an Arizona Corporation*, 99 NLRB 849; *Gibbs Corporation, supra*). I shall therefore make no finding that Section 8(a)(3) of the Act was violated by Mattison's discharge.

The foregoing conclusion is not intended to foreclose the right of the Respondent lawfully to discharge Mattison or any other employee who in bad faith files grievances, or encourages their filing by other employees, intending thereby to harass and injure the Respondent's business. I find no evidence in this record, however, to support any assertion that Mattison had maliciously or even unreasonably, except from Monarch's or the Respondent's point of view, filed grievances or agitated others to file them. Beatty's account to Relyea did not reveal that Mattison's grievances were baseless or that they were not filed or encouraged by others except in the honest belief that they were meritorious. Beatty did not accuse Mattison of inventing false grievances or stimulating others to file groundless grievances. His criticism, rather was in essence that Mattison was a difficult employee who would not overlook employer's deviation from the governing labor contract and demanded for himself and others strict observance of that contract. It may be correct to say, as Relyea testified, that such an employee does not suit the Respondent's convenience, and that its business could run more efficiently without the disruptions which may result from employee insistence upon strict compliance with the terms of its contract. But the Respondent's convenience must be subordinated to the guarantees of Section 7 of the Act. Its discharge of Mattison in disregard of these guarantees violated Section 8(a)(1) 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 its operation 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 certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It has been found that the Respondent on December 10, 1959, unlawfully discharged employee Lawrence C. Mattison. It will therefore be recommended that the Respondent be ordered to offer Mattison immediate and full reinstatement to his former or substantially equivalent position, without prejudice to seniority or other rights and privileges. It shall also be recommended that the Respondent make him whole for any loss he may have suffered because of his unlawful discharge, by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of the discharge to the date of the offer of reinstatement, with backpay to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

I am not persuaded by the circumstances of this case that the Respondent is opposed to the general purposes of the Act. The record shows that the Respondent has maintained a harmonious relation with the collective-bargaining representative of its employees, and has, except for the special circumstances of this case, conducted its labor relations in consonance with the letter and spirit of the Act. I therefore do not believe that because of the unfair labor practice found to have been committed by the Respondent in this case the commission by it of similar and of other unfair labor practices may reasonably be anticipated. I shall, therefore, recommend the issuance only of a narrow order limited to curing the effects of the conduct found unlawful herein.

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. Northern Motor Carriers, Inc. and Fort Edward Express Co., Inc., are in this proceeding a single employer and are engaged in commerce within the meaning of Section 2(2) and Section 2(6) and (7) of the Act.
2. Local 232, Petroleum Drivers, Helpers and Allied Employees, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are labor organizations within the meaning of Section 2(5) of the Act.
3. By discharging employee Lawrence C. Mattison the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
5. The allegation of the complaint that the Respondent has violated Section 8(a)(3) of the Act has not been sustained.

[Recommendations omitted from publication.]

Libby, McNeill & Libby and United Steelworkers of America, AFL-CIO, Petitioner. *Case No. 13-RC-7433. February 15, 1961*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Kenneth L. Keith, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.