

relations acts" are the only means of regulation. Nor do we regard State labor relations boards as the only State tribunals through which a State may assert jurisdiction over labor disputes, especially in view of the congressional policy ceding to any State agency or any State court jurisdiction in those areas where we decline it. Since our declination of jurisdiction over public trainers, as well as nearly all other closely related phases of racing, leaves the States free to assert jurisdiction, we adhere to the conclusion that our declination of jurisdiction will not defeat the purposes of our Act.

Since we had not established any standard for such enterprises prior to August 1, 1959, nothing in Section 14(c) (1) of our Act prevents us from declining jurisdiction over public trainers.

By reasons of the above result it has become unnecessary to determine which specific activities of the Employer, if any, are agricultural under Section 2(3) of our Act.

Redwing Carriers, Inc. and Rockana Carriers, Inc. and Teamsters, Chauffeurs and Helpers Local Union No. 79, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Willie P. May. *Cases Nos. 12-CA-1021, 12-CA-1022, 12-CA-1023, 12-CA-1025, 12-CA-1026, 12-CA-1027, 12-CA-1028, 12-CA-1060, and 12-CA-1102. March 6, 1961*

DECISION AND ORDER

On May 19, 1960, Trial Examiner Albert P. Wheatley issued his Intermediate Report in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report, and supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, only to the extent that they are consistent with the following Decision and Order.¹

The Respondent is a common carrier and for years has carried on regular hauling operations by truck from and to the plants and mines

¹ The Respondent's request for oral argument is denied as the record, including the briefs, adequately presents the issues and the positions of the parties.

of the Virginia-Carolina Chemical Corporation (herein called V-C). On May 22, 1959,² the employees of V-C struck and formed a picket line at the entrance to the V-C premises. The strike lasted until August 1. As more fully described in the Intermediate Report, on June 2, the Respondent terminated seven of its drivers (Silvers, Spivey, V. Bennett, B. Bennett, J. Cooper, L. Cooper, and Sewell), and on July 21, one driver (May), for refusing to carry out their assignments which required them to cross the picket line at V-C, although they remained on the job for the performance of all other work. Another driver, Krzanowski, when given the same assignment on June 24, left the job and went home. Upon his return to the plant on June 26, he was discharged on the specific ground that he had left his work without notice to the Respondent.

The General Counsel relies in substance upon Section 502 of the Act which provides in part that "the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees [shall not] be deemed a strike under this Act." Specifically, the General Counsel takes the position that all nine drivers, the complainants herein, refused to cross the V-C picket line because they believed in good faith that to accept such assignment would subject them to abnormally dangerous conditions in the course of their work. In these circumstances, the General Counsel contends Section 502 provides protection to the nine complainants, and their discharge therefore violated Section 8(a)(1) of the Act.

We need not decide whether, had there existed "abnormally dangerous conditions," Section 502 would afford affirmative protection to these complainants, for, upon careful consideration of all the pertinent evidence, we cannot conclude that the General Counsel has established the existence of such conditions.

It is necessary first to clarify the meaning of the term "abnormally dangerous conditions" as used in Section 502. We are of the opinion that the term contemplates, and is intended to insure, an objective, as opposed to a subjective, test. What controls is not the state of mind of the employee or employees concerned, but whether the actual working conditions shown to exist by competent evidence might in the circumstances reasonably be considered "abnormally dangerous."³ In this light, we turn to the evidence relative to the specific complainants.

We can dispose of Krzanowski's case at the outset. On the basis found by the Trial Examiner, we are satisfied that his case is distinguishable from the others with respect to the Section 502 allegation. When this driver was given the assignment to the V-C premises on

² All dates hereafter are for the year 1959, unless otherwise specified.

³ See, e.g., *N.L.R.B. v. Knight Morley Corp.*, 251 F. 2d 753, 756, 757 (C.A. 6); and *Knight Morley Corporation*, 116 NLRB 140, 145, 154; *Burke v. Mesta Machine Co.*, 79 F. Supp. 588, 611.

June 24, he abruptly left the job and went home. He returned to work on June 26, stating that he had been sick and his truck had not been operating properly. In the circumstances, we find the Krzanowski was justifiably discharged for the specific reason that he left his work for about 2 days without notice or explanation to the Respondent in violation of a company rule.

Seven of the drivers were discharged on June 2. The background circumstances were as follows. Prior to the strike at V-C, Respondent hauled in or out of V-C from 60 to 90 loads a day. From the inception of the strike on May 22 until June 2, the V-C facilities were virtually shut down. During this period, 13 loads in or out of V-C were hauled by 10 of Respondent's drivers, of whom 3 are complainants under discussion.⁴ On June 1, V-C notified Respondent it would reopen on a full scale and Respondent thereupon undertook to resume its normal trucking operations. (As of June 2, Rockana alone had a complement of about 50 drivers.)⁵ On June 2, the seven drivers in question, among others, were assigned to the V-C premises.

As detailed in the Intermediate Report, the incidents occurring between May 22 and June 2, adduced to show the existence of "abnormal danger" which would affect these complainants in crossing the V-C picket line, consisted of the following. Shortly before the strike commenced, drivers Spivey and B. Bennett were told by certain V-C employees not to cross the picket line in the event of a strike as "somebody would get hurt." Driver Shirley was stopped at the picket line and, after reporting to the Respondent, was escorted across the picket line by a deputy sheriff. Driver Francouer was stopped at the picket line and threatened by pickets. He proceeded to a nearby grocery store to telephone Respondent for advice. A "good dozen" pickets followed him into the store and threatened him; as he left the store he was shoved, swung at, and finally kicked in the "rear end." Driver Sewell was approached by 8 to 10 men while he was eating supper in a diner and was told, "I hope you boys are not planning to go in because if you do we ain't going to promise you what will happen."

In the early morning of June 2, six of these drivers, excluding Sewell, after generally discussing the matter among themselves and others, refused the assignment to drive through the V-C picket line. They were promptly discharged. Sewell reported for work in the afternoon, being aware of the six who had turned down the assignment that morning. Sewell made the same decision and was terminated.⁶

⁴ Namely, B. Bennett, J. Cooper, L. Cooper.

⁵ The record does not disclose how many drivers were employed by Redwing as of June 2.

⁶ It was not established that Sewell was aware of certain additional incidents which occurred during the morning of June 2 in connection with a convoy of eight trucks which Respondent initially arranged to go into the V-C premises. These incidents, which are

On July 21, driver May received the assignment, refused, and was discharged. As to May, we rely upon these particular circumstances. He had previously decided, in agreement with the other drivers on the morning of June 2, to refuse any assignment to cross the V-C picket line. On June 27, a Florida State Court issued an injunction which, *inter alia*, restrained 10 individuals from further participation in the picketing at V-C upon finding that they had committed acts of violence on the picket line. Following the injunction until the date of May's refusal on July 21, only one specific incident of violence (the acid throwing) occurred—and this occurred away from the picket line.

As already indicated, we have considered the evidence as to each of the complainants herein in light of the objective facts existing at the time each made his decision to refuse the assignment. In reaching our conclusion on the factual issues posed, we have in addition given weight to the evidence showing that between June 2 and August 1, when the strike ended, Respondent hauled in or out of V-C about 1,800 loads in the process of which over 50 of Respondent's drivers crossed the V-C picket line about 3,600 times.

The threats and acts of violence which have been shown in this case are not in issue as such and in no sense are condoned. Unfortunately, some disorder is not unusual in any extensive strike.⁷ Other recourses and forums appropriately exist to prevent and remedy such transgressions. Our function, of course, is limited to the allegations of the specific violation of the Act raised in the General Counsel's complaint.

In view of the criteria and circumstances related above, and on the record considered as a whole, we conclude that the pertinent evidence does not warrant a finding that there existed "abnormally dangerous conditions" within the meaning of Section 502, when the complainants (except Krzanowski) refused to perform their assigned work.

We are left then with virtually the precise situation as was involved in the *Auto Parts* case.⁸ There an employee refused in the course of his assigned duties to cross a picket line at the plant of another employer, while continuing on the job for the performance of his other work. It was held in effect that the activity of the employee was unprotected. As "simply stated" by the Board, the employee's "conduct was a refusal to do the job for which he had been hired and a direct disregard of his employer's instructions. For such conduct he could

not described in the Intermediate Report, consisted of attempted blocking and cutting off the road of Respondent's trucks, cursing, threatening, and throwing objects at drivers, strewing nails on the road, and the firing of a shot by an unidentified source.

⁷ See *Republic Steel Corporation v. N.L.R.B.*, 107 F. 2d 472, 479 (C.A. 3), cert. denied 309 U.S. 684.

⁸ *Auto Parts Co.*, 107 NLRB 242.

properly be discharged.”⁹ On the same legal basis, therefore, irrespective of whether their activity was concerted, we find that, in refusing the assignment to cross the V-C picket line, the eight complainants (excepting Krzanowski) engaged in unprotected conduct.

We shall accordingly dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

MEMBERS JENKINS AND KIMBALL took no part in the consideration of the above Decision and Order.

⁹For the principle that employees cannot insist on remaining at work on their own terms and conditions, or that partial or intermittent work stoppages are unprotected, see, e.g., *C. G. Conn Limited v. N.L.R.B.*, 108 F. 2d 390, 397 (C.A. 7); *N.L.R.B. v. Montgomery Ward & Co.*, 157 F. 2d 486, 496 (C.A. 8); *N.L.R.B. v. Kohler Company*, 220 F. 2d 3, 10-12 (C.A. 7), enfg. 108 NLRB 207; *N.L.R.B. v. Rockaway News Supply Company, Inc.*, 197 F. 2d 111, 113 (C.A. 2), affd. 345 U.S. 71.

INTERMEDIATE REPORT AND RECOMMENDATIONS

STATEMENT OF THE CASE

This proceeding was heard before the duly designated Trial Examiner in Tampa, Florida, on March 14, 15, and 16, 1960. The issue litigated was whether Redwing Carriers, Inc., and Rockana Carriers, Inc. (herein referred to collectively as Respondent and separately as Redwing and Rockana, respectively), violated Section 8(a)(1) of the National Labor Relations Act, as amended (herein called the Act). After the hearing the General Counsel and the Respondent filed briefs which the Trial Examiner has considered.¹

Upon the entire record, and, from his observations of witnesses, the Trial Examiner makes the following:

FINDINGS AND CONCLUSIONS

THE BUSINESS OF RESPONDENT

Redwing and Rockana are separate Florida corporations located in Tampa, Florida, and are common carriers engaged in the hauling of liquid (petroleum) products and of dry freight (fertilizer, rock, etc.) products. During 1959 each corporation derived revenue in excess of \$100,000 from hauling products outside the State of Florida or destined ultimately to points outside the State of Florida. For the purpose of this proceeding these corporations constitute a single employer within the meaning of the Act and are referred to herein as Respondent. The evidence reveals that Respondent is engaged in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act and that the Board's requirements for the assertion of jurisdiction have been established.²

THE ALLEGED UNFAIR LABOR PRACTICES

Issue

In the course of normal business Respondent has for a number of years carried on regular hauling operations from and to plants and mines of Virginia-Carolina Chemical Corporation (herein referred to as V-C) located near Tampa, Florida. On May 22, 1959, International Chemical Workers Union, Local No. 36, AFL-CIO, called a strike among employees of V-C and picket lines were established at the Florida facilities of that corporation. Between May 22 and June 2, 1959, the hauling operations normally performed by Respondent from and to these facilities of V-C were reduced to occasional trips (rather than regular runs in and out of the plants and mines). On June 2, 1959, Respondent endeavored to resume its normal

¹A document entitled "Consent Motion To Correct the Record" has also been filed and considered and is hereby granted.

²Respondent concedes that the operations here involved are within the jurisdiction of this Agency.

hauling operations from and to the facilities of V-C. On this occasion and thereafter some of Respondent's truckdrivers refused to accept assignments requiring them to cross the picket lines at the plants and facilities of V-C and Respondent terminated their employment because of such refusals. The issue herein is whether such terminations were violative of Section 8(a)(1) of the Act.

The Facts

As noted above, a strike among employees of V-C and picketing at the facilities of V-C started on May 22, 1959. A few days before the beginning of this strike and picketing the employees of Respondent were advised of the pending nature thereof and were advised that crossing the picket lines might lead to trouble.

On May 27, 1959, Rockana employee Donald E. Shirley was stopped at a picket line at V-C's property by about 125 pickets gathered there shouting "scab and picket line breaker" and taking moving pictures and was asked not to cross the picket line "until something was straightened out." Shirley then left the picket line site and reported this incident to Respondent. He was advised by Respondent to wait and that someone would meet and give him safe passage through the picket line. Shortly thereafter he was escorted through the picket line by a deputy sheriff.

On May 29, 1959, Rockana employee Andre Francoeur (also called Frenchy) approached the picket line at one of the facilities of V-C intending to make a pickup. As he did so the pickets (between 25 and 30) "strung themselves across the road," blocking his passage. When Francoeur stopped, the apparent leader of the pickets "jumped on the running board" of Francoeur's truck and told him "it would be more healthy if" he turned "around and did not make the pickup." Francoeur then left the picket line site and went to a grocery store "about a quarter of a mile down the road" and telephoned Respondent, reporting what had happened. He was advised to stay where he was and that someone would be sent to help him.

When Francoeur left the picket line site about a dozen pickets followed him to the grocery store. After his telephone call to Respondent these pickets milled about him in a menacing manner—calling him "scavenger" and threatening to assault him and crowding him out of the store and toward his truck—until Francoeur started to leave the grocery store site. As Francoeur started to leave, a couple of the pickets kicked at him, one of them actually making contact with Francoeur's body. Upon leaving the grocery store site Francoeur was followed by the pickets for about 2 miles. Upon returning to Respondent's place of business Francoeur reported to Respondent and to his fellow employees what had happened.

On May 29, 1959, Rockana employee John T. Sewell was approached by 8 to 10 men in a diner near the facilities of V-C and asked if he was the driver of the Rockana truck parked outside. When Sewell responded in the affirmative he was told, "I hope you boys are not planning on going in [to V-C] because we are on strike and if you do we ain't going to promise you what will happen." Sewell replied, "If that is the way it is I am not going in there" and was told, "Well that is the way it is." As Sewell left the diner, the men who had spoken to him stated, "You boys be sure and watch your steps." The following day Sewell reported this incident to other drivers for Respondent (J. F. Cooper, Buie Bennett, and possibly to Melvin B. Spivey). Audrey Cribbs, another Rockana driver present in the diner, also testified with respect to this matter. His version of this incident varies from that given by Sewell in that he testified that the men suggested, without accompanying threats, that Respondent's employees not cross the picket line. On the basis of observation of witnesses and evaluation and the weighing of evidence, the Trial Examiner believes and finds that Sewell's version is more reliable than that given by Cribbs.

As noted above, on June 2, 1959, Respondent endeavored to resume normal hauling operations from and to the facilities of V-C. Accordingly, when its drivers reported for work on that date some of them found assignments directing them to these facilities. These drivers (and others) then conferred among themselves, discussing the assignments and the strike at the facilities involved. They anticipated that if they tried to cross the picket lines they would be placing themselves in danger of harm to themselves and damage to Respondent's equipment and decided not to cross the picket lines.³ Supervisors for Respondent, including Respondent's

³ Respondent contends that the decision not to cross the picket lines was "individual" rather than "concerted" activity because the witnesses testified they made up their own minds not to cross the picket lines. In the light of the record this appears to be an "afterthought." In any event, any such contention is hereby rejected. It is clear from the record herein that the decision to refuse, and the refusal, to cross the picket lines on June 2, 1959, was group or concerted activity and was treated as such by Respondent.

president, Charles E. Mendez, were informed of this decision and the reasons therefore and these supervisors endeavored to persuade the drivers to go ahead and carry out their assignments, crossing the picket lines where necessary. Six drivers (William G. Silvers, Melvin B. Spivey, Vernon Bennett, Buie Bennett, James F. Cooper, and Lonnie Cooper) remained steadfast in their decision and were terminated. That afternoon when driver John T. Sewell reported for work he was given an assignment requiring him to cross the picket lines and he refused because of the anticipated bodily harm and his employment was terminated by Respondent.⁴ There is a conflict of evidence herein as to whether Respondent's supervisors were informed that the drivers' decision not to cross the picket lines was because of their apprehension about harm to themselves or because they (the drivers) were averse to crossing any picket lines. As noted above, the Trial Examiner finds that Respondent was informed that it was because of the aforementioned apprehension. In making these credibility resolutions the Trial Examiner has considered the attitude, character, and interest of each of the testifiers in the light of the situation as a whole as the evidence reveals it and inherent probability.

As noted above, the drivers' fears of bodily harm and damage to equipment were not without foundation. Furthermore, on and after June 2, 1959, the bodily harm and damaged equipment which the drivers anticipated became a reality. Not only was there substantial damage to the Respondent's equipment by nails and thrown objects but Respondent's drivers were threatened and assaulted and shot. In addition, the parties herein stipulated that after June 2, 1959, there was misconduct, at and in the vicinity of the picket lines (violence), which created hazardous conditions of employment for persons required to cross these picket lines.

On Wednesday, June 24, 1959, Redwing driver William Krzanowski was given an assignment directing him to the facilities of V-C then being picketed. Upon receipt of this assignment Krzanowski remarked to Respondent's Assistant Dispatcher Feltz, "Don't you know those boys are mean out there, they might hurt me" and then left Respondent's premises in his own automobile. Krzanowski did not report for work or call in on Thursday. On Friday, June 26, 1959, Redwing Dispatcher James R. Cunningham asked Krzanowski, "What happened to you yesterday?" and Krzanowski replied that he was sick. Cunningham then indicated to Krzanowski that his services were being terminated and that he should turn in certain safety equipment issued to drivers when they are first employed by Respondent. Later that morning Krzanowski was told by Redwing's Assistant Dispatcher Feltz that he (Krzanowski) should have taken the assignment to the V-C's facilities and that someone else had taken it and Krzanowski replied he did not have to take it. Krzanowski testified that his decision not to cross the picket lines was his own decision and that he did not discuss whether or not he was going to cross the picket lines with anyone. There is no evidence herein that Krzanowski either before or after his termination acted in unison with other drivers for Respondent except for the fact that he did not cross the picket lines and the fact that he indicated that he anticipated physical harm if he attempted to do so. However, his refusal to cross the picket lines (unlike the refusal of the drivers on June 2) was not clearly stated to Respondent. At the time he left the dispatcher's office Respondent did not know whether he was going to perform his assignment or walk away without doing such. As noted above, he did the latter. Also, as noted above, it is not clear that Krzanowski's services were terminated for refusal to perform the assignment requiring him to cross the picket lines. From the record, one of two inferences appear applicable—that he was terminated for leaving his work without notice or that he was terminated for refusing to cross the picket lines. While the Trial Examiner has some doubt about the matter, he believes (and finds) that the weight of the evidence establishes the former rather than the latter.

On June 2, 1959, Redwing driver Willie P. May conferred with other drivers for Respondent and agreed that he would not carry out any assignment requiring him to cross the picket lines at V-C. On July 21, 1959, May was given such an assignment but did not recognize it as such until after he had left Respondent's premises. While en route to his destination (a location not familiar to him) it occurred to him that possibly he was being sent to a V-C facility. At that point May telephoned Respondent's Assistant Dispatcher Feltz and inquired whether he was being directed to V-C facilities. Upon receiving an affirmative reply he told Feltz that he was "afraid to go out there" and that he would return Respondent's truck at once, which he did. When he got back to Respondent's premises May told Redwing Dispatcher Cunningham substantially the same thing he had told Feltz and was told that Respondent did not have something else for him. May made it clear

⁴ The duties of the terminated drivers were transferred to nonobjecting employees and thus Respondent maintained its operations.

that he was only refusing assignments requiring him to go to V-C facilities and that he would go anywhere else. May asked Cunningham whether he should turn in his equipment and was told to do as he pleased. He did turn it in. Respondent's answer herein admits that May was terminated on or about July 21, 1959, and in a letter to this Agency's Regional Director Respondent asserts May was dismissed for failure to carry out his assignment on July 21, 1959.

There is no evidence herein indicating antiunion animus or antipathy toward the employees for their concerted activity and, as noted above, the evidence reveals that the terminations were not impelled by such considerations, but by economic considerations.

Conclusions

The General Counsel asserts that the activities of the drivers herein were an exercise of rights guaranteed in Section 502 of the Act⁵ and that this section of the Act limits the right of an employer to require continuance of work under what the employees in good faith believe to be abnormally dangerous conditions no matter how economic the employer's motivation may be. He relies primarily upon the doctrine announced in *Knight Morley Corporation*.⁶

It appears that Section 502 was inserted into the Act as a protection to those prevented from striking by virtue of no-strike clauses of contracts or by virtue by Section 8(d) of the Act (see *Knight Morley Corp., supra*) and it is questionable whether it applies in situations such as is involved herein, where there is no collective-bargaining contract in effect. Assuming, *arguendo*, it is applicable, it appears that the principle announced in the *Knight Morley* case would apply herein although there is a major factual difference other than the existence and nonexistence of a contract. In the *Knight Morley* case the conditions giving rise to the employee activities were of a fixed and continuing nature and were such that they created an actual constant threat to health. Here the conditions were sporadic and uncertain and it was speculative whether employees would be subjecting themselves to harm by going into the area. The language of Section 502 with reference to good faith suggests that employees are not required to wait until abnormally dangerous conditions are an actual constant and continuing threat and that they may act under a good-faith belief that such conditions exist as well as when such conditions actually exist and the rationale of the *Knight Morley* case appears applicable in either situation. It is believed that the evidence adduced herein establishes a good-faith belief which has not been overcome by evidence that abnormally dangerous conditions did not exist.⁷

Assuming, *arguendo*, that Section 502 is not applicable, questions arise as to whether the drivers' activity here involved was concerted activity, whether it was concerted activity protected by the Act, and, if these issues are answered in the affirmative, the problem involved is one of balancing the conflicting interests and rights and determining whether the employer's right to operate its business must give way to the employees' right to engage in concerted activities.⁸

As previously noted, except in the situation involving Krzanowski, the Trial Examiner believes and finds that the driver's activity here involved was concerted rather than individual activity. Section 7 of the Act recognizes a right of employees to work together for their mutual air or protection. As noted in the dissenting opinion in the *Rockaway News* case, it is a time-honored custom for employees to help one another by refraining from crossing picket lines. That is what the drivers herein were doing. Furthermore, they were seeking conditions of employment for themselves which did not require them to cross picket lines where violence prevailed—an activity intimately connected with their own immediate employment. In view of the foregoing, the Trial Examiner believes, finds, and concludes that the activity here involved was concerted activity protected by the Act. See *Washington Aluminum Company, Inc.*, 126 NLRB 1410.

The problem now for determination may be stated: Must an economically motivated employer's right to operate its business give way to the concerted activities protected by the statute? The cases bearing upon this issue indicate that the answer is in the affirmative. The Board's rationale is set forth in *Cyril de Cordova & Bro.*,

⁵ Section 502 provides, ". . . nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act."

⁶ See *N.L.R.B. v. Knight Morley Corp.*, 251 F. 2d 753 (C.A. 6), enfg. 116 NLRB 140.

⁷ See *Wichita Television Corporation d/b/a KARD-TV, Incorporated*, 122 NLRB 222, 226.

⁸ A problem which the Supreme Court noted but did not answer in *N.L.R.B. v. Rockaway News Supply Company, Inc.*, 345 U.S. 71.

91 NLRB 1121. See also dissenting opinion in *Rockaway News, supra*. In short, the authorities hold that an employer's desire to operate its business cannot serve as justification for infringing the rights which the Act guarantees to employees.

Redwing and Rockana are common carriers subject to the Interstate Commerce Commission and to the Florida Railroad and Public Utilities Commission and it may be argued that the duties imposed on these carriers required them (and through them the drivers) to cross the picket lines involved. It is not clear whether such duty is imposed. Assuming, however, that the carriers had an obligation to provide services under the conditions then prevailing it would seem that then restrictions similar to those imposed by no-strike clauses of contracts would be placed upon employees and that in that event it would be appropriate to apply Section 502 and the *Knight Morley* doctrine and thus effectuate the policy of Congress of not requiring continuance of work under what the employees in good faith believe to be abnormally dangerous conditions. If the duties imposed upon carriers by the aforementioned commissions requires carriers to cross picket lines where violence prevails and Section 502 does not apply, then an apparent conflict of requirements exists and in balancing this conflict (and the conflict of interests and rights previously noted) it appears appropriate to consider the intent of Congress as expressed in Section 502 and, in view thereof, to resolve the conflicts against the carriers.

In summary, the Act gives employees, acting in concert and in the face of abnormally dangerous conditions, a right to quit their labor without penalty (either in the face of a no-strike clause or where there is no such clause) in order to protect their health and their lives.

In view of the foregoing, the Trial Examiner finds and concludes that, except in the situation involving Krzanowski, the activity of the drivers herein in refusing to cross the picket lines at V-C was protected concerted activity and that their terminations were therefore unlawful.

As previously indicated, the Trial Examiner concludes that the evidence adduced does not establish that Krzanowski was terminated in violation of the Act.

ULTIMATE FINDINGS AND CONCLUSIONS

In summary, the Trial Examiner finds and concludes:

1. The evidence adduced in this proceeding satisfies the Board's requirements for the assertion of jurisdiction herein.
2. The evidence adduced establishes that Respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
3. The aforesaid activities are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
4. The evidence adduced does not establish that Respondent violated the Act by terminating the services of William Krzanowski.

[Recommendations omitted from publication.]

Ellis and Watts Products, Inc. and International Union, Allied Industrial Workers of America, AFL-CIO. *Cases Nos. 9-CA-2041 and 9-CA-2069. March 6, 1961*

DECISION AND ORDER

On June 23, 1960, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled consolidated proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Re-