

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

All employees of the Employer employed at the East Stroudsburg, Pennsylvania,<sup>3</sup> sanitary sewer project excluding the engineering staff, office clerical employees, watchmen, timekeepers, master mechanics, superintendents, assistant superintendents, general foreman, and all other supervisors within the meaning of the Act.

[Text of Direction of Election omitted from publication.]

<sup>3</sup> The Petitioner contends that the unit should embrace future projects in Pennsylvania, New Jersey, and New York. The Employer would limit the unit to its present project. The Employer has no other construction employees at this time. On the record we find that a unit confined to the current project is the only feasible and appropriate unit for collective bargaining. *Arthur A Johnson Corporation, et al.*, 97 NLRB 1466, 1467.

**Fuchs Transfer Company and Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.** *Case No. 5-CA-1720. March 24, 1961*

DECISION AND ORDER

On December 1, 1960, Trial Examiner Stephen S. Bean 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. Thereafter, the Respondent filed exceptions to the Intermediate Report, together with a supporting brief.<sup>1</sup>

The Board<sup>2</sup> has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>3</sup>

<sup>1</sup> The Respondent's request for oral argument is denied as the record, including the exceptions and brief, adequately presents the issues and positions of the parties.

<sup>2</sup> Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Leedom, and Fanning].

<sup>3</sup> We agree with the Trial Examiner that Respondent independently violated Section 8(a) (1) of the Act by interrogating Collins concerning his union activities and the union

## ORDER

Upon the entire record in the 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, Fuchs Transfer Company, Baltimore, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees or in any other labor organization of its employees by discriminating in regard to hire and tenure of employment or any term or condition of employment.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named Union 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 any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Offer to Vernon M. Collins immediate and full reinstatement to his former or substantially equivalent position and make him whole for any loss of earnings suffered in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, all payroll records, social security records, timecards, and other personnel records necessary to or convenient for a computation of the amount of backpay due under the terms of this Order.

(c) Post at its plant in Baltimore Maryland, copies of the notice attached hereto marked "Appendix."<sup>4</sup> Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof and maintained for a period of 60 consecutive days thereafter in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by

activities of other employees. In the absence of exceptions thereto, we adopt *pro forma* the Trial Examiner's recommendation that no order be issued with respect to this violation.

<sup>4</sup>In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

the Respondent to insure that said notices are not altered, defaced, or covered by other material.

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

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 our employees that:

WE WILL offer Vernon M. Collins immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges previously enjoyed and make him whole for any loss of pay suffered as a result of the discrimination against him.

WE WILL NOT by discharging an employee, or in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

FUCHS TRANSFER COMPANY,  
*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

The complaint was heard in Baltimore, Maryland, on November 2 and 3, 1960, upon allegations that Fuchs Transfer Company, herein called the Respondent, had violated Section 8(a)(3) and (1) of the National Labor Relations Act by interrogating employees with respect to union activities and by discharging and failing to reinstate Vernon M. Collins because of his union activity.

All parties were represented by counsel and were given full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Counsel for the General Counsel and the Respondent argued the case after the close of the

evidence. Right was reserved to the parties to file briefs on or before November 23, 1960, on which date one was received from Respondent. This has been carefully considered.

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

#### FINDINGS OF FACT

##### I. RESPONDENT'S BUSINESS; THE LABOR ORGANIZATION INVOLVED

It is alleged, admitted, and found that Respondent is, and has been at all material times, engaged in commerce within the meaning of the Act. It is agreed and accordingly found that the Charging Party, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, herein called the Union, is a labor organization within the meaning of the Act.

##### II. THE UNFAIR LABOR PRACTICES

This is another run-of-the-mill case, important of course to the individuals involved, but adding not a whit to the body of the law which has been construed, as it should be, with regard to the public interest in the multitude of complied-with Intermediate Reports and Decisions issued during more than a quarter of a century past. The essential circumstances, which I find are supported by substantial evidence contained in the admixture of fact and fancy constituting the record considered as a whole, are as follows.

#### Introduction

Prior to March 29, 1960, Respondent, a preexisting corporation, of which Maurice H. Burman is president and general manager, arranged to purchase a warehouse located at Hillen and High Streets, Baltimore, referred to as Warehouse 6, from Western Maryland Warehouse Company, herein called Western, a subsidiary of Western Maryland Railway Company. The transfer of the property took place on Sunday, May 1, 1960. Western's warehouse employees, during all material times prior thereto, were represented by the Union, Respondent's by Freight Drivers and Helpers Local Union No. 557, an affiliated local union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 557. On or about March 29, 1960, Arthur G. Fouche, whose official position with the Union is general chairman for Western Maryland System Board of Adjustment, No. 184, and Vernon M. Collins, then employed as a freight handler and tow motor operator by Western, local chairman of the Union, a position similar to that of shop steward, requested Burman to recognize the Union. The latter declined to do so on the ground of Respondent's existing contract with Local 557.

Counsel stipulated that "on May 13, 1960, the Brotherhood of Railway Clerks filed an RC petition, Case No. 5-RC-3129 with the Board for a unit covering all clerks, freight handlers at the warehouse owned by Fuchs Transfer Company located at Hillen and High Streets, Baltimore 2, Maryland. On June 18, 1960, a hearing was held in Case No. 5-RC-3129. The matter is now pending before the Board."

Respondent objected to a motion of the Charging Party joined in by the General Counsel; on which ruling was reserved, to incorporate into the record of this case the transcript of evidence given by three witnesses in Case No. 5-RC-3129. Apart from certain references in the instant hearing to selected testimony of the same witnesses in the representation case, which is given due consideration insofar as in general they affirmed such testimony before me, nothing else in that transcript was offered to be shown by counsel to have relevance to the issues raised in the complaint and answer here. Therefore it seems pointless to extragate and encumber the present record with even more presumably pointless material than had already crept into it, and I now deny the motion to incorporate.

Collins and five other warehouse workers who had been, up to the end of April, employed by Western and whom Burman had previously advised that his company's employees were represented by Local 557, whom he asked if they had signed up for the Union<sup>1</sup> and to whom he had stated that in case they were interested they should apply for employment with Respondent and that if qualified they would be hired, appear on Respondent's payroll as working at Warehouse 6 on May 2, 1960.

#### The Discharge and Interrogation of Vernon M. Collins

On the morning of May 2 while Collins, whose interest in the Union, as previously noted, had been made known to Burman on or about March 29, was on a lift truck

<sup>1</sup> When asked if he had asked people about their union affiliations after they had become his employees, Burman replied, "I really believe I did not."

on the first floor when asked by the latter what he was trying to do and if he had signed a card to keep his union. When Collins answered in the affirmative Burman inquired who else had signed, to which Collins replied that Burman would have to ask the rest of the men themselves. Later in the morning when Collins was on the fifth floor Burman introduced a representative of Local 557, one Stanley,<sup>2</sup> to him saying that Collins tried to disrupt the place. When Collins asserted that all he had done was to sign a card, Burman again asked him who else had done likewise. At closing time Burman discharged Collins stating that as long as he was going to "keep that union stuff in his head" he was going to have to let him go.

#### Discussion of the Discharge

It is the position of Respondent that Collins was discharged because he was an unsatisfactory employee. Testimony was offered endeavoring to show that Collins spent considerable time talking during the only day he was employed by Respondent. Burman testified that when he discharged Collins he just told him he did not need him any more and that he might have made mention of the union part of it, that he did talk to him at least three times on May 2 although not while they were on the fifth floor, that the conversations were no more than one and two sentences long and to the effect "Let's cut this out," "Let's go," and that he thinks it was on May 1 when he asked Collins if he had signed the union card. He also avowed that his testimony on June 18, 1960, that he spoke to Collins concerning the union situation after May 1, 1960, and talked to him several times, is correct. When asked if he mentioned the Union while talking to Collins on May 2, Burman testified he said, "Why don't you do that sort of thing after work."

In addition to Burman's testimony that Collins seemed to be drifting into conversations with other persons, that he did not seem to want to be pushed, that Burman saw him talking to everyone in the building,<sup>3</sup> and that at approximately 9 o'clock he saw Collins talking to one of the other employees, he does not know whom,<sup>4</sup> there was introduced certain testimony of other witnesses comprising a stockholder, a strawboss, and three employees presently working for Respondent, seeking to support Burman's claim of a discharge for cause. Replete in this testimony and that of Burman is such evidence as the following: On May 2 everyone was busy; there was a lot of confusion in the warehouse getting things straight; Western was taking its forklift trucks away; there were two sets of office people in the warehouse, a lot of people wanted to get some work done; there was screening of new employees and showing them how the work was to be done; management had its hands full trying to get business started, to organize the place and keep things going; the work volume was heavier than normal; the day was "doggone" messed, mixed up; a lot of extra activity was going on in transfer of merchandise from one warehouse to another; everyone was "off" and confused, progress was unsatisfactory; employees were sometimes just standing around talking, taking what could be called breathers; there was a lot of talking going on between the employees; there was somewhat of a mess due to the taking over of a new operation; and it is not sure that Collins talked more than most of the other employees.

Collins admitted that he did some talking both during working as well as non-working time on May 2 and I have no serious doubt but that he engaged in rather more conversation about both union and nonunion matters on that day than he would have one believe. On the other hand, I am satisfied that the amount of time he devoted to talking in the midst of the first day's confusion was not so great as represented by some of the witnesses called by Respondent. No rule against talking or solicitation of any kind was in existence. The testimony adduced from such employees as Baldwin and McNeal, witnesses called by Respondent, that a lot of conversation, standing around to talk with people and stopping to talk, goes on during the entire day and the expression of uncertainty as to whether Collins engaged in more of it than his fellow employees, goes far to negative the idea that Collins was less attentive to his job than were his fellow workers. The testimony of the one worker, the only other tow operator, who was with Collins considerably more than any of the others, convinces me that Collins kept on his job relatively steadily and engaged in no solicitation and no more than ordinary talking, at least while the two

<sup>2</sup> Stanley was not a witness

<sup>3</sup> There seem not to have been more than five men in addition to Collins laboring in the warehouse on May 2

<sup>4</sup> With respect to this alleged observation, Burman's testimony that "there again it is an assumption on my part" is cryptic. Whether he assumed he saw Collins talking, or that if he did see him so doing he assumed he was "talking up" the Union, is a question which I do not assume to answer.

were together. Indeed, it is somewhat difficult to see why Collins had any reason to solicit for, or "talk up," the Union on May 2. All of his fellow workers, except McNeal, had applied for membership in the Union in March and reapplied on the very day before May 2. McNeal had been a member of the Union for well over a year while working part time for Western and in addition had signed an application card as recently as March 1960.

Should doubt linger as to whether the ascribed reason for Collins' discharge was pretextuous, it may readily be resolved by Burman's own testimony in the instant hearing that "Collins did do a fine job" and that he was not qualifying his testimony given on June 18, 1960, that "I think Mr. Collins did a very fine job up here." The short space of 8 hours amid the disorder prevailing on May 2 is scarcely sufficient time within which a new employee's capability or willingness to perform his work can be so objectively tested as to merit the harsh penalty of a peremptory discharge. Collins had, so far as this record discloses, been a satisfactory worker for Western, J. H. Toomey and Son, and William Furlong for some 12 or 13 years. I am unable to believe that he was suddenly discharged by Burman because during the course of only 1 day's work he had proved himself unsatisfactory for longrun employment. Rather, I am convinced and find that he was discharged for the reasons alleged by the General Counsel, when Burman told him at the end of the day, "As long as you are going to keep that union stuff in your head, I am going to have to let you go."<sup>5</sup> Burman's desire to avoid conflict between Local No. 557 and the Union is understandable. His concern was that Collins' continued employment would militate against the chance that the employees might repudiate the Union. Therefore, in order to get rid of the Union's leader he discharged a man whose strawboss testified he was, aside from one mixed-up, abnormal, unsatisfactory day on the part of everyone, ordinarily a trustworthy and very good worker.

#### Discussion of the Interrogation

The evidence respecting this feature of the case is fragmentary, being confined in large measure to the three brief conversations already found to have taken place between Collins and Burman on May 2. The record contains no substantial evidence supporting the broad allegation of unlawful interrogation of employees other than Collins on or about that date. Although I am disposed to regard the coercive effect of the questions posed to Collins concerning his union affiliation and that of others as minimal, I feel constrained by precedents in almost innumerable cases to find they violated Section 8(a)(1). As will be pointed out *infra* in the section on this report entitled "The Remedy," however, I consider it inexpedient as effectuating the policies of the Act to issue a restraining order with respect to this quite trivial aspect of the case.

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

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

### IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices it will be ordered that it cease and desist in part therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has discriminated in regard to the tenure of employment of Vernon M. Collins, it will be recommended that it offer to Collins immediate and full reinstatement to his former or equivalent position without prejudice to his seniority and other rights and privileges previously enjoyed and make him whole for any loss of earnings sustained by reason of the discharge on May 2, 1960, by payment to him of a sum of money equal to the amount he would have earned in Respondent's employ from that date to the date of offer of reinstatement, less his net earnings during that period. Backpay shall be computed in accordance with the Board's *Woolworth* formula.<sup>6</sup>

<sup>5</sup> It is to be noted that although Burman denied employing these precise words, he did testify that he might have mentioned the union part and told Collins "he was warning him to let that sort of stuff go until after working hours."

<sup>6</sup> *F. W. Woolworth Company*, 90 NLRB 289.

Although it has been found that Respondent engaged in an independent violation of Section 8(a)(1) of the Act by interrogating Collins with respect to his activities and the activities of other employees on behalf of the Union, the circumstances surrounding such interrogation and its isolated and restricted character are not so convictive of a fixed determination on the part of Respondent to deprive employees of rights secured by the Act as to justify a belief that its preventive purposes will or may be thwarted unless an order to cease and desist from such interrogation be recommended or issued.

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. Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating in regard to the tenure of employment of Vernon M. Collins the Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(3) and (1) of the Act.

3. By the discharge of Collins and the interrogation of him concerning his union activities and those of other employees, the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and has thereby engaged in an unfair labor practice 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.

[Recommendations omitted from publication.]

**Community Shops, Inc. and United Bakery and Confectionery Workers Union, Local 15, Chicago Joint Board, Retail, Wholesale and Department Store Union, AFL-CIO,<sup>1</sup> Petitioner**

**Community Shops, Inc. and United Bakery and Confectionery Workers Union, Local 15, Chicago Joint Board, Retail, Wholesale and Department Store Union, AFL-CIO. Cases Nos. 13-RC-6165 and 13-CA-3339. March 24, 1961**

#### DECISION AND ORDER

On May 27, 1960, Trial Examiner Sydney S. Asher, Jr., 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 also found that the Respondent had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed with respect to such allegations. The Trial Examiner further recommended that the election conducted on August 21, 1959, be set aside, and that another election be held during the customary season at such time as the Respondent's interference with the election and unfair labor practices have been remedied.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The

<sup>1</sup> Herein called Local 15.