

prolonged by the Respondent's unfair labor practices and thereby was an unfair labor practice strike. Employees who were on strike on that date and thereafter thus became unfair labor practice strikers who were entitled to reinstatement upon application irrespective of whether their positions had been filled by the Respondent's hire of other employees as replacements for them. Accordingly, in order to restore the status quo as it existed prior to the strike and thereby to effectuate the policies of the Act, it will be recommended that the Respondent shall, upon application, offer reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, to all their employees who were on strike on and after August 2, 1960, dismissing, if necessary, any persons hired after that date. It is also recommended that the Respondent be ordered to make whole those employees who were on strike on and after August 2, 1960, for any loss of pay they may have suffered or may suffer by reason of the Respondent's refusal, if any, to reinstate them, by payment to each of them a sum of money equal to that which he normally would have earned as wages during the period from 5 days after the date on which he applied for reinstatement, to the date of Respondent's offer of reinstatement. Loss of pay shall be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289; *N.L.R.B. v. Seven-Up Bottling Company of Miami, Inc.*, 344 U.S. 344.

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. Southwestern Porcelain Steel Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. The aforesaid labor organization at all times since April 27, 1960, has been the duly designated exclusive bargaining representative of Respondent's employees for the purposes of collective bargaining within the meaning of Section 9(a) of the Act in the following appropriate unit:

All production and maintenance employees at Respondent's Sand Springs, Oklahoma, plant, including warehousemen, inspectors, shop janitors and all in-plant truckdrivers, exclusive of all office clerical employees, confidential employees, guards, and supervisory employees as defined in the Act.

4. By failing and refusing at all times since May 18, 1960, to bargain collectively with the aforesaid labor organization as the exclusive representative of the employees in the foregoing appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
5. 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.]

Pulley Freight Lines, Inc. and District Lodge 118, International Association of Machinists, AFL-CIO. *Case No. 18-CA-1258.*
December 29, 1961

DECISION AND ORDER

On October 19, 1961, Trial Examiner Robert E. Mullin 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 Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

134 NLRB No. 169.

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

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

ORDER

The Board adopts the Recommended Order of the Trial Examiner with the modification that provision 2(d) read: "Notify the Regional Director for the Eighteenth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."¹

¹ In the notice attached to the Intermediate Report as the Appendix, the words "Decision and Order" are hereby substituted for the words "The Recommendations of a Trial Examiner." 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 "A Decision and Order" the words "A Decree of the United States Court of Appeals, Enforcing an Order."

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This proceeding, brought under Section 10(b) of the Labor Management Relations Act of 1947, as amended (61 Stat. 136, 73 Stat. 519), herein called the Act, was heard in Des Moines, Iowa, on July 24, 1961, pursuant to due notice to all parties. The complaint, issued by the General Counsel of the National Labor Relations Board, and based on charges duly filed and served, alleged that the Respondent had engaged in unfair labor practices proscribed by Section 8(a)(1) and (3) of the Act. In its answer, duly filed, the Respondent conceded certain facts with respect to its business operations, but it denied the commission of any unfair labor practices. At the hearing all parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, and to argue orally. Oral argument was waived. Subsequent to the hearing both the General Counsel and the Respondent submitted able briefs. Of particular note was the brief of counsel for the Company which was unusually thorough and comprehensive.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, an Iowa corporation, is an over-the-road carrier of perishable commodities, licensed by the Interstate Commerce Commission. It has a place of business in Des Moines, Iowa, and during the 12 months prior to the hearing, a representative period, it derived gross revenues in excess of \$1,000,000 from its carrier operations. Upon the foregoing facts, which the Respondent concedes, I find, that Pulley Freight Lines, Inc., is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

District Lodge 118, International Association of Machinists, AFL-CIO, herein called Machinists or Union, is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Contentions of the parties*

The General Counsel alleges that on April 16, 1961, the Respondent discriminatorily terminated Dale R. Miller¹ because of his activity on behalf of the Machinists and that the Company further violated Section 8(a)(1) of the Act through the activities of Milton G. Clemenson, the shop foreman. The Respondent avers that the discharge of Miller was for cause and that the remarks of Clemenson which have been put in question are so trivial as not to warrant an unfair labor practice finding.

B. *The facts*

1. Introduction and sequence of events

The Respondent's drivers, approximately 60 in number, have long been members of the Teamsters Union and the Company presently has collective-bargaining agreements with two different locals of that labor organization. On the other hand, the shop employees at the Des Moines terminal, approximately 10 in number, have never been organized.

In March 1961, Miller, a mechanic in the shop, became interested in the Machinists and frequently discussed this with his fellow employees. This interest attracted the attention of the shop foreman soon thereafter. According to Donald Hamilton, one of the mechanics, about April 1, Foreman Clemenson questioned him as to whether he had heard about Miller's desire to organize a union in the shop. When the employee replied in the affirmative, Clemenson inquired further as to Hamilton's own preferences on the matter of union organization.² On April 14, Miller utilized a morning off from work to visit the office of Machinists' Local 254 and there received a supply of authorization cards. He returned to the shop about 11 a.m. and during the lunch hour that day sought to enlist the support of his coworkers for that Union. In so doing, he discussed the matter with Lloyd Larsen, Donald Hamilton, Robert Aiken, and Gary Shoeman, all fellow employees. Miller announced that he was ready to sign up with the Machinists, that he had cards for all of them, and that he wanted to know how many others would join with him. The other men, however, did not share his enthusiasm. Gary Shoeman, a nephew of Donald Shoeman, the Respondent's vice president, stated that if they joined a labor organization, Nenvor Rietveld, president of the Company, would close the shop. Larsen was similarly apprehensive. Notwithstanding considerable discussion, Miller was unable to persuade any of the other employees to sign a union card.

Miller's activities promptly came to the attention of the management. Gary Shoeman testified that shortly after the noonday discussion of April 14 he mentioned the subject of the employees' conversation to Dale R. McClintic, Respondent's director of personnel and safety.³ Clemenson, Miller's immediate superior, testified that McClintic discussed this information with him that same day, April 14.

Miller was not scheduled to work the next day, a Saturday. On April 16, a Sunday, he reported for work at 7:30 a.m. Clemenson was not on duty that day, but about 8:30 a.m. he appeared at the shop to inform Miller that he was discharged. According to Miller, the following conversation ensued between him and his foreman:

The first thing he said was, "I hear you've been causing trouble around here." I asked him what he was talking about. He said "Those cards you were handing out Friday." I said I didn't hand out any of the cards. He said, "Well, you had some." I said, "yes, I had some and still have them." . . . [Clemenson] went on to say my attitude was bad, my work had slowed down and I wasn't performing my duties as I had before. [Clemenson then said] "This union stunt just tops it off, if you don't like your job here you can go pack up your tools and go home."

Clemenson testified that in the conversation with Miller on this occasion he told the employee that he was being discharged because of his general attitude, his going home early the previous Sunday, and an oil filter incident that week. According to Clemenson,

. . . I told him due to all this difficulty we were having, I told him I thought he would be better and happier at a different place of employment than at Pulley Freight lines. . . .

¹ In the pleadings this individual is also referred to as Dale I. Miller.

² The foregoing findings are based on the credible testimony of Hamilton, none of which was denied or contradicted by Clemenson.

³ This finding is based on the credited, undenied testimony of Gary Shoeman

Significantly, Clemenson did not deny the comments about Miller's union activities which the latter attributed to him.

2. The termination of Miller

Dale R. Miller was hired by the Respondent as a mechanic in June 1960. His initial rate of pay was \$1.75 per hour. About 2 weeks later he received a 25-cent an hour increase. In August he received another raise in the same amount. Late in January 1961 he received a 15-cent increase, thus bringing his hourly rate to \$2.40. Miller testified, and his testimony in this connection was undenied, that with each successive raise Clemenson complimented him on the quality of his work. He further testified that prior to his discharge he had never been reprimanded by his superiors.

The General Counsel alleges that Miller was discriminatorily terminated. The Respondent avers that this employee was dismissed for reasons wholly unrelated to his union activities and that its decision to terminate Miller was based on several events which occurred in the week prior to April 16. These were (1) an incident involving his servicing of a truck, (2) his failure to work a full day on April 8, (3) his use of the Respondent's garage to service his own automobile, (4) his numerous coffee breaks, and (5) his frivolous comments on the drivers' work tickets. The evidence in connection with these charges will now be considered.

On or about April 13, Robert McGrean, a driver for the Respondent, discovered, when returning from Chicago, that his tractor had developed a serious loss of oil. Miller had serviced this tractor earlier that week. The Respondent contends that the subsequent difficulty was due to his carelessness. According to Miller, when McGrean returned to the terminal, on April 13, Clemenson told him to inspect the truck, and that, upon doing so, he found that the leakage was caused by a cam follower plate which had been leaking for some time and which he had first reported to Clemenson 2 months earlier. Miller testified that on the earlier occasion Clemenson had told him to ignore the matter because the job was too big to fix and that on April 13 his foreman made the same comment at the conclusion of Miller's inspection. He further testified that on this second occasion Clemenson did not criticize him or threaten that the matter could be cause for his discharge. This last testimony was not contradicted, for although Clemenson testified that he discussed the matter with Miller and explained that serious damage might have resulted from the loss of oil, he did not testify that the employee was either reprimanded or warned of possible discharge.⁴

Miller was normally scheduled to work at the terminal on Sunday. On April 9, a Sunday, Miller left the shop at 11:15 a.m. approximately 2 hours before his normal quitting time.⁵ Miller testified that earlier in the week he had asked Clemenson for permission to be off early on Sunday and that the latter had assured him he could do so, provided all of his work was finished. Miller was not scheduled to work on Saturdays. On the evening of April 8, however, he reported to the shop and spent approximately 3 hours on the trailer hookups and related work that he would normally perform the following morning. As a result, by 11.15 a.m. the next day he completed all of this work that remained and departed.

Clemenson denied that Miller had permission to leave early on Sunday, or to work in the shop on Saturday night. He further testified that on Monday morning he discussed this with Miller. He testified, "I explained to him that if a man works on Sundays, if he'd like to have time off if he'd come to me I would try to work with him as much as possible but I didn't like to have a man go off and leave the shop without having a definite arrangement. . . ." Miller conceded that on about Tuesday of the following week Clemenson asked him why he had not worked the regular schedule on Sunday and reminded him that he had been receiving a 10-cent bonus for Sunday work with the stipulation that he stay after the trailers had been hooked up and do any major work assigned.⁶ From the testimony of these two witnesses it

⁴ Certain aspects of Clemenson's testimony reflect seriously on the weight to be accorded the shop foreman's account of this incident. Thus, Clemenson testified that while still en route McGrean had telephoned him about the oil leak, whereas McGrean, Larsen, and Miller all testified that McGrean had called and talked only to Larsen. Secondly, the work ticket prepared on this incident was written by Clemenson rather than by McGrean, the driver, and the one who would customarily write such a ticket. Finally, whereas this work ticket referred to the oil loss as having occurred on *the way* to Chicago, McGrean testified that the incident happened on the return trip from Chicago to Des Moines.

⁵ This finding is based on Miller's credited, undenied testimony.

⁶ Foreman Clemenson was not in the shop on Sundays. Miller, however, was not alone. Donald Hamilton, another mechanic, was also on duty. Although the latter was primarily

is my conclusion that although Miller had secured Clemenson's permission to leave early on Sunday, provided his work had been completed as he testified, on the other hand, Miller had not been given permission to rearrange his own schedule by coming to the shop for several hours of work on Saturday evening.

Sometime in March 1961, the Respondent announced a rule to the effect that, in the future, employees would not be allowed to use the shop facilities to work on their private vehicles. Miller admitted that on April 8, while off duty, he had brought his own automobile to the shop to repair an emergency brake and that he had not requested permission from his foreman to use the shop for this purpose. On the other hand, while Miller was at the shop on this occasion Foreman Clemenson was also there but said nothing to Miller either then or later about this breach of the company regulation. At the hearing, Clemenson conceded that at the time in question he himself was performing some repairs on the private automobile of a neighbor. From the record it appears that the company rule in this connection was more honored in the breach than in the observance. Thus, Robert Aiken, another mechanic, testified that he too had worked on his own car in the shop on April 8, and had done so without permission. Robert Spurgeon and Lloyd Larsen, both shop employees, testified to the same effect. These same witnesses also testified that they had worked on the cars of other employees without having secured permission. None was ever reprimanded. Even Clemenson did not assert that he had ever mentioned the matter to Miller until the day of his discharge.

The Respondent also asserted that Miller had loitered on the job and taken unauthorized coffee breaks. According to Clemenson, Miller indulged in frequent coffee breaks and his habit in this regard grew progressively worse from about February until his discharge. The foreman's testimony to this effect, however, was not corroborated by the employee's timecards. These were supposed to list the amount of time spent by the employee on such intervals.⁷ During his cross-examination, Clemenson was asked about several of Miller's timecards. The latter bore no record of any such unauthorized use of his time and Clemenson conceded that Miller's time record had never been docked for any extra or unauthorized coffee breaks. Insofar as loitering was concerned, no specific instance was alleged. This general allegation, by itself however, was hardly enough to justify Miller's dismissal, for even Vice President Shoeman testified that, in his view, every man in the shop had been guilty of loitering.⁸ The Respondent offered in evidence several shop tickets on which Miller had made various comments, presumably to establish a deterioration in his attitude. These were the tickets on which the truckdrivers had requested certain work to be done by the shop. The mechanic assigned to service a truck was required, upon completion of the job, to describe the work performed on the reverse side of the ticket. The Respondent produced five such tickets bearing dates from February 28 to April 11. On each of these, in addition to noting the work and service performed, Miller had added a captious remark to the driver.⁹ Mr. Shoeman testified that these comments tended to arouse friction between the drivers and the mechanics. On the other hand, none of the drivers testified that Miller had failed to perform the work requested, nor was there evidence that any of them had complained about either his work or the notations on the shop tickets. Miller testified that Clemenson had never reprimanded him for this practice and that on one occasion he had told Miller that such notes represented a good way to answer some of the more frivolous requests of the drivers. It was undenied that at the time of Miller's discharge, Clemenson did not mention these work tickets as a cause of the dismissal.

Clemenson and McClintic testified that they conferred about Miller's work performance on April 13, and that they discussed it again on April 14, along with

responsible for the refrigeration units on the trailers, according to Clemenson, both Hamilton and Miller helped one another. Clemenson testified that it was important for a mechanic to be present during the checkout of the trucks which began about noon. The parties stipulated that on April 8, Hamilton was on duty from 10 a.m. to 7:40 p.m.

⁷ The Company permitted each employee two coffee breaks per day. These were supposed to be noted on the timecard, but the employee was not paid for the time so spent.

⁸ Thus, Shoeman testified that prior to April 15 "I made several trips to the shop and I saw every man down there loitering I saw every man down there on coffee breaks. I saw men when I walked in start back to work again. . . ."

⁹ Thus on one, in which the driver, Sam McGrean, had requested several checks on the air pressure system, Miller wrote that he had made the checks and then added "what's this air kick, Sam?" On another, where he had had to weld some metal on the tractor cab, Miller had described the operation as "Put little piece of tin on big piece of tin." Shoeman conceded that the 5 work tickets offered as exhibits were the worst they could find after an examination of from 50 to 60 in Miller's file.

President Rietveld. According to Shoeman, Miller, and McClintic, at a final conference on April 15, it was decided that Miller should be discharged.¹⁰

C. Concluding findings

In support of the General Counsel's contention that Miller was discriminatorily terminated there is the following evidence: Miller's union activities had first come to Clemenson's attention on about April 1, when the latter questioned Hamilton about Miller's "wanting to organize a union in the shop" and also interrogated Hamilton as to his own views on that question. Later, on the afternoon of April 14, as found above, Clemenson and McClintic learned of Miller's attempt during the lunch period earlier that day to enlist his fellow employees in the Machinists' Union. The next day a conference was held on Miller's work record. The following morning Clemenson met him at the shop, referred to "Those cards you were handing out Friday," mentioned Miller's various deficiencies, and concluded with the statement, "This union stunt just tops it off, if you don't like your job here you can go pack up your tools and go home."

The Respondent's contention that among the reasons for Miller's discharge was that he used the shop for work on his own automobile, that he loitered on the job, and that he wrote irritating comments on the drivers' work tickets, is not convincing. In the light of the above findings, it is apparent that many other employees had used the shop for work on their own cars, including even Clemenson, without reprimand. From Miller's timecards it appears that his coffee breaks were never considered serious enough for him to be docked for such time and Vice President Shoeman testified that loitering was a common problem in the shop. Finally, the concern expressed about Miller's comments on the five work tickets appear to be in the nature of an afterthought. No adverse reference about them was ever made to Miller either before or at the time of his discharge, and Vice President Shoeman testified that the five work tickets offered in evidence were the worst examples that could be found after examining from 50 to 60 in Miller's file.

On the other hand, two charges against Miller's record do, indeed, have substance. This was the fact that although he had permission from Clemenson to leave work early on Sunday, April 9, it further appears that this permission from the foreman did not presume that Miller would perform some of that work the previous Saturday evening. Secondly, the matter involving McGrean's truck was obviously of serious concern to the Respondent. The latter, as well as the former, could very well constitute cause for discharge. Even here, however, it would appear that under normal circumstances Miller would have been accorded a warning that his dismissal was imminent.¹¹

In its brief, the Respondent points out that one court has said that "If an employee is both inefficient and engaged in union activities, this is a coincidence that does not destroy the just cause for his discharge." *N.L.R.B. v. Birmingham Publishing Company*, 262 F. 2d 2, 4 (C.A. 5). That, of course, is well settled. At the same time an equally appropriate observation of the Court of Appeals for the Eighth Circuit should be kept in mind, *viz.*, "A justifiable ground for dismissal is no defense if it is a pretext and not the moving cause." *N.L.R.B. v. Solo Cup Company*, 237 F. 2d 521, 525 (C.A. 8). It is not for the Trial Examiner to substitute his judgment for that of the Respondent as to how the latter should conduct its business. From this record it appears that in the period immediately prior to his dismissal Miller's work was subject to criticism and that the Respondent might very well have chosen to discharge him solely for his mistakes. The question as to whether Miller's discharge was harsh, unwise, or a reflection on the Respondent's business judgment, however, is not before the Trial Examiner. The Respondent was free to fire Miller for a good

¹⁰ McClintic, however, had given a prehearing affidavit in which he stated that at their final conference, after a discussion of Miller's deficiencies, Shoeman had authorized that employee's dismissal if he failed to improve. Thus, in this document McClintic averred "Shoeman gave us the O.K. to fire Miller. Shoeman said to go ahead and make some plans to dismiss Miller if he failed to do his work, but it didn't work out that way." [Emphasis supplied]

¹¹ In November 1960 Miller had been arrested and found guilty of operating a motor vehicle while intoxicated. This had resulted in suspension of his driver's license for 60 days. McClintic testified that customarily the Respondent would discharge an employee under those circumstances. He testified that in Miller's case, however, Clemenson wanted him retained because the employee was a good mechanic. As a result, Miller was kept on the payroll, and McClintic even interceded with the State officials to secure a temporary driving permit for him.

reason, a bad reason, or no reason, so long as the reason was not, in fact, the employee's union activities. The only issue with which we are here concerned is whether the true motivation for Miller's discharge was his mistakes or his union activity.

In assessing the record and the testimony of the witnesses to determine the reason for the Respondent's dismissal of this employee the following must be considered: The incident involving McGrean's truck came to the Respondent's attention on April 13. On April 14, the Respondent's officials discussed the matter and Miller's connection with it. That same day, at noon, Miller endeavored to solicit authorization cards for the Machinists from among his fellow mechanics. It was conceded by McClintic and Clemson that that afternoon they received word of these activities on Miller's part. On April 15, the Respondent's management again discussed Miller's work record. The employee was off work that day, but shortly after he reported for duty on April 16, Clemenson met him at the shop, referred to "Those cards you were handing out Friday," mentioned Miller's various deficiencies, and concluded with the statement, "This Union stunt just tops it off, if you don't like your job here you can go pack up your tools and go home." In McClintic's affidavit, he averred that during their conferences, Vice President Shoeman said "to go ahead and make some plans to dismiss Miller if he failed to do his work, but it didn't work out that way." On this record, it is my conclusion that Miller's lapses had, by April 14, become a matter of serious concern to the Company and that the Respondent had decided that the employee might be dismissed but not until he was given one more chance. Shortly thereafter, however, and on that same day, Miller's solicitation of his coworkers on behalf of the Machinists came to the Respondent's attention. The following day another conference was held on Miller's status. The next morning Miller was abruptly discharged. The remarks of his foreman on this occasion, never denied or contradicted when the latter was on the stand, cannot be ignored. Clemenson's comment that "This Union stunt just tops it off" makes it clear that Miller's solicitation for the Machinists was the straw that broke the camel's back. On the above facts, I conclude and find that the real reason for Miller's summary dismissal was his union activities. Although the Respondent had cause for dissatisfaction with some of Miller's work, as the Court of Appeals for the Third Circuit observed in a similar case, "It apparently became intolerable only after he had joined the union." *N.L.R.B. v. Electric City Dyeing Co.*, 178 F. 2d 980, 983 (C.A. 3). By this action the Respondent violated Section 8(a)(3) and (1) of the Act. I further find that Clemenson's earlier interrogation of Hamilton as to Miller's union activities, and Hamilton's own interest in a labor organization, constituted a violation of Section 8(a)(1) of the Act by the Respondent.¹²

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 engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action of the type conventionally ordered in such cases as provided in the Recommended Order below, which I find necessary to remedy and to remove the effects of the unfair labor practices and to effectuate the policies of the Act. For reasons set forth in *Consolidated Industries, Inc.*, 108 NLRB 60, 61, and cases there cited, I shall recommend a broad cease-and-desist order.

Having found that the Respondent discriminatorily discharged Dale R. Miller on April 16, 1961, I will recommend that the Respondent offer him immediate and full reinstatement, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings that he may have suffered by payment to him of a sum of money equal to that which he normally would have earned from the aforesaid date of his discharge to the date of Respondent's offer of reinstatement.

¹² This interrogation was neither for a proper purpose nor encompassed by any of the safeguards that would bring it within the *Blue Flash* rule *Blue Flash Express, Inc.*, 109 NLRB 591, 593-594. *Petroleum Carrier Corporation of Tampa, Inc.*, 126 NLRB 1031, 1036-1039; *Julius Corn and Sheldon Corn, d/b/a Julius Corn and Co.*, 129 NLRB 1264, 1271-1272

ment, less net earnings during said period. The backpay provided for herein shall be computed in accordance with the formula stated in *F. W. Woolworth Company*, 90 NLRB 289.

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce and the Union is a labor organization, all within the meaning of the Act.

2. By discriminating in regard to the hire and tenure of Dale R. Miller, thereby discouraging membership in the Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

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

Upon the foregoing findings and conclusions and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

RECOMMENDED ORDER

Pulley Freight Lines, Inc., its officers, agents, successors, and assigns, shall.

1. Cease and desist from:

(a) Discouraging membership in District Lodge 118, International Association of Machinists, AFL-CIO, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or by discriminating in any other manner in regard to their employment.

(b) Interrogating employees concerning union affiliation or activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1).

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which is necessary to effectuate the policies of the Act:

(a) Offer Dale R. Miller immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by payment to him of a sum of money equal to that which he normally would have earned from the date of his discriminatory discharge on April 16, 1961, to the date of the offer of reinstatement, less his net earnings during said period, said backpay to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due under the terms of this order.

(c) Post at its shop in Des Moines, Iowa, copies of the notice attached hereto marked "Appendix." Copies of said notice, to be furnished by the Regional Director for the Eighteenth Region, shall, after being duly signed by the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Eighteenth Region, in writing, within 20 days from the receipt of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in District Lodge 118, International Association of Machinists, AFL-CIO, or in any other labor organization of our employees, or in any other manner discriminate in regard to their hire or tenure of employment, or any term or condition of their employment.

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

WE WILL NOT interrogate employees concerning union affiliation or activities in a manner constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their 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, 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.

PULLEY FREIGHT LINES, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Guard Services, Inc. and United Plant Guard Workers of America, Charging Party and Local 221, Building Service Employees International Union, AFL-CIO, Party to the Contract

Guard Services, Inc. and Amalgamated Plant Guards, Local 235, UPGWA, Charging Party and Independent Guard Employees Alliance, Party in Interest. Cases Nos. 13-CA-3720 and 13-CA-4046. December 29, 1961

DECISION AND ORDER

On September 26, 1961, Trial Examiner Charles W. Schneider issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the consolidated complaint and recommending that the complaint be dismissed in its entirety, as set forth in the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and the brief, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, only to the extent consistent with the following:

1. As to Case No. 13-CA-4046, the Trial Examiner found that (1) employee suggestions for the formation of an independent union,