

Montgomery Ward & Co., Incorporated and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 961. Case No. 27-CA-1063.
May 29, 1962

DECISION AND ORDER

On November 16, 1961, Trial Examiner Wallace E. Royster 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 alleged unfair labor practices and recommended that the complaint be dismissed as to such allegations. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief in support thereof.

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 entire record in this case, including the Intermediate Report, the exceptions and the brief, and for the reasons set forth below has decided to dismiss the complaint in its entirety.¹

The record shows that on January 4, 1961, the Charging Party, herein referred to as the Union, was certified as the collective-bargaining representative for a unit of truckdrivers at the Respondent's Denver mail-order house. Thereafter, the Union and the Respondent commenced bargaining negotiations. The Union proposed that the Respondent agree to the Union's standard Central States Area Over-the-Road Motor Freight Agreement which the Union had negotiated with other motor freight carriers in the area, and which was to expire on January 31, 1964. (This agreement is herein referred to as the Red Book agreement.) The Respondent refused to sign the Red Book agreement. However, on April 4, 1961, the parties agreed to certain contract provisions covering wages, union security, indemnification, and adjustment of grievances.² With respect to other matters dis-

¹ Absent exceptions, we hereby adopt *pro forma* the Trial Examiner's recommended dismissal of allegations that the Respondent violated the Act by bargaining with truckdrivers Gruhlke, Peterson, and Ferri, and by unilaterally changing their terms and conditions of employment.

² Step 4 of the grievance provision provides in pertinent part:

If the grievance is not satisfactorily adjusted within fifteen (15) days after presentation under Step 3, above, and if the grievance involves the interpretation or application of the provisions of the Agreement, the grievance then may be submitted by either the Company or the Union to an arbitrator for a final and binding decision. . . . With respect to grievances involving the interpretation or application of the provisions of this Agreement, the decision of the president of the Company,

cussed, the parties agreed to be bound "for the present time" by the applicable provisions of the earlier Central States Over-the-Road and Local Cartage Agreements³ which the Union had negotiated with other motor freight carriers in the area, and which had expired on January 31, 1961. (This earlier Central States Agreement is herein referred to as the Blue Book agreement.) The parties' agreement to be bound by the Blue Book was qualified by the understanding that "the use of the expired Central States contract (Blue Book) is a guide only and is to be used only until new provisions are bargained between us."

On April 3, the day before the parties arrived at their final contract agreement, Respondent's representatives, contemplating the establishment of two new terminals at Walsenburg and Sterling, Colorado, queried the union representative generally as to what provisions of their contract would be applicable if the Respondent wanted to redomicile or transfer certain truckdrivers out of the Denver unit. Union President Bath thereupon advised the Respondent that there was a bidding procedure in the Blue Book which should be followed. Apparently Bath had reference to the following clause in the seniority provision of the Blue Book:

SEC. 3. (a) *All runs and new positions are subject to seniority and shall be posted for bids.* Posting shall be at a conspicuous place so that all eligible employees will receive notice of the vacancy, run or position open for bid, and such posting of bids shall be made not more than once each calendar year, unless mutually agreed upon. Peddle runs shall be subject to bidding provided driver is qualified. [Emphasis supplied.]

In the middle of May 1961 Respondent's personnel manager, Perkins, notified Bath that the Respondent was contemplating the creation of two new terminals, one at Walsenburg and another at Sterling, and asked him what procedure should be followed in redomiciling drivers from the Denver unit. Bath replied that the Union had no objection to the establishment of the new terminals, but that, in accordance with the Blue Book, the Union would require the establishment of a bidding procedure, so that drivers with the most seniority would have a choice. Bath also told Perkins to advise and discuss with the Union any moves Respondent might desire to make.

Early in June 1961 Perkins again called Bath and asked what could be done to resolve the problem of establishing new terminals at

or of his representative, shall be considered as final unless written notice is served by either party on the other party within ten (10) days after the decision by the president or his representative that the grievance will be presented for determination under Step 4.

³ The provisions of the Local Cartage Agreement covered the local drivers in the Denver area, and are not involved herein.

Sterling and Walsenburg, and of redomiciling certain drivers out of the Denver unit. No satisfactory solution was achieved. On June 20 Perkins once again called Bath to discuss the matter. This time, according to Perkins, Bath stated, "Don, it is okay to go ahead with this thing if you wish to do it, but you understand, that I retain these drivers in the Union."⁴ Perkins agreed that the redomiciled drivers would remain members of the Local Union, and he thereafter told Bath that the Respondent would go ahead with setting up the new terminals. Perkins then called Charles Russ, Respondent's labor relations counsel in Chicago, and informed him of the agreement he had just arrived at with Bath. However, Russ told Perkins that as the existing contract covered only the Denver unit, the Respondent could not recognize the Union as the representative of the drivers domiciled at the new terminals outside of Denver unless the Union was selected in an election at either or both of the new terminals. Russ also told Perkins that the Respondent would consent to an election at either or both of the new terminals.

Thereafter, on June 22, Perkins notified Bath of what Russ had told him concerning Respondent's recognition of the Union as collective-bargaining representative of the drivers to be located at the two new terminals. Bath protested Respondent's position as expressed by Russ. Thereafter, on June 23, Bath, by letter to Russ, protested "the redomicile of drivers outside of Denver, Colorado, and using this as a subterfuge to defeat the contract. . . ." Bath also demanded that the "redomicile be processed through the proper grievance machinery and until such time, the runs shall be operated as a Denver Domicile." Additionally, Bath stated that if the Respondent did not abide by the Blue Book, the Union would "take proper action as we deem necessary at the proper time." In reply to Bath's letter, Russ, by letter of June 28, notified Bath that the Respondent would recognize the Union as representative of single drivers domiciled at places away from the Denver terminal, but that if two or more drivers were located at the new terminals, the Respondent would not recognize the Union unless its majority status was established by an election. Russ also asserted that the Respondent's establishment of terminals did not "have any bearing on the collective-bargaining agreement we have with your union." (presumably the Blue Book) and that the agreement covered only the "drivers domiciled at the Denver terminal and no other location." In this communication, Russ also took the position that "if you have a grievance concerning the application of our agreement at Denver," the Union should then proceed under the separate grievance procedure provided for in the collective-bargaining agreement. The Union never filed a grievance.

⁴ Although Bath denied that he agreed to the redomiciling of drivers outside the Denver unit, he did not deny that he told Perkins that the drivers must remain in the Local Union.

In the meantime, on June 26, Bath again wrote Russ. This time, however, Bath requested the Respondent to execute the Red Book agreement which, as set forth above, the Respondent had earlier refused to agree to. In this letter, Bath took the position that the Respondent was not following the pertinent Blue Book provisions, but that if Respondent signed the Red Book agreement there would be no question as to the procedure the parties were to follow in redomiciling the drivers.⁵ The Respondent never specifically replied to this latter communication from the Union, but it is clear from the record that the Respondent never agreed to the Red Book provisions.

Also on June 26, Perkins, by telephone, notified Bath that the Respondent was going to establish the new terminals, move certain drivers from the Denver terminal, and that it would not recognize the Union as representing the drivers at the new locations unless the Union were certified as the collective-bargaining representative following an election. Bath replied that the drivers located at Denver were "his drivers" and that if Respondent moved them to the new terminals "it would be violating his rights, and he would have a picket around us."

On June 27 or 28, the Union learned from one of the drivers located in the Denver terminal that Respondent had approached certain of the drivers about their desires to staff the new terminals.⁶ Bath, thereupon, called Perkins and stated, "Don . . . I can't understand why you go to the drivers of the Union to redomicile these people." Perkins then explained, "Harry, I can only do what I am instructed to do out of the Chicago office."

The Respondent commenced operating at the new terminals on July 5, 1961, with three drivers transferred from the Denver unit plus one additional driver recruited elsewhere. It did not recognize the Union as representative of these drivers, nor did it apply the provisions of the Denver terminal contract at Sterling and Walsenburg.

The Trial Examiner found, in pertinent part, that the creation of the new terminals at Sterling and Walsenburg caused the loss of two truck runs originating in Denver. He also found that the truck runs from the new terminals were manned, in part, by former Denver drivers who, after redomicile to Sterling and Walsenburg, were thereby removed from the Denver unit. He concluded, in effect, that the establishment of the two new terminals had an impact on the work and personnel in the Denver terminal unit represented by the Union, and that the Union was entitled to an opportunity to bargain with

⁵ The Red Book agreement, unlike the Blue Book agreement, specifically provided for the procedure to be followed in opening new branches, terminals, divisions, or operations.

⁶ It appears that the Respondent did follow, in major part, the bidding provision contained in the Blue Book. Thus, the drivers in the Denver unit, based on their seniority, were given their choice as to whether they wished to transfer to the new terminals; but if they did not accept the transfer, they were subsequently assigned to the remaining truck runs at the Denver terminal by seniority.

the Respondent in respect to these changes before they were made. The Examiner found that the Respondent had not bargained with respect to the establishment of the new driver locations or terminals, and that it therefore violated Section 8(a)(1) and (5) of the Act.

The Respondent contends in principal part that the real dispute between the parties was a question concerning the Union's representation of drivers at the new terminals, and had nothing to do with any failure to bargain over the establishment of new terminals or driver locations; and that the instant dispute should have been processed through the grievance procedure of the collective-bargaining agreement, and not through the complaint machinery of the Act. We find merit in these contentions.

The Board and the courts have long held that an employer has no duty to bargain where the union has not signified its desire to negotiate.⁷ Such are the facts in this case. Here, the Union never requested the Respondent to bargain about the *establishment* of the new terminals at Sterling and Walsenburg, Colorado, although notified of Respondent's contemplated action. Indeed, it had no objection to the establishment of these terminals. Thus, on April 3, 1961, the Union advised the Respondent that there was a bidding procedure in the Blue Book which should be followed if the Respondent decided to redomicile or transfer certain truckdrivers out of the Denver unit. Subsequently, in the middle of May 1961 Bath, when notified that the Respondent was contemplating the creation of two new terminals, stated he had no objection to establishing the terminals. Instead, he merely took the position that the Union would have to have an opportunity to put up bids so the drivers with the most seniority would have a choice. Finally, on June 20, when Perkins again called Bath to discuss the matter, Bath's only concern was not over the establishment of the new terminals but whether or not the transferred drivers would remain in the Local Union. Moreover, it was not until Perkins subsequently notified Bath that the Respondent would not recognize the Union as the representative of the drivers domiciled at the new terminals that Bath protested, for the first time, the redomiciling of the drivers. Finally, neither the Union's June 23 nor its June 26 letter, requested the Respondent to bargain concerning the establishment of the new terminals; nor did the letters protest the establishment of the terminals. Instead, it appears that in each letter the Union only objected to the Respondent's refusal to apply the parties' agreement to the redomiciled drivers.

Accordingly, in view of the foregoing, we conclude, contrary to the Trial Examiner, that as the Respondent notified the Union well in advance of its intention to establish the new terminals, and the Union

⁷ See *Union Screw Products, a Partnership*, 78 NLRB 1107, at 1112 and 1129-1131, *N.L.R.B. v. Columbian Enameling & Stamping Co., Inc.*, 306 U.S. 292

never requested the Respondent to bargain concerning their establishment, the Respondent did not violate Section 8(a)(5) of the Act by their establishment.⁸

Moreover, as also contended by the Respondent, here the parties had included in their collective-bargaining agreement a specific grievance procedure providing for final arbitration of all "grievances involving the interpretation or application of the (contract's) provision."⁹ Furthermore, the Union kept insisting that the dispute should be settled by the grievance procedure, and the Respondent agreed. Yet, despite the collective-bargaining agreement devised by the parties themselves for settling such a dispute, the Union chose instead to file the instant charges—thus asking the Board, in effect, to intervene and resolve the dispute. In these circumstances, the Board would be frustrating the Act's policy of promoting industrial stabilization through collective bargaining if we were to intervene in this dispute, instead of requiring the Union in this case to give "full play" to the established grievance procedure.¹⁰

Accordingly, as we herein find for the foregoing reasons, that the Respondent did not violate the Act as alleged in the complaint, we shall dismiss the complaint in its entirety.

[The Board dismissed the complaint.]

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

⁸ See *Union Screw Products, supra*; *NLRB v. Columbian Enameling & Stamping Co., Inc., supra*. See also *John Wafford, d/b/a Wafford Cabinet Company*, 95 NLRB 1407; *Joseph Solomon, d/b/a The Solomon Company*, 84 NLRB 226; *Mildred F. Kellow, d/b/a Kellow-Brown Printing Company*, 105 NLRB 28; *John H. McCann, et al., d/b/a McCann Steel Company*, 106 NLRB 41.

⁹ See *supra*, footnote 2. Moreover, contrary to the Trial Examiner's findings, the record appears to show that the parties actually understood that their collective-bargaining agreement included the applicable provisions of the Blue Book. Thus, the parties agreed that the Blue Book was to be used for the time being, and by the application of the seniority, and other provisions contained therein, they did, in fact, do more than merely use the Blue Book as a "guide." Indeed, it is clear that the applicable provisions were part of their overall collective-bargaining agreement.

¹⁰ See *Hercules Motor Corporation*, 136 NLRB 1648.

As Member Fanning, in the instant case, would dismiss this complaint for the reason that the Union never requested the Respondent to bargain concerning the establishment of the two new terminals, he does not here pass upon the Board's alternative ground for dismissing the complaint, namely, that the Union failed to follow the established grievance procedure. On the other hand and apart from other considerations, Member Brown would dismiss the complaint because the Union did have such grievance machinery available to it for resolving this particular dispute.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This matter was tried before me, Wallace E. Royster, in Denver, Colorado, on September 21, 1961. Upon a charge filed by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 961, herein called the Union, the General Counsel of the National Labor Relations Board issued his complaint against Montgomery Ward & Co., Incorporated, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor

practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, herein called the Act.

In essence, the complaint alleges that the Respondent has refused unlawfully to bargain with the Union and has, in derogation of the Union's status, bargained directly with employees. Respondent's answer denies any violation of the Act.

Upon the entire record¹ in the case, upon consideration of the briefs submitted by counsel, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, an Illinois corporation with its main office in Chicago, Illinois, is engaged in the sale and distribution of merchandise through mail-order houses and retail stores. The mail-order house in Denver, Colorado, alone, is involved in this proceeding. In the year preceding the issuance of the complaint, the Respondent, through its Denver mail-order house, sold merchandise valued in excess of \$500,000 and purchased and caused to be shipped directly into the State of Colorado from points outside that State merchandise valued at more than \$50,000. I find that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ORGANIZATION INVOLVED; THE APPROPRIATE UNIT

The Union is a labor organization within the meaning of Section 2(5) of the Act. The parties agree, and I find, that the Union since at least January 4, 1961, has been the certified representative of Respondent's truckdrivers in its private carrier operation operating from the terminal of the Respondent's Denver, Colorado, mail-order house, excluding all retail store drivers and helpers, and all other employees, guards, and professional employees and supervisors. The parties agree, and I find, that the described unit is one appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

III. THE UNFAIR LABOR PRACTICES

After negotiations, the Respondent and the Union, effective April 1, 1961, came to agreement on wages, union security, adjustment of grievances, and indemnification. In all other respects the Union and the Respondent were without a firm contract. They agreed, however, to look to a document known as the Central States Agreement for guidance until new provisions were bargained between them. The Central States Agreement referred to was a form of contract which the Union had negotiated with other employers in 1958 and which had expired in January 1961.

In bargaining the Union urged the Respondent to accept an agreement which it had negotiated with other employers and which succeeded the expired Central States Agreement. The Respondent refused. At one of the bargaining meetings on April 3, the question of moving drivers from the Denver terminal to other points was mentioned. Harry Bath, the Union's president, said that the men in the Denver terminal would have to be given opportunity to bid in respect to any such changes. No agreement was reached in the matter. The expired Central States Agreement is silent on this point. The agreement which succeeded it contains specific provisions covering the matter.

In May and June, Donald Perkins, Respondent's personnel manager at Denver, spoke on several occasions to Bath, saying that he wanted to make some changes in the truck routes which would involve redomiciling drivers outside Denver. Bath told him to write to the Union, outlining his proposal, to give the drivers opportunity to bid on any such revision of routes that would affect domicile. In May and June, certain driver employees of the Respondent in Denver learned that they could have opportunity to work at points outside Denver if they desired when final decision was made to make route changes. On June 23 Bath wrote to Charles F. Russ, Jr., the Respondent's labor relations counsel, in Chicago, protesting the apparent intention of Respondent to move some of the drivers, then in the bargaining unit, to points outside Denver. A few days later Bath again wrote to Russ asking that the Respondent accept the new Central States Agreement as their contract and again protested the Respondent's plan to move drivers out of Denver. Russ answered Bath on June 28, saying that the establishment and abolishment of terminals had no relation

¹ The motion of Respondent's counsel, in which the General Counsel concurs, to correct the transcript in certain particulars is granted

to the collective-bargaining contract between the Respondent and the Union. Russ went on to say that at any location where there was but a single driver, the Respondent would recognize the Union as the bargaining representative for that driver. Where two or more drivers were so located, the Respondent would require the Union to establish its representative status through an election.

I find that at no time has there been a contract between the Respondent and the Union covering the relocation of drivers from the Denver terminal. The new Central States Agreement which the Union urged upon the Respondent does cover such a development but has never been accepted by the Respondent. The Union has never abandoned its claim that it has a right to bargain with the Respondent in this matter and it has never agreed that the Respondent could change trucking routes involving change of domicile at will. Although it is true that the Respondent was free from any contract obligation in respect to such moves, it is obvious enough that by removing routes handled by Denver terminal drivers, the Respondent was diminishing the amount of work available to Denver drivers and, in such a situation, the Union as the bargaining representative of such drivers, had a right to be heard.²

Effective July 5 a run which theretofore had been handled by a Denver driver who carried merchandise to Sterling, Colorado, and back, was changed so that the driver thereafter was stationed at Sterling and drove from there to Denver and return. Similarly, and at the same time, a run which had theretofore begun at Denver with a routing to Walsenburg and return was changed so that thereafter the driver began his run at Walsenburg, drove to Denver, and thence to his starting point. The result of these changes was to cut by two the number of runs originating at the Denver terminal and thus to deprive the employees in the bargaining unit at Denver of some work opportunity. The runs from Walsenburg and from Sterling were manned by drivers who before the change had been working from the Denver terminal. They thus were removed from the bargaining unit. The Union was entitled to an opportunity to bargain with the Respondent in respect to these changes before they were made and not to be confronted with a *fait accompli*. This is not to say that the Respondent was required to come to agreement with the Union in the matter. It was and is free to give effect to its judgment in respect to where its routes shall run and where the drivers are to be stationed. But in matters affecting the drivers at the Denver terminal, and the changes instituted on July 5 were of concern to those drivers, it had an obligation to bargain with the Union. A change in domicile, as to some individuals surely, would be as much a matter of interest and solicitude as any other change in working conditions. Those constituting the bargaining unit at Denver had a right to have their bargaining representative guard their interests in the matter.

On June 23 Bath wrote to the Respondent saying that the changes should be settled as a matter of grievance. Counsel for the Respondent argues that the Union should have invoked grievance procedures rather than have filed a charge. Assuming that in some instances the policies of the Act may best be effectuated by leaving contestants to a means of settling disputes to which they have agreed, the considerations underlying such a disposition do not exist here. The Respondent and the Union had no contract covering the relocation of drivers or the changing of routes. Even if the expired Central States Agreement covered the matter, as it did not, there was no agreement that the document referred to constituted a contract between the parties. It was carefully described as a "guide." Thus there was no contractual provision under which such a grievance could arise.

I find that by failing and refusing to bargain with the Union in respect to the change in driver locations from Denver to Walsenburg and to Sterling, the Respondent has violated and is violating Section 8(a)(1) and (5) of the Act.

On June 29, Personnel Manager Perkins interviewed Frank Ferri, Virgil Peterson, and Leo Gruhlke. He told each that drivers were to be stationed at Walsenburg and at Sterling; that drivers at those locations would not be covered by the Union's contract; and that anyone leaving the Denver terminal for either place would lose his Denver seniority. Each was offered opportunity to transfer and each accepted—Gruhlke to Sterling; Peterson and Ferri to Walsenburg. Each testified that he was not coerced in reaching a decision but I think it amply evident that coercion was present. Gruhlke could accept the Sterling location or work locally in Denver with a lessened opportunity for earnings. To Ferri it meant a steady job as an over-the-road driver rather than one on a relief basis. To Peterson it meant a long-sought opportunity to leave local trucking and to earn more. The elements of the offers, i.e., steady work, greater earnings, a desirable change in the type of work—all were beguiling to the individuals concerned. But the important question is not whether the employees were thus coerced or charmed by

² See *Shamrock Dairy, Inc., et al.*, 124 NLRB 494, 498

the Respondent but rather whether the Respondent thereby violated rights secured by Section 7 of the Act.

The complaint describes the job offers to Gruhlke, Peterson, and Ferri and the denial to them at their new locations of certain benefits under the Union contract as bargaining with individual employees in derogation of the Union's status and as unlawful restraint and coercion. I think that it was neither. The Union was not the bargaining representative of drivers at locations other than Denver and had no statutorily guaranteed right to bargain with the Respondent over working conditions at locations other than Denver. In the absence of an agreement between the Union and the Respondent in respect to seniority rights of Denver terminal drivers in applying for jobs at other locations, I see no trespass upon the Union's domain. The Union's right to bargain with the Respondent was limited to the Denver terminal unit. The Respondent was free to fill the jobs at Walsenburg and Sterling from any source it pleased. It was the establishment of these driver locations with the consequent effect upon the Denver terminal unit which constitutes the violation of the Act which I have found. I will recommend that the complaint be dismissed to the extent that it alleges unlawful individual bargaining with the three drivers and that they were unlawfully restrained and coerced in that connection.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations 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.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent has unlawfully refused to bargain with the Union in respect to the establishment of the driver locations affecting drivers in the Denver terminal unit, it will be recommended that upon request of the Union the Respondent reinstate the Denver-Sterling and Denver-Walsenburg runs as they existed immediately before July 5, 1961. The Respondent shall not be required to make this change unless the Union contemporaneously requests the Respondent to bargain with it concerning the establishment of any driver locations directly affecting Denver terminal unit drivers. If agreement is reached concerning the establishment of driver locations affecting drivers in the Denver terminal unit, such agreement shall be reduced to writing and be signed by the Respondent.

As I have found no violation of the Act in respect to Respondent's dealings with Leo Gruhlke, Virgil Peterson, and Frank Ferri, it will be recommended that the aspect of the complaint specifically concerning them be dismissed.

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. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 961, is a labor organization within the meaning of Section 2(5) of the Act, and at all times material herein was and now is the exclusive bargaining representative of the Denver terminal drivers in the unit set forth below, within the meaning of Section 9(a) of the Act.

2. All truckdrivers in Respondent's private carrier corporation operating from the Denver, Colorado, mail-order house terminal, excluding all retail store drivers and helpers and all other employees, guards, professional employees, and supervisors constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

3. By refusing to bargain with the Union in respect to the establishment of driver locations affecting runs manned by drivers in the appropriate unit, the Respondent has refused unlawfully to bargain with the Union and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

4. By such refusal to bargain the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(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.]