

It is recommended that unless on or before 20 days from the date of receipt of this Intermediate Report and Recommended Order, the Respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

### APPENDIX

#### NOTICE TO ALL EMPLOYEES

In accord with the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

**WE WILL NOT** promulgate or enforce any unlawful rule concerning solicitation or petitions.

**WE WILL offer** to Ernest Essary immediate and full reinstatement to his former or substantially equivalent position, without prejudice to seniority or other rights and privileges, and make him whole for any loss of pay suffered by reason of his discharge on September 26, 1961.

**WE WILL NOT** by means of discharge or by the promulgation or enforcement of an unlawful no-solicitation rule, or in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist American Federation of Grain Millers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, 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 amended.

All our employees are free to become, remain, or refrain from becoming or remaining members of American Federation of Grain Millers, AFL-CIO, or any other labor organization, except to the extent that this 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 amended.

IDAHO POTATO PROCESSORS, 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.

Employees may communicate directly with the Board's Regional Office, 327 Logan Building, 500 Union Street, Seattle 1, Washington, Telephone Number, Mutual 2-3300, Extension 553, if they have any question concerning this notice or compliance with its provisions.

**A & D Trucking Co., Inc. and Local 379, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case No. 1-CA-3507. June 27, 1962**

### DECISION AND ORDER

On December 15, 1961, Trial Examiner Paul Bisgyer 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 together with a supporting brief.

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 [Chairman McCulloch and Members 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 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 modifications of provisions 2(d) and 2(e) in accord with footnotes 22 and 23 of the Recommended Order.<sup>1</sup>

<sup>1</sup> The notice is further modified by adding the following language at the end thereof. Employees may communicate directly with the Board's Regional Office, 24 School Street, Boston 8, Massachusetts, Telephone Number, Lafayette 3-8100, if they have any question concerning this notice or compliance with its provisions.

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

### STATEMENT OF THE CASE

This proceeding, with all the parties represented, was heard before Trial Examiner Paul Bisgyer in Boston, Massachusetts, on September 13 and 14, 1961, on the amended complaint of the General Counsel and the answer of A & D Trucking Co., Inc., herein called the Respondent. The issues litigated were whether the Respondent, in violation of Section 8(a)(3) of the National Labor Relations Act, discriminatorily discharged seven named employees,<sup>1</sup> whom it thereafter reinstated; refused to bargain with Local 379, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, in violation of Section 8(a)(5) of the Act; and otherwise interfered with, restrained, and coerced employees in the exercise of their statutory rights in violation of Section 8(a)(1) of the Act. At the close of the hearing the parties were given an opportunity to argue their positions orally. Thereafter, only the General Counsel filed a brief. The Respondent's motion to dismiss the amended complaint made at the hearing is denied in accordance with my findings and conclusions set forth below.

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

### FINDINGS AND CONCLUSIONS

#### I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Massachusetts corporation, is engaged in the sale, and distribution of sand and gravel from its sand and gravel pit in Westford, Massachusetts. In the course of its business operations during the past year, the Respondent sold and distributed from its Westford pit materials valued in excess of \$50,000 to Burlington Sand & Gravel Company, Inc., which company, in turn, purchased and received during the same period goods valued in excess of \$50,000 directly from sources outside the Commonwealth of Massachusetts.

I find that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.<sup>2</sup>

<sup>1</sup> Frank P. DeFoe, Nicholas Georgopoulos, Edward Gillespie, John Matanza, Daniel T. Rebal, Joseph A. Ryan, and John Wells

<sup>2</sup> *Siemons Mailing Service*, 122 NLRB 81, 85.

## II THE LABOR ORGANIZATION INVOLVED

The uncontradicted testimony establishes that the Union, on behalf of its members, deals and bargains with employers concerning grievances, wages, hours, and other conditions of employment. Accordingly, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

A. *The evidence*

## 1. The Respondent's truckdrivers organize; the Union's request for recognition

In the latter part of April 1961,<sup>3</sup> following the usual business slack, the Respondent resumed its operations of hauling gravel from its Westford pit to the plant of Burlington Sand & Gravel Company. Not long thereafter, the truckdrivers became dissatisfied with their wage rates<sup>4</sup> and other conditions of employment and began discussing among themselves the advisability of securing union representation. As a result, John Matanza, one of the drivers, communicated with John J. Garvey, a business agent of the Union, informed him of the drivers' union interest, and obtained a supply of membership application cards from him. On June 15, Matanza distributed these cards among the seven drivers in the Respondent's employ<sup>5</sup> who thereupon signed them and handed them back to Matanza. The same evening Matanza delivered the signed cards to Garvey.

On Monday morning, June 19, Garvey, accompanied by another business agent, Burns, visited the Respondent's president, Danny Diamontis, at his home, which also served as the Respondent's office, advised him that he represented all the Respondent's truckdrivers, and requested that they negotiate a collective-bargaining agreement. Diamontis replied that nothing could be done before he consulted his two partners. Accordingly, Diamontis and the business agents agreed to confer again the following Friday, June 23, at the Respondent's Westford pit.<sup>6</sup> Following this initial meeting, Diamontis apprised James Anastasiades, the Respondent's corporation clerk<sup>7</sup> and one of its owners, of the Union's bargaining request.

## 2. The Respondent's opposition to the Union

In the evening of June 19, Anastasiades discussed the union situation with John Wells, one of the Respondent's drivers, at a restaurant. Anastasiades mentioned the union business agents' visit with Diamontis and asked Wells what was the story about the Union. Wells replied that he should have expected that the drivers would turn to the Union since he had cut the men's wage rates. According to Anastasiades, Wells also attributed their union interest to complaints the drivers had against the Respondent's supervisor, Leo Donabedian.

Between 9 and 9:30 the next morning, June 20, Diamontis assembled all the drivers as they came to the pit to reload their trucks to speak to them. According to the mutually corroborated testimony of witnesses for the General Counsel,<sup>8</sup> Diamontis asked the group what was the story about the Union and why did they join. When Wells replied that they wanted the Union and had their reasons, Diamontis warned that if they went union the Burlington Sand & Gravel Company, the Respondent's principal customer, would "knock off" four trucks, causing a loss of employment to four drivers, but if the drivers did not unionize he would persuade

<sup>3</sup> All the events material herein occurred in 1961.

<sup>4</sup> During the previous season the Respondent paid its drivers \$2 50 an hour. When it resumed operations it reduced the rate to \$2 an hour for all its drivers, except John Wells, who retained his prior \$2 50 rate.

<sup>5</sup> They are the only nonsupervisory drivers in the Respondent's employ. Another individual, Leo Donabedian, also drives a truck. However, he has supervisory functions, "watches" the business for the owners of the Company, gives orders to the drivers, and has the authority to discharge employees for cause. Accordingly, I find that he is a supervisor within the meaning of the Act and is excluded from the concededly appropriate unit of truckdrivers.

One driver, Edward Gillespie, testified that, although he signed a membership application card on June 15 when the others did, he signed a second one on July 7 because Business Agent Garvey told him he did not have his card. Matanza corroborated Gillespie's testimony that he had signed a card on June 15.

<sup>6</sup> Witnesses interchangeably referred to the Westford pit as the Snake Road pit.

<sup>7</sup> This office is equivalent to that of secretary of the corporation.

<sup>8</sup> Drivers Wells, Ryan, and Gillespie.

Burlington Sand to retain all eight trucks and every driver would continue working. On this occasion, Ryan, another driver, also expressed his disapproval of the Respondent's practice of giving sneak raises.

Diamontis admitted that he called the drivers together in order to learn more about the Union. He further testified that he told the drivers that he was confronted with two problems—one was the Union and the other was cutting down the number of trucks the Respondent was operating because Rocky Schelsi, one of the owners of Burlington Sand, complained that the gravel was coming in too fast.<sup>9</sup> Specifically, Diamontis denied telling the drivers that if they unionized Burlington Sand would force the Respondent to discontinue using four trucks. With respect to the union problem, Diamontis amplified his testimony and stated that he asked the drivers why they wanted the Union and what were their gripes and that, in response, the drivers expressed their adherence to the Union and their complaints about Supervisor Donabedian. He also testified that drivers Matanza and Wells then proposed to get rid of the Union if the Respondent raised their wage rate to \$2.50 an hour but that he rejected their proposition. This meeting closed with Diamontis advising the drivers to think it over. Significantly, no testimony was presented by the Respondent to corroborate Diamontis' assertion that gravel was being delivered to Burlington Sand at too fast a rate. On the contrary, Diamontis admitted that actually the number of trucks was never reduced after this meeting.

I am persuaded by the testimony that Diamontis warned the drivers that their union adherence would result in a reduction in the number of trucks the Respondent would operate, with a consequent loss of employment by four of them. This finding is convincingly indicated by Diamontis' conjoining in his discussion with the employees the union "problem" with the truck "problem," and his closing admonition to the drivers to think it over. Furthermore, not only did the Respondent fail to present evidence of the necessity for the threatened reduction in the number of trucks, but admittedly no reduction had actually ever taken place. Finally, Diamontis' threat fits in with the overall pattern of the Respondent's conduct designed, as it was, to defeat the drivers' self-organizational efforts, as hereinafter discussed. In view of the foregoing, I credit the testimony given by the General Counsel's witnesses.

Later in the afternoon of June 20, about 2:30, Anastasiades directed the drivers as they arrived at the Westford pit to stop working and park their trucks because he had something to say to them. After all the drivers, except Ryan who was away making a delivery, were assembled, Anastasiades, in the presence of his partner Diamontis, brought up the subject of the Union. What then transpired with respect to significant matters is in sharp and irreconcilable conflict. Witnesses for the General Counsel<sup>10</sup> testified in substantial agreement that Anastasiades asked them what was the story about the Union, as his partner Diamontis had done earlier that day, and offered to pay them \$2.50 an hour if they would drop the Union. They further testified that the drivers rejected this proposal and insisted on remaining with the Union. In response to this demonstrated loyalty to the Union, these witnesses testified that Anastasiades thereupon told the drivers they were fired,<sup>11</sup> asked them for the keys to the car,<sup>12</sup> and stated that he was going to bring in seven drivers from Lowell to drive the trucks.

Anastasiades admitted that he questioned the drivers about the Union, but specifically denied that he fired the drivers or offered them \$2.50 to forget the Union. According to his version of this meeting, he asked the drivers about their gripes and that the drivers, in reply, complained that Supervisor Donabedian, Diamontis, and he were "on their backs" too much, and that they were not receiving enough money. He further testified that Matanza and Wells, on behalf of the drivers, then proposed to forget about the Union if he would pay them \$2.50 an hour; that he rejected this offer; that the drivers thereupon began walking off the job; and that he then asked them for the keys to the trucks because "he figured they were quitting or pulling

<sup>9</sup> The gravel hauled by the drivers to the Burlington plant was used by Burlington in mixing concrete.

<sup>10</sup> Drivers Wells, Gillespie, Matanza, and Georgopoulos.

<sup>11</sup> Although Matanza testified that Anastasiades told the drivers they were fired, in other portions of his testimony he referred to the drivers' action on this occasion as a strike. It is clear, however, from his entire testimony that he did not use the term "strike" technically and undoubtedly had in mind the picketing in which the drivers engaged the following day.

<sup>12</sup> Gillespie testified, however, that Anastasiades asked him for his key when Anastasiades told him to park his truck. It is undisputed that Anastasiades' request for the keys was contrary to customary practice of permitting employees to keep them while in Respondent's employ.

some sort of strike." Although Anastasiades invited the drivers to express their gripes, he testified that he did not reply to them.

When this meeting broke up, the drivers requested a lift to their cars which were parked at the Burlington Sand plant. Wells and four others rode in Diamontis' car, while two of the drivers rode with Anastasiades in his pickup truck. While en route, Wells testified, Diamontis made the same proposition which his partner Anastasiades had made a short while before to pay the drivers \$2.50 an hour if they abandoned the Union. Wells also testified that, in addition, Diamontis offered to sign a paper guaranteeing that the drivers would not be fired for a year and to buy them a case of beer if they would not belong to the Union. Diamontis denied making these statements to Wells.

During this trip to the Burlington Sand plant, Anastasiades had a flat tire. Anastasiades testified that while the tire was being changed, Wells and Matanza approached him and Diamontis and again proposed that the drivers' pay be raised to \$2.50 an hour and that the drivers, in return, would forget the Union. Wells denied having had any conversation with Anastasiades or Diamontis on this occasion. Neither Diamontis nor Matanza testified concerning this alleged conversation.

Joseph Ryan, who did not attend the June 20 afternoon meeting, credibly testified without contradiction that when he returned with his truck to the Burlington Sand plant later in the day, he met Diamontis and the drivers there and that Diamontis told him to leave the truck with him.

The next morning, June 21, the drivers appeared at the Westford pit and picketed the establishment. Union Business Agent Garvey furnished the picket signs. About 3 p.m., the drivers ceased picketing and gathered at the Rainbow Cafe. Thereafter, Supervisor Donabedian entered the cafe, joined the group, and told them to report to work the following day. Donabedian also advised the drivers that they would be paid for the day they lost and would later receive a registered letter. After consulting with the Union, the drivers returned to work on June 22.<sup>13</sup> About the same day each of the drivers received a letter dated June 21, sent by the Respondent by certified mail, which stated that "You are hereby offered immediate and full reinstatement to your old job with all rights. Please report for work." Diamontis testified that he sent this letter on advice of his attorney.

I am not impressed with the accounts given by Anastasiades or Diamontis concerning the incidents related above. There is no question that the June 20 afternoon meeting was not called by the drivers to present their demands. They had already voluntarily enlisted the assistance of the Union which was seeking to arrange a conference with the Respondent to negotiate a contract. It is equally clear, on the other hand, that Anastasiades had assembled the drivers in an attempt to get rid of the Union, which his partner, Diamontis, was unable to accomplish that morning. In such circumstances, it is highly improbable that the drivers would walk out on strike, as Anastasiades' testimony suggests, when his efforts also proved unsuccessful. That the drivers were actually discharged and did not go on strike or voluntarily quit is indicated by the fact that they promptly returned to work when they were requested to by Supervisor Donabedian. Significantly, no mention was even made at that time of the drivers' purported strike action or demands, or their quitting, as one would reasonably expect would have been done had such been the case. Similarly, the Respondent's reinstatement letter to the drivers is devoid of any reference to their strike action or quitting and can only be explained that the Respondent experienced a change of heart following its hasty dismissal of its drivers. Finally, Ryan's involuntary termination casts serious doubt on the Respondent's denial that it discharged the other drivers.

Viewing the conflicting testimony concerning the foregoing incidents in the light of the Respondent's unreceptive attitude toward the Union and the demeanor of the witnesses, I find the versions of the General Counsel's witnesses are worthy of belief and I credit them.

On June 23, Union Business Agents Garvey and Burns appeared at the Westford pit for their prearranged meeting with Diamontis and Anastasiades. The record shows that the only thing that occurred on this occasion was that the union business agents inquired about the Respondent's intentions and the Respondent's officials handed the business agents a card of the Company's attorney and told them to get in touch with him.<sup>14</sup> There is no evidence that either party communicated with the other respecting contract negotiations.

As further evidence of the Respondent's determination to rid itself of the Union, the General Counsel adduced the following testimony of drivers Wells and Gillespie.

<sup>13</sup> The drivers, however, were not paid for the day they did not work

<sup>14</sup> This finding is based on substantially uncontradicted testimony. Whatever variance there is in the testimony on this subject, it is of a minor nature and need not be resolved.

Wells testified that 2 or 3 days after he returned to work on June 22, Anastasiades told him at the Westford pit that he wanted the drivers to drop the Union or else he would sell the trucks and hire other trucks to haul the material. Apparently referring to the same conversation, Wells further testified that Anastasiades also stated that he was not going to sign any contract with the Union. Concerning another conversation he had with Anastasiades a few days later, Wells testified, Anastasiades warned him that if the drivers were unionized, he would not be able to take care of him,<sup>15</sup> and urged him to forget the Union and to ask the men to do likewise. Anastasiades denied making the statements that Wells attributed to him. I have found Wells to be a credible witness and accordingly accept his testimony.

Gillespie testified that sometime between June 20 and July 10 he had a conversation with Diamontis at the Westford pit; that Diamontis questioned him whether he was "going to stay with him or go with the other fellas [sic] in the Union," and that he replied that he was "going to stay with the majority of the crowd." Diamontis denied that he made these statements. I credit the testimony given by Gillespie who I found is a reliable witness.

Pursuant to a ballot conducted by the Union on July 7, the drivers went on strike on July 10.<sup>16</sup> The evidence shows that the strike lasted about a week, although several employees returned to work before then, and that about 4 or 5 weeks later the wages of all the drivers, except Wells, were raised to \$2.25 an hour. However, Wells, who was earning \$2.50 an hour at that time, suffered a reduction in his wage rate to \$2.25 an hour.

Driver Matanza testified that he was on strike for about a day or a half a day and that the evening before he returned to work he had a conversation in Ross' Cafe in Watertown with Diamontis who told him that if the drivers returned to work he would pay them \$2.25 an hour and asked him to convey this information to the striking drivers, which he did. When questioned on recross-examination, as to the reason for returning to work during the strike, Matanza testified that in another conversation with Anastasiades the night before his return he spoke to Anastasiades at the latter's home at which time Anastasiades informed him that he would give him a raise and pay him for the day he was out on strike if he went back to work.

Anastasiades admitted granting the wage increase to all the drivers except Wells but testified that he did so because on the first day of the strike three drivers, Matanza, Georgopoulos, and DeFoe, had threatened to quit unless they received an increase and that he decided to bring the other drivers up to the same rate. He denied, however, promising any driver a wage increase to abandon the strike.

Diamontis agreed that he had a conversation with Matanza at Ross' Cafe in the evening of July 10. He testified that Georgopoulos was also present, that he told both drivers to forget the strike and go back to work, and that they said they would think it over. Diamontis, however, denied offering them a wage increase if they returned to work.

I have found that Matanza was a credible witness and accordingly accept his version of the conversations with Anastasiades and Diamontis which I find is consistent with the Respondent's demonstrated attitude towards the Union.

## B. Analysis—Conclusions

### 1. With respect to the Section 8(a)(1) and (3) allegations of the complaint

As fully discussed above, from the inception of the Union's appearance at the plant, the Respondent's officials engaged in a pattern of conduct deliberately designed to divert its employees from the Union. Thus, they threatened the drivers with loss of employment if they retained their allegiance and affiliation with the Union; offered them a wage increase if they dropped the Union; proposed to give them written assurance against discharge for a year in exchange for their withdrawal from the Union; warned a driver of the futility of union representation since the Respondent would not sign a collective-bargaining contract; told the same employee that he would lose benefits he otherwise would enjoy if the Company were unionized and solicited his support to induce the other employees to forget the Union; questioned an employee concerning his support of the Respondent or the Union; promised the employees a wage increase if they abandoned their union-conducted strike and concerted activities instituted on July 10 for mutual aid and thereafter unilaterally

<sup>15</sup> The evidence discloses that Anastasiades and Wells were on friendly terms. In fact, when the Respondent resumed operations in 1961, Wells was the only nonsupervisory driver who retained his \$2.50 hourly rate.

<sup>16</sup> At the hearing, the General Counsel stated that the purpose of the strike was not important to his theory that the wage increase, hereinafter discussed, was violative of the Act and therefore this matter was not litigated.

granted such increase; and as an additional inducement for quitting the strike, promised to pay an employee for the day's wages he lost while on strike. It has long been settled law that such conduct constitutes interference, restraint, and coercion of employees in the exercise of their statutory rights which Section 8(a)(1) prohibits.

The record also establishes that the Respondent, in reprisal for the drivers' adherence to the Union, discharged them on June 21. Although the Respondent thereafter relented and recalled its employees, such discharge was the most obvious form of discrimination condemned by Section 8(a)(3) of the Act.

## 2. With respect to the Section 8(a)(5) allegations of the complaint

It is undisputed that on June 19 the Union's business agent, Garvey, advised the Respondent's president, Diamontis, that the Union represented all the Company's drivers and requested that they negotiate a contract. The parties are in agreement that a truckdrivers' unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.<sup>17</sup>

The Respondent contends that it was not obligated to bargain with the Union because at the time of the Union's request the Union did not represent a majority of the drivers and that, in any event, the drivers' membership application cards only designated the Union's parent organization, not the Union, as their bargaining representative. I find no merit in this contention.

The evidence establishes that on June 15 the seven drivers comprising the entire unit freely signed cards reading "Application For Membership—International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America." These cards also contained a blank space for the insertion of a local union number and designated the organization as the signatory's bargaining representative. It is clear from the drivers' testimony that when they signed these cards they intended to join the Union and select it as their bargaining representative, whether or not any of them was unaware of the Union's local number, or whether or not the local's identification number was noted on the cards at that time. Moreover, it has long been settled that a designation of a parent labor organization as bargaining representative is a sufficient and valid designation of an affiliate.<sup>18</sup> Accordingly, I find that on June 15 and at all times material thereafter the Union represented all the employees in the appropriate unit as their exclusive bargaining representative.

As pointed out earlier in this report, on June 19, President Diamontis deferred answering the Union's bargaining request in order to consult his other partners and arranged another meeting on June 23. However, instead of considering the Union's request in good faith, the Respondent immediately embarked upon a course of unlawful conduct in an attempt to undermine the Union's representative status and thus avoid its bargaining obligation. That the Respondent had no genuine doubt that the Union enjoyed majority, if not unanimous, support of all the Company's drivers is plainly revealed not only by its failure to ask the Union for proof of majority but by engaging in unfair labor practices to dissipate it.<sup>19</sup> Moreover, the Respondent could not but be impressed by the drivers' determined adherence to the Union when they refused to submit to the Respondent's pressures.

Also indicating that the Respondent never intended to perform its statutory bargaining obligation is the fact that when the Union's business agents appeared at the Westford pit at the appointed day, June 23, the Respondent's officials simply advised them to see the Company's lawyer and handed them the latter's card. There is no

<sup>17</sup> More accurately described, the conceded appropriate unit consists of "All truck-drivers of the Respondent employed at its Westford plant, exclusive of office clerical employees, guards, professional employees, and all supervisors as defined in Section 2(11) of the Act."

<sup>18</sup> *Dolores, Inc.*, 98 NLRB 550, 554; *Cummer-Graham Company*, 90 NLRB 722, 725, footnote 8; *The Nubone Company, Inc.*, 62 NLRB 322, 326, footnote 9, *enfd.* 155 F. 2d 523 (C.A. 3); *Franks Bros Company*, 44 NLRB 898, 910, *enfd.* 137 F. 2d 989 (C.A. 1), *affd.* 321 U.S. 702

Considering driver Wells' entire testimony, I find that he neither signed the membership card nor was he induced to sign a card for the purpose of supporting a petition for a Board election. Moreover, even if Wells believed he signed for such purpose, his belief cannot invalidate his voluntary designation of the Union as his bargaining representative. *Consolidated Machine Tool Corporation*, 67 NLRB 737, 739, *enfd.* as mod 163 F. 2d 376 (C.A. 2), *cert denied* 332 U.S. 824. In any event, Wells' designation does not affect the Union's majority status.

<sup>19</sup> *NLRB v. Samuel J. Kobritz d/b/a Star Beef Company*, 193 F. 2d 8, 14 (C.A. 1), *enfg.* 92 NLRB 1018; *Allegheny Pepsi-Cola Bottling Company*, 134 NLRB 388.

evidence that the Respondent or anyone on its behalf sought to communicate with the Union after the Union's fruitless efforts to initiate bargaining. On the contrary, the Respondent, in disregard of the Union, subsequently gave the drivers a wage increase which it had previously promised in return for their abandonment of the July 10 strike.

Accordingly, I find that the Respondent, prompted by a complete rejection of the collective-bargaining principle, refused to recognize and negotiate with the Union as the exclusive representative of the Respondent's employees and thereby violated Section 8(a)(5) and (1) of the Act.

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

The activities of 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 its free flow.

#### V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

To remedy the Respondent's unlawful refusal to fulfill its statutory bargaining obligation, I shall recommend that it bargain on request with the Union as the exclusive representative of the employees in the appropriate unit. I have also found that the Respondent has discriminated against the employees named in the complaint. Since it appears that the Respondent had already reinstated these employees, I shall recommend only that the employees be reimbursed for any loss of pay suffered by them as a result of the discrimination. To facilitate the computation, I shall recommend that the Respondent make available to the Board, upon request, payroll and other records necessary and appropriate for that purpose. I shall also recommend that an appropriate notice, hereto attached marked "Appendix," be posted by the Respondent.

In view of the nature of the unfair labor practices herein found, including discrimination which, as the Fourth Circuit Court of Appeals observed, "goes to the very heart of the Act,"<sup>20</sup> there exists the danger of the commission in the future of other unfair labor practices proscribed by the Act. I shall accordingly recommend that the Respondent be directed to cease and desist from in any other manner infringing upon the rights guaranteed employees in Section 7 of the Act.<sup>21</sup>

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. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By discriminating in regard to the hire and tenure of employment of the employees named in the complaint as to discourage membership in, and activities on behalf of, 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.
4. All truckdrivers of the Respondent employed at its Westford, Massachusetts, plant, exclusive of office clerical employees, guards, professional employees, and all supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.
5. At all times material herein, the Union has been the exclusive bargaining representative of the employees in the aforesaid appropriate unit within the meaning of Section 9(a) of the Act.
6. By refusing on and after June 19, 1961, to recognize and bargain collectively with the Union as the exclusive representative of the employees in the aforesaid unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
7. By reason of the foregoing conduct, and by engaging in the conduct set forth in section III, B, 1 of the Intermediate Report, the Respondent has interfered

<sup>20</sup> *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F. 2d 532, 536 (C.A. 4).

<sup>21</sup> *N.L.R.B. v. Express Publishing Company*, 312 U.S. 426, 433.

with, restrained, and coerced employees in the exercise of their statutory rights within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondent, A & D Trucking Co., Inc., Watertown, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local 379, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization, by discharging or laying off its employees or by discriminating against them in any other manner in regard to their hire or tenure of employment or any term or condition of employment, except to the extent that their rights in that regard may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

(b) Refusing to recognize and bargain collectively with the above-named Union as the exclusive representative of all truckdrivers employed at its Westford, Massachusetts, plant, exclusive of office clerical employees, guards, professional employees, and all supervisors as defined in Section 2(11) of the Act, concerning rates of pay, wages, hours of employment, and other conditions of employment.

(c) Threatening its employees with loss of employment or other benefits if they retained their allegiance and affiliation with the above-named Union; offering them a wage increase or assurance against discharge if they dropped the Union; warning them of the futility of union representation by asserting that it would not sign a collective-bargaining contract with their bargaining representative; soliciting employees to induce other employees to forget the Union; coercively interrogating employees concerning their support of the Union; promising employees a wage increase or to pay them for the time they were on strike to induce them to abandon their protected strike and concerted activities for mutual aid; and to grant such wage increase in disregard of the employees' bargaining representative.

(d) In any other manner interfering with, restraining, or coercing its 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, 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 by Section 8(a)(3) of the Act.

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

(a) Upon request, bargain collectively with the above-named Union as the exclusive representative of all employees in the appropriate unit described above, concerning rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Make whole the following employees for any loss of earnings suffered by them by reason of the discrimination against them in the manner set forth in the section of the Intermediate Report entitled "The Remedy":

|                       |                 |                |
|-----------------------|-----------------|----------------|
| Frank P. DeFoe        | John Matanza    | Joseph A. Ryan |
| Nicholas Georgopoulos | Daniel T. Rebal | John Wells     |
| Edward Gillespie      |                 |                |

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all the records necessary to analyze the amount of backpay due under the terms of the Recommended Order.

(d) Post at its plant in Westford, Massachusetts, copies of the notice attached hereto marked "Appendix."<sup>22</sup> Copies of said notice, to be furnished by the Regional

<sup>22</sup> In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted in the notice for the words "The Recommendations of a Trial Examiner." In the further event that the Board's Order be enforced by a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

Director for the First Region, shall, after having been duly signed by a representative of 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. The Respondent shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.

(e) Notify the said Regional Director, in writing, within 20 days from the receipt of this Intermediate Report and Recommended Order, what steps it has taken to comply herewith.<sup>23</sup>

<sup>23</sup> In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director, 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 the recommendation of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discourage membership in Local 379, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization, by discharging or laying off our employees, or by discriminating against them in any other manner in regard to their hire or tenure of employment or any term or condition of employment, except to the extent that their rights in that regard may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

WE WILL NOT threaten our employees with loss of employment or other benefits if they retain their allegiance and affiliation with the above-named Union; offer them a wage increase or assurance against discharge if they drop the Union; warn them of the futility of union representation by asserting that we will not sign a collective-bargaining agreement with their bargaining representative; solicit our employees to induce other employees to forget the Union; coercively interrogate our employees concerning their support of the Union; promise our employees a wage increase or to pay them for the time they were on strike to induce them to abandon their protected strike and concerted activities for mutual aid; or grant such wage increase in disregard of their bargaining representative.

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 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 and 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 by Section 8(a)(3) of the Act.

WE WILL bargain collectively, upon request, with the above-named Union, as the exclusive representative of all our employees in the unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if any understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All truckdrivers employed at our Westford, Massachusetts, plant, exclusive of office clerical employees, guards, professional employees, and all supervisors as defined in Section 2(11) of the Act.

WE WILL make our employees listed below whole for any loss of pay suffered as a result of the discrimination against them.

Frank P. DeFoe  
Nicholas Georgopoulos  
Edward Gillespie

John Matanza  
Daniel T. Rebal  
Joseph A. Ryan

John Wells

All our employees are free to become, remain, or refrain from becoming or remaining members of Local 379, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or of any other labor organization,

except to the extent that this right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the National Labor Relations Act.

A & D TRUCKING Co., 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.

**National School Slate Company and Upholsterers' International Union of North America, AFL-CIO.** *Case No. 4-CA-2439.*  
*June 27, 1962*

### DECISION AND ORDER

On December 19, 1961, Trial Examiner Arthur E. Reyman 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.

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 Respondent's exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions.

As the Trial Examiner found, the Union was certified as the bargaining representative of the Respondent's employees in an appropriate unit. Thereafter, during negotiations, and before an impasse was reached, the Respondent granted individual wage increases to some of its employees. The gravamen of the complaint is that these unilateral wage changes before an impasse was reached violated Section 8(a)(5) and (1) of the Act.

We agree with the Trial Examiner that the Respondent violated the Act. However, we do so for the following reasons. Like the Trial Examiner, we think that, once the Union was certified, the Respondent was not free to bypass the Union on wage matters, but had an obligation under the Act to meet and confer with the Union concerning each and every subject relating to wages, hours, and other terms and conditions of employment. This is not a situation where an employer, who has bargained to an impasse on wages, thereafter puts into effect the same wage offer which the Union had rejected. Rather, it is one where, without discussing the particular wage increase involved with