Almeida Bus Lines, Inc. ***and*** **Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL-CIO** ***and*** **Gilbert Jesus.** *Cases Nos. 1-CA-3691 and 1-CA-3757. December 26, 1962*

DECISION AND ORDER

On June 27, 1962, Trial Examiner C. W. Whittemore 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 attached Intermediate Report. Thereafter, the Respondent, the General Counsel, and the Charging Parties filed exceptions to the Intermediate Report and supporting briefs.

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 [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 Board has considered the Intermediate Report and the entire record in this case, including the exceptions and briefs, and hereby adopts the findings,[1] conclusions, and recommendations of the Trial Examiner except as modified herein.

The Trial Examiner found that since October 28, 1961, the Respondent discriminatorily refused to give Gilbert Jesus "regular" work as a busdriver in order to discourage union membership and activity. Accordingly, the Trial Examiner recommended that the Respondent offer Jesus immediate employment as a "full-time" driver, without prejudice to seniority and other rights and privileges he would have enjoyed absent the refusal to hire him in that position in the fall of 1961. The Trial Examiner also recommended that Jesus be made whole for any loss of earnings he may have suffered because of the discrimination against him from the date the Respondent hired certain new drivers after October 27, 1961, to the date the Respondent offers Jesus employment as a full-time driver. We agree that the Respondent discriminated against Gilbert Jesus in violation of Section 8(a)(1) and (3) of the Act by failing to assign bus or charter runs to him on and after October 28, 1961.

[1] We agree with the Trial Examiner's finding that Joseph Olivera was discharged by the Respondent to discourage union membership and activity in violation of Section 8(a)(1) and (3) of the Act. In reaching this conclusion, however, unlike the Trial Examiner, we do not rely on the absence of evidence in the record showing that Olivera was at fault in any accident in which he may have been involved prior to December 12, 1961. It is clear that the evidence otherwise presented fully supports the finding that Respondent discriminatorily discharged Olivera.

However, we do not agree with Trial Examiner's proposed remedy with regard to Jesus.

The pertinent facts regarding Jesus' status as a driver and the date the Respondent first deprived him of employment as a busdriver are as follows: Jesus was employed as a "spare" busdriver by the Respondent in September 1961, when Joseph Florio, one of the Respondent's dispatchers, asked him if he wanted to drive the Respondent's dograce run. Thereafter, Jesus was one of several "spare" drivers who drove the dogtrack run which was operated for about 2 months starting in September 1961. He drove that run whenever Florio called him to do so. Jesus was also assigned three or four other charter driving jobs in September and October 1961. In sum, the record shows that prior to Respondent's discrimination against him, Jesus was regularly called to work as a "spare" driver several days each week. However, since on or about October 28, 1961, with two exceptions,[2] the Respondent has not offered Jesus any bus-driving assignments although spare driving assignments are customarily rotated among the Respondent's spare drivers

In addition to the foregoing, the record also shows that the Respondent hired two busdrivers in December 1961, and eight additional drivers thereafter. Some of these newly hired drivers are currently assigned regularly scheduled routes on a full-time basis. However, all the newly hired bus-drivers were initially employed as spare drivers. On the other hand, the record does not specifically demonstrate the requisites of promotion from "spare" driver status to that of a "full-time" driver, nor does it show whether Jesus, but for the discrimination against him, would be currently employed as a "full-time" driver.

In view of the foregoing, we are unable to determine, as did the Trial Examiner, whether Jesus is entitled to reinstatement as a "full-time" driver or is entitled to backpay as a full-time driver for the period from the date the Respondent hired its first new driver after October 27, 1961 (i.e., December 1961), to the date it offers him reinstatement as a full-time driver. Instead, we shall order the Respondent to offer Jesus immediate reinstatement in the driving job to which he would have been assigned but for the discrimination against him, and we shall award him backpay for the driving work he would have done after October 27, 1961, to the date the Respondent offers him reinstatement in the appropriate driving job. As it is possible that Jesus might not be entitled to immediate reinstatement as a full-time driver, we shall also order the Respondent, in that

[2] On November 11, 1961, Jesus drove a charter run to Connecticut at the Respondent's request, but only after Jesus had recommended the Respondent's services to the charterer. Jesus was not called again until a few weeks prior to the hearing herein, when the Respondent offered him an assignment to drive a bus to Indiana.

event, not to discriminate in considering him for promotion to full-time driver status.

Furthermore, in accordance with the policy recently adopted by the Board, we shall include an allowance for interest on the backpay obligations of the Respondent with respect to each discriminatee. Such interest shall be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716.[3]

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner with the following amendments:

(1) Paragraph 2(a) thereof shall be deleted and the paragraph below shall be substituted therefor:

> (a) Offer employee Joseph Olivera immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and offer Gilbert Jesus immediate employment in the driving job to which he would have been assigned but for the discrimination against him without prejudice to his seniority and other rights and privileges, and without discriminating against him in considering him as a full-time driver if he is not entitled to immediate reinstatement to such position, and make both employees whole for any loss of pay they may have suffered by reason of the discrimination against them: as to Joseph Olivera, in the manner set forth in the section entitled "The Remedy," but adding interest thereon at the rate of 6 percent per annum, to be computed in the manner set forth above; and as to Gilbert Jesus, by paying him a sum of money equal to that which he would normally have earned as wages after October 27, 1961, in the driving job in which he would have been employed to the date the Respondent offers him reinstatement in the driving job to which he is entitled, but adding interest thereon at the rate of 6 percent per annum, to be computed in the manner set forth above.

(2) The phrase "full-time" shall be deleted from that paragraph of the notice concerning the Respondent's offering Gilbert Jesus employment.

[3] For the reasons set forth in his dissent in *Isis*, Member Rodgers would not grant interest on backpay, and does not approve such an award here.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

An original charge in Case No. 1–CA–3691 was filed by the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL–

CIO, on January 18, 1962. An original complaint in said case was issued and served by the General Counsel of the National Labor Relations Board on March 2, 1962. On March 16 and April 23, 1962, the Amalgamated filed amended charges in the same case. On March 22, 1962, an original charge in Case No. 1–CA–3757 was filed by Jesus, an individual. On April 26, 1962, the General Counsel issued an order consolidating the cases, an amended complaint, and a notice of hearing thereon. An answer to the original complaint was duly filed by the above-named Respondent. General Counsel alleges and the Respondent denies [1] that the Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. Pursuant to notice, a hearing was held in New Bedford, Massachusetts, on May 15 and 16, 1962, before Trial Examiner C. W. Whittemore.

At the hearing all parties were represented, and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. Briefs have been received from General Counsel and the Respondent.

Upon the record thus made, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Almeida Bus Lines, Inc., is a Massachusets corporation, with principal office and terminal in New Bedford, Massachusetts. It is engaged in providing transportation by bus to the public on runs set up by the Massachusetts Department of Public Utilities. Its annual gross revenue exceeds $250,000. During the year from April 1961 through March 1962, Almeida purchased from Tidewater Company gasoline valued at more than $25,000 which was shipped directly to its New Bedford terminal from the State of Rhode Island. During the same period it purchased and had shipped to its terminal from Rhode Island grease and motor oil valued at more than $7,000. And during the same period it purchased for its General Motors Corporation buses, from the General Motors Truck and Coach Company of Newton, Massachusetts, parts valued at more than $7,000.

For its runs into and out of Boston, Massachusetts, Almeida uses the Trailways terminal, where it picks up passengers from interstate lines.

Almeida does not hold an I.C.C. license for interstate travel. Such license, however, is held by Southern Massachusetts Bus Lines, Inc., a corporation which, together with Almeida, General Counsel contends as constituting a single employer within the meaning of the Act. The following facts sustain his position: (1) Almeida and Southern both have an office at the same address; (2) Southern performs all "charter" and out-of-State runs for the two corporations; (3) Southern uses Almeida's busdrivers to operate its charter runs; (4) all stock of both corporations is owned by John Almeida, Jr.; (5) the officers and directors of both corporations are the same; and (6) top operating management of both companies is in the hands of Cecilia Almeida, wife of John Almeida, Jr., and his son, John Almeida III.

During the same period noted above, Southern ran 68 interstate charter runs, from which it received revenue exceeding $10,000.

The Respondent Almeida is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL–CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and major issues*

The two chief issues of this case—alleged unlawful discrimination against employees Joseph Olivera and Gilbert Jesus—arose shortly after organization of the Respondent's employees by the above-named Union culminated in a Board-conducted election held October 27, 1961. Independent violations of Section 8(a)(1) of the Act are also alleged in the complaint and denied by the Respondent.

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[1] An oral denial by the Respondent to the amended complaint was accepted at the hearing

B. *The alleged discrimination*

1. Joseph Olivera

At the time of his discharge in mid-December, Olivera had worked continuously for the Respondent since 1955 as a busdriver.

It is undisputed that management was aware of his union leadership and activity. In August and September he had openly aided the organization, distributing application cards among his fellow employees. He was the union observer at the election in October, and was elected president of the Local in November.

In September Mrs. Almeida (identified above as the operating manager of both Almeida and Southern) told him she had thought he had "started" the Union, but had found out this was not so. Just before the election Almeida III, the general manager and a director of the corporation, told Olivera, "You are trying to get the union here." Olivera admitted the fact. Almeida asked what he thought the chances were. Olivera replied, "Well, your father's always beaten it before." Almeida then said, "Well, I hope for your sake, Joe, and the sake of the rest of the men, that the union doesn't get in." [2]

On December 12 Olivera's bus was involved in an accident. His account of it is uncontradicted. In substance his description is as follows. To avoid striking a passenger car which suddenly cut across his course from left to right, and because his smooth tires did not hold on the wet pavement, he turned his vehicle into a driveway leading off the street. And to avoid hitting trucks parked in the driveway he guided the bus between a telephone pole and its guywire. The bus failed to clear the guywire and was damaged. None of the passengers aboard was injured, however, nor was damage caused to any other car. He made his report to the company "appraiser" or inspector, and no management representative accused him of being at fault, or reprimanded him for the accident. He drove his regular run for the next 3 days.

On Saturday, December 16, he was called into the office by Mrs. Almeida, given a paycheck, and told not to go to work until he had seen her the next Monday. On Monday he reported at the office, waited until noon in vain for her appearance, and then called her at her home. He asked if he was to go back to work. She said "No," and he asked if she was "firing" him. She said she was sorry but would have to let him go. He asked why. She said, "Well, you've had too many accidents." He commented, "Come, Mrs. Almeida, you know that you're firing me because I'm president of the Union." She replied, "Well, you fellows want it that way, . . . that's the way it's going to be; you want to live by your rules, and I've got rules of my own to live by."

Olivera has not been reinstated.

His account of the accident and his discharge is not disputed. Mrs. Almeida was not called as a witness. Thus there is no testimony in the record from any management official as to why he or she fired Olivera. Although on cross-examination Olivera admitted that during the 6 years of his driving a bus for the Respondent he had filed a few accident reports, there is no evidence that he was at fault in any of them, and it is undisputed that he had never been warned about any of them. Almeida III as a witness admitted that he had nothing to do with Olivera's discharge, and that many busdrivers were still operating who had filed many accident reports in the past.

Under the circumstances the Trial Examiner cannot find that counsel for the Respondent adduced any competent evidence to support his oral claim that this driver was discharged because of his accident record.

The undisputed fact that when Olivera chided her for using an accident as a pretext, while the real reason was his union leadership, Mrs. Almeida not only did not deny his contention but in effect admitted it by saying, "You want to live by your rules, and I've got rules of my own to live by," in the opinion of the Trial Examiner supports the conclusion, here made, that Olivera was actually dismissed to discourage union membership and activity, as alleged in the complaint. Such unlawful discrimination interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Gilbert Jesus

Jesus was a regular busdriver for the Respondent from 1952 until 1954, when he left voluntarily. He returned in the fall of 1960 as a full-time garage employee

[2] The quotations are from Olivera's uncontradicted testimony.

and as an "extra" driver. He quit again in May 1961, because no job as a "regular" driver opened up for him and he was dissatisfied with garage work.

In September 1961, he was called by Florio, the dispatcher, and asked if he would take the "dog race run" several nights a week. He agreed and until the Board election drove buses on this run and also some charter runs to which Florio assigned him. During this period he declined work in the garage.

On October 26, the day before the election, Jesus was called to the home of Almeida III and asked to go for a ride with him. During the ride Almeida referred to the election the next day and said, "If you fellows go along with the union you're not going to get no more work, but if you go along with the company and help us out, well, I'll give you all I can." [3]

The day after the election Jesus went to the radio room, where the dispatching sheet was posted, to see if he was scheduled for a run the next day. His name was not on the list. Dispatcher Florio (who is also an assistant shop foreman and a supervisor within the meaning of the Act) asked him if he was going to the union meeting that night, when initiation fees were to be paid. Jesus told him that he "might as well," before dues went up. As he left the radio room he asked Florio how it happened he was not getting work while others were listed Florio replied, "Well, Johnny (Almeida III) told me to tell you right now there's nothing doing."

Jesus continued to go to the terminal in the mornings seeking work as a full-time driver. Some 2 weeks later John Almeida, Jr., told Jesus to get off the premises. Jesus protested. He said he came down to see if there was work for him. Almeida told him there was "nothing doing" and declared that he did not want him "hanging around."

Since the Board election Jesus has been assigned but a single run—a charter run for a local church.

A month or so before the hearing he went to the office again. Mrs. Almeida and Almeida III declined to talk to him. He asked Florio "how come" he was not getting any work, although new regular men had been hired. Florio told him, "Johnny told me not to give you no more work because of this union baloney." [4]

At the hearing counsel for the Respondent conceded that at least two new drivers were hired in December 1961 for regular runs, and Florio admitted that several new drivers were hired in the fall of that year.

It is the Respondent's apparent contention that because Jesus has declined work in the garage it had no responsibility to hire him as a driver. Florio's claim that no job as a driver has been open for him is discredited by his own admission, noted above, that since the election *new* drivers have been employed

Except for the discredited claim of "no opportunity" the Respondent offered no reason for failing to assign Jesus, a driver of many years' experience, a regular run after the Board election. The Trial Examiner is convinced by the preponderance of credible evidence and finds that since October 28, 1961, and except for the single charter run on November 11, 1961, the Respondent has discriminatorily refused to give regular work as a bus driver to Gilbert Jesus, in order to discourage union membership and activity. Such discrimination constitutes unlawful interference, restraint. and coercion.

C. *Other interference, restraint, and coercion*

In addition to the above-found threat by Almeida to Jesus just before the election to the effect that if he voted for the Union he would get no more work, and Florio's interrogation of the same employee as to whether he was joining the Union, the Trial Examiner finds that the following conduct also is proscribed by the Act as unlawful interference, restraint, and coercion of employees in the exercise of rights guaranteed by Section 7 of the Act:

(1) A week before the election Almeida III told employee DeMello that if the Union won his father would "take over," and it would be a "miserable place" to work.

(2) In January 1962, Almeida III told employee Rousseau that if ever again he talked to a certain union representative he would be fired.

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[3] The quotations are from the employee's undisputed testimony. The record does not reveal what reply, if any, Jesus made.

[4] The quotations are from Jesus' credible testimony. The Trial Examiner does not credit Florio's denial that he had ever told Jesus that he had been instructed not to give Jesus any more work. He admitted that he had told the employee, when he inquired about work, "I take orders."

(3) In December Almeida, Junior, told employee DeMello that all the law required was that he "bargain" with the union, and he "would not sign a contract." [5]

(4) Shortly before employees went on strike in April 1962, Almeida, Junior, warned employee LaFlamme that if he went on strike he had "better look for another job."

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 of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices the Trial Examiner will recommend that it cease and desist therefrom and take affirmative action to effectuate the policies of the Act.

As the Respondent's continued unlawful activities indicate a purpose to defeat self-organizational rights of its employees, the Trial Examiner is convinced that they are potentially related to other unfair labor practices proscribed by the Act and that the danger of their commission in the future is to be anticipated from the Respondent's conduct in the past. The preventive purposes of the Act will be thwarted unless the remedy is coextensive with the threat. Accordingly, in order to effectuate the policies of the Act, it will be recommended that the Respondent cease and desist from in any manner infringing upon the rights of employees guaranteed by Section 7 of the Act.

It will be recommended that the Respondent offer Joseph Olivera immediate and full reinstatement, without prejudice to his seniority and other rights and privileges, to his former or substantially equivalent position, and offer Gilbert Jesus immediate employment as a full-time driver, without prejudice to seniority and other rights and privileges he would have enjoyed absent the refusal to hire him in such position in the fall of 1961. It will be recommended that both Olivera and Jesus be made whole for any loss of earnings they may have suffered by reason of the discrimination against them, by payment to each of them of a sum of money equal to that which he would normally have earned as wages from the date of discrimination (in the case of Olivera the date of his discharge, and in the case of Jesus the date when the first new driver was hired on or after October 27, 1961) to the date of the offer of reinstatement or, in the case of Jesus, offer of hire as a full-time driver. The backpay provided for herein shall be computed in accordance with the Board's formula set out in *F. W. Woolworth Company*, 90 NLRB 289.[6]

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating against Joseph Olivera and Gilbert Jesus, to discourage membership in the above-named labor organization, 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 employees in the exercise of rights guaranteed by Section 7 of the Act, the 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 within the meaning of Section 2(6) and (7) of the Act.

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[5] In view of other unlawful acts, as to which the evidence is undisputed, the Trial Examiner cannot accept as true Almeida's denial that he ever told any employee he would not sign a contract

[6] In his brief General Counsel urges that interest be added to the backpay award The Trial Examiner is in agreement with the merit of his argument However, for reasons the same Trial Examiner set out in *Raytheon Company*, 140 NLRB 883, he does not consider it within his province to include, in a recommended order, a provision which would be contrary to Board policy as it presently exists

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that Almeida Bus Lines, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL–CIO, or in any other labor organization, by discharging, laying off, refusing to hire, or in any other manner discriminating in regard to the hire and tenure of employment of employees, or any term or condition of employment.

(b) Interrogating employees regarding their union adherence in a manner violative of Section 8(a)(1) of the Act.

(c) Threatening employees with economic reprisals to discourage membership in any labor organization.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the 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 choice, and to engage in other 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Offer employee Joseph Olivera immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and offer employee Gilbert Jesus immediate employment as a full-time driver, and make both employees whole for any loss of pay they may have suffered by reason of the discrimination against them, in the manner set forth in the section above entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due and the right of reinstatement under these recommendations.

(c) Post at its terminal in New Bedford, Massachusetts, copies of the attached notice marked "Appendix."[7] Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, in conspicuous places, including all places where notices to employees are customarily posted, and maintained for a period of 60 consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the First Region, in writing, within 20 days from the date of the service of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.[8]

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[7] In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice In the further event that the Board's Order be enforced by a decree of 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."

[8] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said 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

As recommended by a Trial Examiner of the National Labor Relations Board and in order to conduct our labor relations in compliance with the National Labor Relations Act, we notify our employees that:

WE WILL NOT unlawfully discourage our employees from being members of Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, AFL–CIO, or any other union.

WE WILL NOT threaten you with reprisals because you join any union.

WE WILL NOT violate any of the rights you have under the National Labor Relations Act to join a union of your own choice or not to engage in any union activities.

WE WILL offer Joseph Olivera reinstatement to his former job, and offer Gilbert Jesus employment as a full-time driver, and will give them both back-pay due them.

All our employees are free to become or remain members of the union named above, or any other union, and they are also free to refrain from joining any union unless in the future we should enter into a valid union-shop contract with a union that represents our employees.

ALMEIDA BUS 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.

Employees may communicate directly with the Board's Regional Office, 24 School Street, Boston, Massachusetts, Telephone No. Lafayette 3-8100, if they have any question concerning this notice or compliance with its provisions.

Tidelands Marine Service, Inc. ***and*** **Seafarers' International Union of North America, Atlantic and Gulf Districts, AFL-CIO.** *Cases Nos. 15-CA-922, 15-CA-951, and 15-CA-962. December 26, 1962*

DECISION AND ORDER

On June 15, 1959, Trial Examiner A. Norman Somers 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. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs.

At the original hearing in this proceeding, the Trial Examiner, relying on the *A & P* case,[1] denied the Respondent's demands for the production of the pretrial statements made by certain of the General Counsel's witnesses. Thereafter, while this proceeding was still pending before the Trial Examiner, the Board issued its decision in *Ra-Rich Manufacturing Corporation*,[2] overruling the *A & P* case. The Trial Examiner thereupon reopened the hearing and directed the production by the General Counsel of all the pretrial statements requested by the Respondent. The Trial Examiner, however, limited cross-examination thereon to questions seeking an explanation of inconsistencies between the testimony of each witness and his pretrial statement.

[1] *The Great Atlantic and Pacific Tea Company, National Bakery Division*, 118 NLRB 1280.
[2] 121 NLRB 700.