

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to 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, as amended, we hereby notify our employees that:

WE WILL NOT promise employees wage increases, or other benefits, if our employees reject Retail Clerks, Managers & Salesmen's Union, Local 1393, or any other labor organization; threaten to get "tough" and close our Pottstown store if it became unionized; request a vote of confidence in the context of such promises or threats; coercively interrogate our employees concerning their union membership, sympathies, activities, or voting intentions in any Board-conducted election; or inform employees that changes would be made to dissuade them from supporting the above-named union or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed in Section 7 of the Act.

WE WILL bargain collectively, upon request, with the above-named union, as the exclusive representative of all our employees described below with respect to 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. The bargaining unit is:

All selling and nonselling employees at our Pottstown, Pennsylvania, store, including regular part-time employees, but excluding professional pharmacists and supervisors, as defined in the Act.

BAUSE SUPER DRUG STORES, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, 1700 Bankers Securities Building, Walnut and Juniper Streets, Philadelphia, Pennsylvania, Telephone No. 735-2612, if they have any question concerning this notice or compliance with its provisions.

Ambrose Distributing Company and General Teamsters, Warehousemen, Chauffeurs & Helpers Union Local No. 483, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Independent).
Case No. 19-CA-2825. February 9, 1965

DECISION AND ORDER

On November 13, 1964, Trial Examiner Wallace E. Royster issued his Decision 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 Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision.

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

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 Trial Examiner's Decision and the entire record in the case, including the Respondent's exceptions, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts, as its Order, the Recommended Order of the Trial Examiner and orders that Respondent, Ambrose Distributing Company, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This matter was tried before Trial Examiner Wallace E. Royster in Twin Falls, Idaho, on June 30, 1964.¹ The complaint alleges that Ambrose Distributing Company, herein called the Respondent, questioned and threatened employees in connection with membership in or activities in behalf of General Teamsters, Warehousemen, Chauffeurs & Helpers Union Local No. 483, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Independent), herein called the Union, and discharged employees Richard F. Byrd and Thomas Smith because of their interest in the Union.²

Upon the basis of the entire record, in consideration of the brief filed by counsel for the Respondent, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is engaged in the wholesale distribution of meat and Texaco petroleum products and is also a private carrier by truck. During 1963, the Respondent distributed meat and Texaco petroleum products valued in excess of \$100,000 of which products valued at more than \$50,000 were shipped from its Butte, Montana, terminal to States other than the State of Montana. During the same period the Respondent purchased, transferred, and delivered to its Butte terminal meat and Texaco petroleum products valued at more than \$100,000 of which more than \$50,000 were brought to that terminal from States of the United States other than the State of Montana. During the same period the Respondent performed trucking services valued at more than \$50,000 for business concerns located in States other than the State of Montana. I find, as the Respondent concedes, that it is an employer within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

About 38 truckdrivers work out of Respondent's terminal in Wendell, Idaho. Richard Byrd, who had worked for the Respondent on previous occasions, was rehired in mid-1963 as a truckdriver there. At the time Byrd was indebted to the Respondent as a result of a business arrangement and, subsequent to his reemployment, amounts were deducted from his earnings in liquidation of this debt. In September, Byrd applied for membership in the Union and, from about then until mid-November,

¹ All dates are in 1964 except where otherwise indicated.

² The complaint issued May 8 upon charges filed February 17 and April 7.

solicited other drivers to join. On December 12, 1963, the Union filed a petition with the National Labor Relations Board seeking a representation election among Respondent's truckdrivers. On January 16 following, a hearing on this petition was held and on January 28 a Direction of Election issued. The election on February 18 resulted in a vote adverse to the Union.

On January 4, Nolan Cooper³ commented to Byrd that the latter was the "Union instigator"; and that two of the drivers had said that Byrd had gotten them to sign union designations. Ernest Bartee testified that in early February Cooper said that if the Union won the election the Respondent would reduce its operations so that no more than five trucks would be kept running. After the election, in which the Union received 11 votes, Cooper remarked to Bartee that he had listed 15 employees who he believed would vote for the Union and thus was in error as to 4. He exhibited the list to Bartee who noted that the names of Thomas Smith and Byrd were included. Cooper told Bartee that the men listed would be "sent down the road"; that Byrd and another driver, Dutch Dillon, were the men who were promoting the Union. About a week after the election, at a time when agents of the Regional Office of the Board were conducting some sort of investigation either in connection with this case or in respect to the election, Cooper upbraided Byrd for reporting to the investigator what Cooper had said to him about the Union. Cooper said that Byrd was not courageous enough to fight his own battles and had to call in outsiders for help.

Cooper was called by counsel for the General Counsel as an adverse witness but was not questioned about any of the remarks attributed to him by Byrd and Bartee. The testimony of Byrd and Bartee in these areas stands undenied and is credited.

About January 20, Byrd testified Neal Ambrose, Respondent's owner, interrupted a conversation between Byrd and another employee, Gene Kuhn, saying to Kuhn, "Be careful what you say, Byrd is going to be the new shop steward in the union."

Thomas Smith, a driver, testified that about mid-December 1963, at Wendell, Ambrose asked him what he thought about the Union and asked him not to vote for it. Ambrose went on to say that he had been thinking for some time about establishing a fund for permanent employees which would be distributed as an annual bonus, but although he could not promise to follow through on this plan he was thinking about bringing it to being if the Union was unsuccessful.⁴ In early February, still according to Smith, Ambrose said that he could not understand why Byrd would be for the Union considering the help he had given Byrd in the past.

In January, while on a run to a California plant, Byrd narrowly avoided collision with another vehicle and scraped his trailer against a roadside obstruction. No damage beyond a paint scratch resulted. Byrd mentioned this happening to shop employees in Wendell and Ambrose learned of it. On the occasion when Ambrose spoke to Byrd and Smith about the upcoming election and the possibility of a bonus, he said that he was a fair man and would not hold resentment against an employee who had signed a union authorization. Ambrose said, however, that were this not so he could have used the scratched paint incident as a reason to discharge Byrd.

Although called as a witness, Ambrose did not deny making any of these comments to Byrd or Smith. I find that Ambrose spoke as they testified.

In early March, Byrd and another driver left a trailer at Respondent's yard in Butte and then went on to other destinations. On March 11, Ambrose telephoned Byrd and asked him if he had "dropped"⁵ a trailer load of grain at Butte. Byrd said that he had. Ambrose said that Byrd had not properly lowered the landing gear on the trailer with the result that the trailer was damaged and that it was necessary to spend 5 hours to jack it up to the proper position. Byrd denied that this was so and asserted that the trailer had been properly uncoupled from the tractor and was sitting safely when he left it. Ambrose then said that considering the kind of work Byrd had been doing recently and the fact that he had struck a bridge⁶ sometime earlier, he was discharged. Byrd became angry at this point and told Ambrose he was a liar; that Ambrose knew that he had not damaged any trailer in Butte. Ambrose replied, according to Byrd, "Well that does not make any difference. I've got about five guys up here that will swear that you did." Ambrose said that he should have been given some help when

³ Cooper is Respondent's manager at Wendell and concededly is a supervisor within the Act's meaning.

⁴ Byrd testified that he was present with Smith when Ambrose held out this possibility but recalled the date to be January 17. The difference in dates is immaterial.

⁵ In context this was not an admission by Byrd that he had handled the trailer improperly but only that he had brought it to Respondent's Butte terminal.

⁶ This is a reference to the matter of the scratched paint. There is no evidence that Byrd ever struck a bridge.

he needed it and that Byrd, in consideration of all that Ambrose had done for him in the past, was one who should have supplied it. Byrd has not since worked for the Respondent.

Thomas Smith, after some previous employment with the Respondent, was rehired in June 1962 as a truckdriver. He was absent from work for several weeks in the fall of 1963, but before the end of the year returned to his job. In early February, according to Smith's undenied and credited testimony, Ambrose said that he was going to stop operating the trucking business for a period of 2 weeks until the election was over, and said that if the election jeopardized his trucking operation in Utah he would sell the trucks then being used on those runs.⁷

Shortly after the election, Ambrose and Smith discussed that event. Smith said that he would just like to forget it and let bygones be bygones. Ambrose commented, in obvious reference to Byrd's interest in the Union, that he could not understand him; that he had done more for Byrd than for almost anyone else. In late February or early March, Smith was directed to drive a truck to some destination and on this occasion told Cooper that he could not do so because he had no money. Smith testified that at this time three paychecks and two expense checks, which were due him, had not been received. It is clear, however, that a cash advance which the Respondent had given to him for expense purposes was not then exhausted. Ambrose telephoned him to inquire about the difficulty. Smith admitted that he had spent part of his expense money for groceries. At Ambrose's direction, Smith went to the Wendell yard. Ambrose brought up the subject of the union election. Smith said that no one knew how he voted. After some further discussion, Ambrose made a personal loan to Smith of \$200 with the understanding that the advance would not be held out of his pay, but that Smith would repay it as soon as he was able. About the middle of March, Smith, while driving a truck in Canada, jackknifed the trailer, causing damage which Smith estimated to be less than \$200. He telephoned his dispatcher in Butte and was instructed to continue on. Smith arrived in Butte about March 18. When the truck was ready after some repair work, Smith delayed in the Butte office, waiting for an expense check. Ambrose instructed Smith to go on to Wendell saying that he, Ambrose, would bring the check down in a day or two. Ambrose added, "You won't be going out before Sunday, anyway." Smith returned to Wendell. On Saturday, March 21, Smith met Ambrose at the Wendell office. Ambrose said "Tom, you sure have me in a bind." Smith asked how that was so and Ambrose explained, "You know I fired those fellows the other day that dropped that trailer up in Butte." Smith said that he had heard about it. Ambrose then went on to say, in effect, that if he did not now discharge Smith, the Union could force him to take the other men back to work. Ambrose suggested that Smith could haul hay and said that he would help him in that endeavor. After several subsequent conversations on later dates in the course of which Ambrose allayed Smith's fears that there would not be sufficient business to make hay hauling profitable for him, Smith purchased another truck and readied himself for this work. He then telephoned Ambrose, who was in Butte, and told him that he was ready to start hauling. Ambrose said, "I don't think we are going to have any hay for you to haul." That was the last conversation between Smith and Ambrose. These developments after March 21 are curious but I find no reason to determine why Ambrose so suddenly and without explanation withdrew his aid from Smith.

In his testimony Ambrose said that Byrd was negligent in the manner in which he uncoupled the trailer in Butte and that the trailer was thus damaged. There is no testimony by Ambrose that he ever investigated the circumstances attending this incident but he seems to have assumed that Byrd was at fault. As Ambrose did not deny that upon the occasion of Byrd's discharge he spoke as Byrd testified he did and as Byrd's testimony throughout the hearing had the ring of truth, I credit Byrd.⁸

Byrd, when accused by Ambrose, denied that he had damaged the trailer. Ambrose countered with the reply that he had men who would swear that he did. The remarks of Ambrose in this conversation as detailed in the testimony of Byrd amounted to an expressed determination by Ambrose to bring about the discharge no matter where the fault, if any, in connection with the trailer damage might lie. The concluding remark by Ambrose that Byrd had not helped Ambrose when the latter needed it is an obvious reference to Byrd's support of the Union.

I find that Byrd was not discharged because of any shortcoming in the performance of his work.

⁷ Ambrose denied in general terms that he had ever threatened a shutdown or curtailment of operations if his employees joined the Union. I credit Smith.

⁸ Ambrose was not in any event a witness to inspire confidence. His replies to questions on cross-examination were often evasive.

Cooper had said that union supporters would be "sent down the road." Ambrose had warned Byrd somewhat obliquely that his union support might bring about a discharge were not Ambrose a "fair" man. Byrd was the principal supporter of the Union among the drivers and Ambrose suggested that he would be the Union's steward.

I am convinced that even if a trailer was damaged, Ambrose used this circumstance only as a pretext to bring about Byrd's discharge. His words to Byrd about Byrd's failure to help him when he needed it reveal that the discharge was in retaliation for Byrd's espousal of the Union. Whether Ambrose thought that Smith was a supporter of the Union is not evident. Smith told Ambrose that no one knew how he voted in the election and that he preferred that it all be forgotten. Shortly after the election Ambrose exhibited his confidence in Smith by lending him \$200 and by passing over the circumstance that Smith had used expense money for family needs.⁹ When Smith came to Butte with the damaged trailer, Ambrose gave him no hint that he was to be discharged although Smith was in fear that he might be. When the discharge did take place, Ambrose did not attempt to justify it on the ground that Smith was at fault in the accident. He said that if he did not discharge Smith it might appear to some that he had treated Byrd unfairly; that he might somehow be required to bring Byrd back to his job. Although in his testimony Smith quoted Ambrose as saying that he had "fired those fellows the other day that dropped that trailer up in Butte," there is a complete absence of any evidence that anyone other than Byrd was discharged in that connection.

I find that by suggesting the possibility of bonus payments if employees would reject the Union, by saying that trucks might be sold and some operations curtailed should the Union be chosen, by saying that union supporters would be "sent down the road," and in this context questioning employees about their interest or membership in the Union, the Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, and I find, engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

I find that Byrd was discharged because the Respondent correctly believed him to be a leader among the employees in the movement to establish the Union as bargaining representative. The asserted reason, a damaged trailer, was but a pretext. The discharge of Smith came about because of the Respondent's fear that failure to take this action might strip from the discharge of Byrd the mantle of legality with which the Respondent had sought to clothe it.¹⁰ I find that in the discharges of Byrd and Smith the Respondent was motivated by a desire to rid itself of one who had prominently supported the Union. The Respondent thereby discriminated in regard to their tenure of employment to discourage membership in, and activity on behalf of, the Union and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

The allegation that in February Byrd was discriminatorily deprived of employment opportunities is not supported by a preponderance of the evidence.

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.

V. THE REMEDY

Having found that the Respondent has engaged in the commission of 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.

As the two discharges were a product of Respondent's discrimination, it will be recommended that it offer to Richard Byrd and Thomas Smith immediate and full reinstatement each to his former or substantially equivalent position, without prejudice to seniority or other rights and privileges, and that they be made whole for any loss of earnings suffered by reason of the discrimination by payment to each of that sum of money which normally would have been earned from the dates of the discharges to the dates of the offer or reinstatement less net earnings, if any, during those periods. Backpay shall be computed with interest at the rate of 6 percent per annum on a quarterly basis in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

⁹ The propriety of this was not really litigated and I do not pass on it. Arguably, at least, it provided Ambrose with a plausible reason for discharge had he chosen to take that action.

¹⁰ *Englewood Lumber Company*, 130 NLRB 394, 395.

In consideration of the nature of the unfair labor practices found; I find that there exists the danger of commission of further unfair labor practices by the Respondent and I accordingly recommend that the Respondent be directed to cease and desist from in any manner infringing upon rights guaranteed employees in Section 7 of the Act.

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 an employer 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 discharging Richard Byrd and Thomas Smith to discourage membership in, or 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. By the discharges, by interrogating employees in a context of coercion, and by threats and promises to employees conditioned upon their attitude toward the Union, 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.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondent, Ambrose Distributing Company, Wendell, Idaho, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in General Teamsters, Warehousemen, Chauffeurs & Helpers Union Local No. 483, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Independent), or in any other labor organization, by means of discharge or discrimination in any other manner in regard to hire or tenure of employment or any term or condition of employment.

(b) By means of coercive interrogation, threats of loss of employment, or promises of benefit or in any other manner interfering with, restraining, or coercing 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 in Section 8(a)(3) of the Act.

2. Take the following affirmative action which I find to be necessary in effectuation of the policies of the Act:

(a) Offer to Richard Byrd and Thomas Smith immediate and full reinstatement each to his former or substantially equivalent position, without prejudice to seniority or other rights and privileges, and make each whole for any loss of earnings suffered by reason of discharge as provided by that section of this Decision entitled "The Remedy."

(b) Notify Richard Byrd and Thomas Smith if they are serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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

(d) Post at its terminals in Wendell, Idaho, and Butte, Montana, copies of the attached notice marked "Appendix."¹¹ Copies of said notice, to be furnished by

¹¹ 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 Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

the Regional Director for Region 19, shall, after being duly signed by the Respondent, be posted immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 19, in writing, within 20 days from the date of receipt of this Recommended Order, what steps the Respondent has taken in compliance.¹²

¹² 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

Pursuant to 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, as amended, we hereby notify you that:

WE WILL NOT in order to discourage membership in or activity in behalf of General Teamsters, Warehousemen, Chauffeurs & Helpers Union Local No. 483, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Independent), or in any other labor organization, discharge any employee or otherwise discriminate against employees in regard to hire or tenure of employment or any term or condition of employment.

WE WILL NOT question our employees in coercive circumstances regarding their interest in the above-named Union, or any other labor organization, and we will not offer any promises of benefit or threats of loss of employment conditioned upon the rejection or acceptance of any union.

WE WILL NOT in any 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 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.

WE WILL offer to Richard Byrd and Thomas Smith immediate and full reinstatement to their former jobs, without prejudice to their seniority or other rights and privileges, and pay them the wages lost by reason of discharge.

All our employees are free to become or remain, or refrain from becoming or remaining, members of the above-named Union, 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.

AMBROSE DISTRIBUTING COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

NOTE.—We will notify Richard Byrd and Thomas Smith if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, 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, Washington, Telephone No. 688-4553, if they have any questions concerning this notice or compliance with its provisions.