

mortar as backup material to receive ceramic tile in the Roanoke Building at Minneapolis, Minnesota.

2. Operative Plasterers and Cement Masons International Association, Plasterers and Cement Masons, Local No. 65, and Dan Gustafson, are not entitled, by means proscribed by Section 8(b) (4) (D) of the Act to force or require Twin City Tile and Marble to assign the above work to plasterers.

3. Within 10 days from the date of this Decision and Determination of Dispute, Operative Plasterers and Cement Masons International Association, Plasterers and Cement Masons, Local No. 65, and Dan Gustafson, shall notify the Regional Director for Region 18, in writing, whether they will or will not refrain from forcing or requiring Twin City Tile and Marble Company, by means proscribed by Section 8(b) (4) (D), to assign the work in dispute to plasterers rather than tile layers.

A & A Maintenance Corp. and Taxi Drivers Organizing Committee, AFL-CIO. *Case No. 2-CA-10292. June 16, 1965*

DECISION AND ORDER

On March 12, 1965, Trial Examiner Ivar H. Peterson 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, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, 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, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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, A & A Maintenance Corp., New York, New York, 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

Upon charges duly filed on October 2, 1964,¹ by Taxi Drivers Organizing Committee, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 2, issued a complaint on December 9 against A & A Maintenance Corp., herein called the Respondent, alleging that the Respondent had engaged in certain conduct violative of Section 8(a)(1) of the National Labor Relations Act, as amended. In its answer, the Respondent denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before Trial Examiner Ivar H. Peterson in New York, New York, on January 25, 1965. The General Counsel, the Respondent, and the Union were represented by counsel and were afforded full opportunity to participate in the hearing, and to argue orally and file briefs. No briefs have been filed. The motion of the Respondent to dismiss the complaint, upon which ruling was reserved, is disposed of in accordance with the findings and recommendations below.

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

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

The Respondent, a New York corporation, and 19 affiliated companies named in the complaint, operate as a single integrated business enterprise in furnishing taxicab and related services in and about the city of New York, operating from the same office and terminal. During the year preceding issuance of the complaint, the Respondent and its affiliated companies derived gross revenues from taxicab operations in excess of \$500,000. During the same period, the Respondent purchased taxicabs, parts, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were received from enterprises within the State of New York which in turn had received such goods and materials directly from States other than the State of New York. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The Union was formed in September 1964 by the executive board of the New York City Central Labor Council to aid in organizing taxicab drivers in New York City. It consists of representatives of affiliate members of the Central Labor Council and an equal number of taxicab drivers. It appears that the Union succeeded a somewhat similar organization, known as Taxi Drivers Alliance, herein called TDA, which theretofore had engaged in organizing activities among taxicab drivers. The function of the Union is to assist in organizing taxicab drivers and to represent them in collective bargaining. I find, contrary to the Respondent's contention, that TDA was, and the Union is, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The complaint, as amended, alleges that the Respondent's president, Stanley Wissak, engaged in certain conduct violative of Section 8(a)(1) of the Act. In paragraph 6 the complaint alleges that about the middle of August and on or about September 5, Wissak "warned and directed its employees not to accept, sign or execute application cards for TDA or the Union, and to destroy such application cards previously executed and refrain from becoming or remaining members of TDA or of the Union, and to refrain from giving any assistance or support to them." Paragraph 7 charges that about the middle of September Wissak "offered, promised and granted to its employees free automobile parts, and promised other benefits and improvements in their working conditions and terms of employment to induce them to refrain from

¹ Except as otherwise noted, all dates refer to the year 1964.

becoming or remaining members of the Union, and to refrain from giving any assistance or support to it, and to induce them to abandon their membership in and activity on its behalf." The General Counsel presented two witnesses in support of these allegations—John Murphy, who had been a driver employed by the Respondent for about 5 years prior to his discharge on September 29,² and James Martini, who had worked for the Respondent 7 years as a driver and was still employed at the time of the hearing.

Murphy became interested in the TDA early in July, and thereafter solicited signatures to TDA authorization cards among fellow drivers and spoke to them about the need for organization. After the Union succeeded the TDA, Murphy continued to be active on its behalf.

The Respondent's drivers are divided into a day shift and a night shift, those on the night shift taking over operation of the cabs between 3:30 and 5 p.m., depending upon when the day-shift driver returns to the terminal. On a day in the middle of August Murphy, while waiting at the terminal for his cab to be serviced prior to taking it out on the night shift, was approached by another driver, Sol Rodgen, who wanted to sign a union card. Murphy and Rodgen went up a stairway to a small balcony locker area, at least partially visible from the floor of the terminal, where Rodgen signed the card and paid Murphy \$1 as an "initiation fee" and was given a receipt by Murphy. According to Murphy, while the card signing was occurring, Wissak "was downstairs . . . looking up through the stairs and watching . . ." Murphy's testimony as to what next transpired is as follows:

Q. (By Mr. CRONIN.) What happened after that?

A. I went down the stairs, walked over to the grease rack.

In the meantime Mr. Wissak grabbed ahold of this other driver, Sol Rodgen; took him into a little locker room and had him in there for a few minutes, and all of a sudden the two of them came out and Wissak yelled over to me, "Hey, give him back his card."

So I walked over. The man come to me and said, "Here," and offered me the receipt and asked me for the card and I gave him the card.

He proceeded to tear up the card in front of Mr. Wissak and threw it in the barrel.

I returned him his dollar and he gave me the receipt back, and there was a lull for a while, for a few minutes.

Mr. Rodgen walked out the 52nd Street side door and then Mr. Wissak went to work on me.

He wanted to know in a loud voice whether I was a union organizer. He went into a tantrum that he don't want no union around here, he would put the cars up against the wall Rather than have a union he would let the cars lay against the wall and close the place down . . . and he screamed that he spent [would spend] thousands to keep the union out of the place.

Murphy testified that the mechanics on duty and two drivers, whom he named, were present while Wissak made the foregoing statements. He admitted, on cross-examination, that his prehearing affidavit did not include the statements he attributed to Wissak, namely, the inquiry whether he was an organizer, and that Wissak said he did not want a union in the terminal, would close and put the cars "against the wall" if a union came in, and would spend thousands to keep a union from coming in. Murphy was positive, however, that Wissak had made the statements to which he testified.

Wissak's account of the incident related by Murphy is as follows:

Q. On this August afternoon did you observe Mr. Murphy?

A. Yes.

Q. What was he doing?

A. Well, he was in the center of the floor talking to some of my drivers as they pulled out. As the cars were waiting to go out, he would be talking to them . . . holding up the shift Murphy would be stopping some of the drivers, the cars weren't going out fast enough So I told Murphy, "Please leave the drivers alone." And he got indignant. He said, "I will do what I want. You can't tell me what to do." He said, "You're no good," he said, "your father . . . threw you out five years ago because you were no good."

So I said to him, I said, "Will you please leave the drivers alone? I want to get this shift out."

² Murphy's discharge, although alleged as a violation of Section 8(a)(3) in the charge filed herein, is not included in the complaint as an unfair labor practice.

And he says, "I'll do what I want around here."

Then we had a couple of heated words . . . then he got very indignant and I thought he was going to start a fight with me, and I said, "I am not from fighting people, let my shift go through." He was still disrupting my shift . . .

Q. Was anything said by him to you about Tojo?

A. Yes. He called me, he said, "I know you, Tojo," and he has called me that name . . . He said, "I will be your boss yet, Tojo, you . . ."

Q. Was his voice loud?

A. As loud as mine. I think we both got a little heated . . .

Q. And you walked away?

A. No, I think my manager came out and said stay away from him, "I'll take care of him," something to that effect.

Q. Now, after that, when did you next see Mr. Murphy?

A. Well, I looked up in the drivers dressing room where the drivers have their lockers, and I saw him talking to a Mr. Rodgen.

* * * * *

Q. What happened next?

A. Murphy went down and I went up and Mr. Rodgen asked me what happened. So I told him what he called me, "Tojo," and he said he'd be my boss, and Rodgen told me that's the way he spoke with you.

The next thing I know Rodgen walked over to him, they had a couple of words and Rodgen ripped up something and threw it in the wastepaper basket.

Wissak further testified that he had not asked Rodgen if he had signed a union card and that he had not instructed Rodgen to tear up his card. He denied having asked Murphy if he was a union organizer, or having told him that he did not want a union in the garage, that he would put the cars against the wall and sell out if the Union came in, or that he would spend thousands to beat the Union. He specifically denied that he told Murphy to give the union card back to Rodgen.

On cross-examination, Wissak acknowledged the truth of the statement made in his prehearing affidavit, that he "might have told a man who I saw receive a card from Murphy to tear it up," but could not recall whether that man was Rodgen.

On about September 5, driver Martini was approached by a member of the Union's organizing committee, not employed by the Respondent, as Martini was having a cup of coffee in the lunchroom adjacent to the terminal. Martini agreed to sign a card, and then the following occurred:

While I was signing the card Mr. Wissak walked in and he saw me, he says, "Don't you know that that is a slap in the face direct to me?"

I says, "I don't think I done anything wrong."

He says, "You don't have to sign with the union."

I says, "Look, I am only making an investment. If it is to help myself, fine; if not, I only lost a dollar."

He said, "Well, you shouldn't have done that."

I said, "Look, what I do out of the garage is my own business. It doesn't concern you a bit."

And he said a few words and he walked out . . .

Two weeks after the foregoing incident, Martini approached Wissak in the garage and asked Wissak if he would put certain parts in his (Martini's) own car; Martini testified the following then occurred:

Q. (By Mr. CRONIN.) By car you mean your own car?

A. My own private car which I want to pay for it. I didn't want it done for nothing.

And he [Wissak] told me, he said, "Don't worry about it. We will do the work on one condition, you will give me a signed affidavit that you have nothing to do with the union."

I told him I already signed a pledge and I am willing to go along and let it go at that, and I had my car fixed somewhere else.

Martini testified, on cross-examination, that his prehearing statement was wrong in attributing to Wissak the words "You do not have to pay" for the work he asked Wissak to perform on his car, and that in fact he had told Wissak he wanted to pay, to which Wissak replied he need not worry and that the work would be performed on condition he execute an affidavit repudiating the Union. Martini further testified he had called the error to the attention of counsel for the General Counsel prior to testifying, after having reread his statement, because he didn't wish to "make anybody believe that I was getting the work done for nothing." He also

acknowledged that, in the prehearing interview, he had not mentioned Wissak's request that he gave an affidavit repudiating the Union, but insisted that Wissak had made that request.

Regarding the lunchroom incident, Wissak testified he was there having a cup of coffee and as he finished he saw Martini and another man in a booth. Wissak saw Martini "hand this man a dollar," whereupon he went over to Martini and asked, "Is that the best you can do with your dollar?" He denied telling Martini that signing the union card was a slap in the face to him or that Martini should not have done so. According to Wissak, Martini on a number of occasions asked him to fix Martini's private car, the last time being the Friday before the hearing. He testified, "I might have told him in September that I would try to fix his car," but denied saying he would do so on condition that Martini sign an affidavit withdrawing from the Union.

Both Murphy and Martini appeared to me to be honest witnesses who were sincerely endeavoring to relate the truth. Their versions of the incidents are consistent and plausible, and both of them stood up well under vigorous and skillful cross-examination. Wissak, on the other hand, impressed me much less favorably. His account of the encounter with Murphy seems considerably exaggerated, particularly concerning the extent and openness of Murphy's solicitation and the claimed defiant reaction of Murphy to his request not to interfere with the drivers. Murphy did not impress me as a rash and belligerent individual, who with little or no provocation would tell his employer "I will do what I want" and appear to be ready to start a fight. Equally unbelievable is Wissak's testimony that Rodgen, after Wissak had related to him that Murphy had referred to Wissak as "Tojo" and said he would be Wissak's boss, apparently repented his action in signing the union card and, without more, went over to Murphy, retrieved his card, and then tore it up. Neither Rodgen nor the garage manager, who according to Wissak intervened by saying he would "take care of" Murphy, testified; no claim or showing was made that either of them was unavailable. I accept the testimony of Murphy and Martini and do not credit the testimony of Wissak where it is in conflict.

Upon the basis of Murphy's testimony, which I credit, and Wissak's admission in his prehearing statement that he "might" have told a man he had seen receive a union card from Murphy to tear it up, I find that Wissak did tell Rodgen to retrieve and destroy the union card Rodgen had signed, and that Wissak further told Murphy that he would close the terminal rather than have the Union come in and would spend thousands of dollars to defeat the Union, and that the Respondent thereby violated Section 8(a)(1) of the Act. I also find that Wissak's statement to Martini, that Martini's action in signing a union card was a "slap in the face" and that Martini should not have done so, and Wissak's later statement that the Respondent would repair Martini's car on condition that Martini sign an affidavit withdrawing from the Union, constitute restraint and coercion violative of Section 8(a)(1) of the Act.

Except as found above, the Respondent has not engaged in any other conduct violative of the Act. Accordingly, it will be recommended that the allegation that the Respondent "offered, promised and granted to its employees free automobile parts, and promised . . . improvements in their working conditions and terms of employment" to induce employees to withhold support from or to abandon the Union, be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. THE REMEDY

It having been found that the Respondent interfered with, restrained, and coerced its employees in the exercise of their rights under the Act, it will be recommended that it cease and desist therefrom and post an appropriate notice.

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. A & A Maintenance Corp. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Taxi Drivers Alliance was, and Taxi Drivers Organizing Committee, AFL-CIO, is, a labor organization within the meaning of Section 2(5) of the Act.

3 By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and 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, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that the Respondent, A & A Maintenance Corp., New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Warning or directing employees not to sign, or to destroy, cards designating Taxi Drivers Organizing Committee, AFL-CIO, as their collective-bargaining representative.

(b) Coercively threatening employees with closure of operations or the expenditure of funds to induce employees not to join or support Taxi Drivers Organizing Committee, AFL-CIO, or any other labor organization

(c) Conditioning the performance of repair work on employee automobiles upon withdrawal of support from Taxi Drivers Organizing Committee, AFL-CIO, or any other labor organization.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Taxi Drivers Organizing Committee, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in such activities.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Post at its terminal in New York, New York, copies of the attached notice marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for Region 2, shall, after being duly signed by a representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, and 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 the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 2, in writing, within 20 days from the date of receipt of this Decision and Recommended Order, what steps the Respondent has taken to comply herewith.⁴

It is further recommended that the complaint be dismissed insofar as it alleges violations of Section 8(a)(1) of the Act not specifically found herein.

³ 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 be 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."

⁴ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 2, in writing, within 10 days from the date of this Order, what steps it 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 warn or direct employees not to sign, or to destroy, cards designating Taxi Drivers Organizing Committee, AFL-CIO, as their collective-bargaining representative.

WE WILL NOT coercively threaten employees with closure of operations or the expenditure of funds to induce employees not to join or support the above-named or any other labor organization.

WE WILL NOT condition the performance of repair work on employee automobiles upon withdrawal of support from the above-named 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 their right to self-organization, to form, join, or assist Taxi Drivers Organizing Committee, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, or 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 in Section 8(a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of the above-named union or any other labor organization, except to the extent that such right may be affected by an agreement in conformity with Section 8(a) (3) of the Act.

A & A MAINTENANCE CORP.,
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, Fifth Floor, Squibb Building, 745 Fifth Avenue, New York, New York, Telephone No. 751-5500, if they have any question concerning this notice or compliance with its provisions.

Sully-Miller Contracting Company and Valentin Lucero
Construction Teamsters Union, Local 606 and Valentin Lucero.
Cases Nos. 21-CA-5755 and 21-CB-2252. June 16, 1965

DECISION AND ORDER

On March 5, 1965, Trial Examiner Henry S. Sahn issued his Decision in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent Company and the Respondent Union each filed exceptions to the Trial Examiner's Decision and supporting briefs.

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

The Board has reviewed the rulings made by the Trial Examiner 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, the exceptions and briefs, and the entire record in these cases, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations for the reasons noted below.

Respondent Company discharged employee Lucero as demanded by Respondent Union after the latter threatened to "shut the job down."