

NOTE.—We will notify any of the above-named employees 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, 614 National Newark Building, 744 Broad Street, Newark, New Jersey, Telephone No. 645-3088, if they have any questions concerning this notice or compliance with its provisions.

Hi-Way Dispatch, Inc. and Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case No. 25-CA-1933. June 21, 1965*

DECISION AND ORDER

On January 21, 1965, Trial Examiner Sidney Sherman 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 a statement of exceptions to the Trial Examiner's Decision, and brief in support thereof. The General Counsel filed a brief in support of the Trial Examiner's Decision and an opposition to Respondent's motion.¹

¹ In its brief to the Board, the Respondent requests the Board to take judicial notice of, or in the alternative, subpoena as evidence a pretrial affidavit of Respondent's President Bove. The Trial Examiner found, in part, that Bove's credibility was impaired by his repudiation at the hearing, without any explanation, of a statement made in the pretrial affidavit in question. The affidavit was not introduced into evidence. The Respondent now challenges the credibility findings of the Trial Examiner relating to Bove, contending that Bove did not repudiate his pretrial affidavit, but that his testimony was in complete accord with his pretrial affidavit. Respondent thus seeks to reopen the record in connection with a matter which hardly may be considered to be newly discovered and which it did not seek to introduce at the hearing. For this reason alone we would deny Respondent's motion.

It appears, moreover, that the Trial Examiner considered the apparent discrepancy between Bove's testimony and his pretrial affidavit as only one factor in determining whether or not to credit Bove's testimony. Indeed, another very significant factor relied on by the Trial Examiner was his observation of Bove's demeanor as a witness.

The demeanor of a witness is a factor of consequence in resolving issues of credibility. As the Trial Examiner has had the advantage of observing the witness, it is the Board's longstanding policy to attach great weight to a Trial Examiner's credibility findings insofar as they are based on demeanor. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F. 2d 362 (C.A. 3). See also, *Wichita Television Corporation, Incorporated, d/b/a KARD-TV*, 122 NLRB 222, enfd. 277 F. 2d 579 (C.A. 10), cert. denied 364 U.S. 871; *Baltimore Steam Packet Company*, 120 NLRB 1521. Thus, in the instant proceeding, assuming *arguendo* that Bove's pretrial affidavit is consistent with his testimony, nevertheless, we would not disturb the credibility resolution of the Trial Examiner inasmuch as his resolution of this matter was grounded in large part on Bove's demeanor as a witness. *Wichita Television Corporation Incorporated, d/b/a KARD-TV, supra*; *Baltimore Steam Packet Company, supra*. Accordingly, on this separate basis, as well, we deny Respondent's request to take judicial notice of or to subpoena into evidence Bove's pretrial affidavit.

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 [Members Fanning, Brown, 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 briefs, and the entire record in this proceeding, 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 Order recommended by the Trial Examiner and orders that Respondent, Hi-Way Dispatch, Inc., its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

The original charge herein was served upon Respondent on April 4, 1964,¹ the complaint issued on June 10, and the case was heard before Trial Examiner Sidney Sherman on August 4² and October 29. The issue litigated was whether Respondent violated Section 8(a)(3) and (1) of the Act by laying off 10 drivers on February 29. After the hearing, briefs were filed by Respondent and the General Counsel. There was also filed after the hearing, pursuant to my request,³ a stipulation by the parties.⁴

Upon consideration of the entire record, and upon my observation of the witnesses, I adopt the following findings and conclusions:

I. THE BUSINESS OF RESPONDENT

Hi-Way Dispatch, Inc., hereinafter called Respondent, is a corporation and is engaged at its headquarters in Marion, Indiana, in the business of hauling freight by motor carrier. During the year preceding the issuance of the complaint, Respondent received more than \$50,000 for transporting goods across State lines.

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

II. THE LABOR ORGANIZATION INVOLVED

Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called the Union, is a labor organization within the meaning of the Act

III. UNFAIR LABOR PRACTICES

The complaint alleges that Respondent, on February 29, violated Section 8(a)(3) and (1) of the Act by laying off 10 of its drivers because of their union or concerted activity. The answer denies this charge

¹ All events hereinafter related occurred in 1964, unless otherwise stated.

² After hearing part of the General Counsel's case on August 4, I ordered further proceedings stayed to afford the Respondent and the Union an opportunity to resolve the issue before me through the grievance procedure in their contract. Upon appeal by the General Counsel, the foregoing order was set aside by the Board and the case remanded to me. Pursuant to this remand, the taking of testimony was completed on October 29.

³ In a letter of December 22, which is hereby received in evidence as Trial Examiner's Exhibit No. 2

⁴ That stipulation, together with the letter of transmittal, is hereby received in evidence as Trial Examiner's Exhibit No. 3

A. Sequence of events

Respondent is engaged at Marion, Indiana, in the business of hauling freight by motor carrier. Its principal shipper is the Foster-Forbes Glass Co., also located in Marion, which includes among its customers breweries in Chicago and Milwaukee.

At all times here relevant, up to February 29, Respondent operated 20 over-the-road tractors. Two of these were owned by their drivers. One of the others was owned by Respondent, nine were owned in whole or in part by Anthony Bove, Respondent's president, and the balance were owned by other persons. As to the 18 tractors not owned by their drivers, Respondent or Bove was required on March 1 of each year to make an initial cash outlay of \$275 for license plates for each tractor, for which they were subsequently reimbursed in those cases where the tractor was owned by a third party, out of any profits earned⁵ from the operation of the tractor.

Since, at least, 1961, Respondent has had continuous contractual relations with the Union, in the form of (1) a main contract, consisting of a so-called Central States Area Agreement negotiated by the Central States Drivers' Council, representing the Union, and by an employer association, representing Respondent, and (2) an addendum or supplement to the foregoing,⁶ which is significant here only because of certain provisions herein providing for two alternative methods of computing a driver's pay—namely, percentage of gross revenue from freight hauled by the driver, and the driver's miles and hours, whichever is higher. Under this addendum, the drivers are paid in the first instance on the basis of a percentage of gross revenue, but, if at any time they believe that their compensation for the immediately preceding 30-day period would have been higher, if computed on the basis of miles and hours, they are entitled to file a claim and recover the difference, if any.

It appears from the record that dissatisfaction developed among the drivers over the administration of the provisions of the addendum, and that they believed that it would be to their advantage to eliminate the foregoing option and have their compensation computed on a straight miles-and-hours basis.⁷ This matter was discussed at several union meetings in January and February. At the first of these meetings, on January 18, the majority of the drivers voted for elimination of the addendum and adoption of a straight miles-and-hours basis of compensation. At that meeting a "strike vote" was also taken, the significance of which will be discussed later. At a meeting on February 17, the majority of the drivers again voted against the addendum, and 17 of Respondent's 20 drivers at that meeting signed a "blanket" grievance, reading as follows:

We, the undersigned drivers of Hi Way Dispatch, feel that we are being deprived of the 30-day provision of the Addendum and request to be taken off the Addendum and to go back to miles and hours provisions of the Road contract.

In addition, four of the drivers, at the same time, signed individual grievances alleging that, when they attempted to turn in accurate records of their miles and hours on a particular trip so that they might take advantage of the miles-and-hours option in the addendum, they were threatened with discharge by Mason, Respondent's general manager, and Bove, Respondent's president. These grievances were presented to Bove within the next few days and rejected by him. They were then appealed, pursuant to the contractual grievance procedure, to a joint labor-management committee.

During February, Patrick, the Union's business agent, also had several discussions with Bove, in which Patrick urged, without avail, a contractual rescission of the addendum and substitution therefor of the so-called Krevda rider, which called for payment on a straight miles-and-hours basis.

On February 29, on the eve of the new motor vehicle registration period, Respondent laid off 10 of its drivers in inverse order of seniority, and did not renew the registrations of the vehicles operated by them. At the same time Respondent notified Foster-Forbes, its principal customer, of this layoff and that it would have to curtail its services to Foster-Forbes accordingly.

On March 10 the joint grievance committee, referred to above, denied the drivers' request for elimination of the addendum, but it did instruct Respondent to "live up to

⁵ See Trial Examiner's Exhibit No. 3.

⁶ Hereinafter called the addendum.

⁷ The reason for this belief is not entirely clear from the record. It may be inferred, however, that the drivers felt that a miles-and-hours basis would generally be more favorable to them, and that the existing provision for filing a claim for the difference with respect to each 30-day period was unworkable, since it required the driver to keep accurate records of his miles and hours to support his claim, and since Respondent was frustrating the efforts of the drivers to maintain such records.

the . . . Addendum in its entirety," and, in effect, enjoined both the Respondent and the drivers to conform to the regulations of the Interstate Commerce Commission.⁸

On March 30 Respondent began to recall the laid-off drivers in order of seniority, the last one being recalled on May 3.

B Discussion

The General Counsel contends that the drivers were laid off in reprisal for their prosecution of the February 17 grievances attacking the addendum, and that, as such grievance action was protected, concerted conduct, such layoffs were unlawful. In support of this contention, there was adduced the testimony next set forth.

Freeman, one of the laid-off drivers, testified that a few days after the February 17 meeting (when the grievances about the addendum were signed by the drivers), he and two other drivers were discussing with Respondent's president, Bove, and its general manager, Mason, the drivers' opposition to the addendum, and that Bove stated that if the drivers wanted to change the Respondent's method of operation "he would have to lay some of them off." Bove denied that he had made such a remark. On the basis of his demeanor, as well as certain other aspects of Bove's testimony, discussed below, which reflected on his credibility, I credit Freeman.⁹

Hobbs, the Union's steward for the drivers, testified that, when he presented the "blanket" grievance to Bove,¹⁰ he remarked that the drivers were trying to run his business and that "if the sons-of-bitches wanted to play games, we could both play games." Bove's denial of this was rather equivocal.¹¹ In any event, on the basis of demeanor considerations, as well as other circumstances adversely affecting Bove's credibility,¹² I credit Hobbs.

At the hearing, Mason admitted that, in discussing with him the blanket grievance about the addendum, Bove declared that adoption of a straight mules-an-hour basis of compensation might necessitate some change in Respondent's operations.

There was also uncontradicted testimony by Patrick, which was corroborated by DeBons, one of the laid-off drivers, that on April 13, when 7 of the 10 drivers were still in layoff status, Patrick presented to Bove a grievance about another matter, and that Bove stated, "The only way you are going to get these men back to work is for you to back off," to which Patrick rejoined that his job was to enforce the Union's contracts and he "was not about to back off." Bove not only failed to contradict the foregoing testimony but also offered no explanation of his remark, the clear implication whereof was that Bove would not recall the seven drivers who were still laid off, unless Patrick showed less zeal in prosecuting grievances for alleged contract violations.

⁸ Presumably, the grievance committee here had reference to those regulations requiring that accurate trip records be kept.

⁹ At the hearing, Mason was not asked about this incident although he made two appearances on the stand, first as a witness for General Counsel and later as a witness for Respondent. In its brief, Respondent points to the failure of the General Counsel to examine Mason on this point, but fails to explain its own failure to do so. While Mason was no longer in Respondent's employ when he testified, his testimony was in the main favorable to Respondent, even to the extent of offering a patently untenable explanation for the February 29 layoffs. (See discussion of this below.) Under the circumstances, I do not believe that any inference adverse to the General Counsel is warranted by his failure to examine Mason about the Freeman episode.

Respondent also cites the failure of the General Counsel to identify, or call as witnesses, the two other drivers referred to in Freeman's testimony. I have given due weight to this circumstance in making my credibility finding here.

¹⁰ This incident occurred a few days after February 17.

¹¹ He merely answered in the negative when Respondent's counsel asked him whether he recalled talking with Hobbs "about the layoffs." However, Hobbs' foregoing testimony did not refer to any discussion of layoffs but merely imputed to Bove a vague threat of reprisal against the drivers if they persisted in their grievance over the addendum. Accordingly, Bove's foregoing denial of any discussion of layoffs with Hobbs does not necessarily constitute a denial of such threat.

¹² Among other matters, Bove's credibility was impaired by his repudiation at the hearing, without any explanation, of a statement in his pretrial affidavit to the effect that by February 25, he had already decided to lay off the drivers and that on that date he called a meeting of the drivers to inform them of that decision. (In his testimony he denied that that was the purpose of the meeting or that he reached the layoff decision before February 28.)

It appears from the foregoing credited testimony that Bove was perturbed over the drivers' opposition to the addendum (as well as Patrick's militancy with regard to grievances, generally), and indicated in his discussions on that subject with Hobbs and Freeman that he would visit reprisals on the drivers if they persisted in such opposition, expressly warning Freeman that such reprisals would take the form of the layoff of some of the drivers. The foregoing would seem to suffice to establish a *prima facie* case that the layoffs were in reprisal for the prosecution of the grievances over the addendum.

Respondent contends that the layoffs were due, not to the prosecution of the grievances, but rather to its desire to postpone a substantial¹³ cash outlay for new license plates at a time when it faced the economic drain and uncertainties of a strike. Respondent here relies on *Betts Cadillac*¹⁴ and related cases where the Board held that an employer need not play the role of a "sitting duck" in the face of an imminent strike, but may take action to reduce his vulnerability to a strike, even if that involves a partial or complete shutdown of his plant. Thus, he may suspend operations if he cannot continue to operate without incurring the risk of spoilage of materials, in the event of a strike,¹⁵ or he may shut down to avoid incurring obligations to customers which he will be unable to discharge in case of a strike.¹⁶

These cases require proof that the employer would have suffered some special economic disadvantage, or aggravated the disruptive effect of the strike, had he continued to operate up to the moment the strike began, and that he curtailed his operations to prevent such strike damage.

Even if it be assumed that the making of a cash outlay of about \$2,500 on the eve of an anticipated strike constituted special damage of the sort contemplated by *Betts Cadillac*, the record preponderates against Respondent's contention that it acted because of the fear of a strike, rather than because of prosecution of the grievances over the addendum.

I do not doubt that late in February talk of a strike came to Respondent's attention. At their January 18 meeting, the drivers had voted to strike in support of their demand for elimination of the addendum provisions governing their method of compensation. Union Business Agent Patrick attempted to minimize the significance of this action, testifying that it was a vote to strike only if it was ascertained by him that the addendum was not legally binding on the drivers and that they were free to demand a straight miles-and-hours provision, and then, only if Respondent refused to agree to such a provision. Patrick testified further that he subsequently ascertained from the Union's president that the addendum was legally binding, and he so advised the drivers about February 1, thereby, in effect, nullifying the strike vote.¹⁷ Be that as

¹³ The amount involved was \$275 for each of the nine tractors or a total of \$2,475. The 10th tractor was owned by its operator, who paid his own registration fee, but who was, nevertheless, included in the layoff because of the seniority provisions of the contract governing layoffs.

In explaining why the layoff action was limited to half the drivers, Bove testified that the size of the layoff was geared to the ability of Respondent's principal customer, Foster-Forbes, to find substitute carriers in the Marion area, that, while such substitutes were available for points between Marion and Chicago, none was available for the Milwaukee run, as Respondent was the only local carrier licensed for that run, and that Respondent deemed 10 drivers sufficient to handle Foster-Forbes' Milwaukee freight. (While this testimony explains the size of the layoff, it does not necessarily shed any light on the motivation therefor. Consideration of the needs of Foster-Forbes would presumably have been uppermost in Bove's mind, whether the layoff was due to the reasons alleged by him or to those alleged by the General Counsel.)

¹⁴ *Betts Cadillac Olds, Inc., et al.*, 96 NLRB 268.

¹⁵ *Duluth Bottling Association, et al.*, 48 NLRB 1335.

¹⁶ *Betts Cadillac Olds, Inc., supra.*

¹⁷ There was also some evidence that under the Union's procedures no strike action could be taken on the basis of the January 18 vote, alone, but that it was necessary, in addition, that there be a second strike vote, and that the strike be sanctioned by higher union authority, including the president of the Union, and there was conflicting testimony as to whether a second strike vote was, in fact, taken at the February 17 meeting. In view of my findings in the text, below, I do not deem it necessary to resolve this conflict, but will assume for the purpose of this Decision that there was such a second strike vote.

While Patrick testified that the necessary strike sanction was not forthcoming, there is also no evidence that Bove was aware that internal union procedures required such sanction or that it had been refused. Accordingly, in reaching the ultimate result herein, I do not rely on the alleged limited effect of any strike vote taken.

it may, I am satisfied that talk of a strike among the drivers did not die down at that time but persisted thereafter, and that such talk was overheard by Respondent's president, Bove, and its general manager, Mason, as well as certain representatives of Foster-Forbes, Respondent's principal customer. However, notwithstanding that he had several meetings with Patrick during January and February about the elimination of the addendum, Bove admittedly made no effort to verify these strike rumors. He did testify that at one of these meetings, about February 23, when he referred to a threat of a strike, Patrick warned him that if the addendum dispute was not settled there would be a strike. However, Patrick's version of this meeting omits any reference either by Bove or Patrick to the possibility of a strike, and Mason corroborated Patrick as to the absence of any reference to a strike on this occasion by either Bove or Patrick.¹⁸ Accordingly, I find that while Respondent overheard talk of a strike among the drivers, it made no effort to determine from the Union, itself, whether any strike was in fact planned, nor did it even apprise the Union that it was aware of such talk, or otherwise give the Union an opportunity to disavow any intention to strike. Accordingly, whether or not Respondent, in good faith, believed that a strike was imminent, it is apparent that it was not greatly concerned on that score. It is difficult to square such lack of concern with the contention that it was the imminence of a strike which dictated Respondent's decision to take such a drastic step as the suspension of half its operations. On the other hand, Respondent's apparent indifference to the strike rumors prior to the layoffs lends credence to the General Counsel's view that the decision to lay off the drivers was reached without reference to the prospect of a strike, and solely as a measure of reprisal against the drivers for prosecuting the February 17 grievances.

There are several other matters which reflect on the sincerity of Respondent's contention that the layoffs were due to the fear of a strike. Not the least of these is the fact that this contention was apparently an afterthought adopted to meet the exigencies of the trial.

Thus, it was shown at the hearing that on April 3, after the instant charge was filed, Bove wrote the Board a letter, in which the layoffs are explained as follows

. . . the only outbound tonnage of this Company originates at Foster-Forbes Glass Co., Marion, Indiana, destined to points in Wisconsin, Illinois and Michigan, principally. Volume from this Company decreased to the point where it was impossible to retain all the drivers, including those named in the complaint, and a reduction was necessary, because of lack of tonnage. By reason of the foregoing, the ten men named in the complaint were laid off, only because of lack of tonnage.

When confronted with this letter, Bove attempted to reconcile it with his position at the hearing that the layoffs were due to the threat of a strike, by asserting that the "lack of tonnage was . . . due to the fact that there was a threat of a strike," and that it was this factor, in addition to his desire to save the outlay for license plates, in the face of a strike threat, that prompted the layoffs. However, it was stipulated that Respondent's volume of business was substantially the same for the months of January and February, and there was no credible evidence of any ascertainable decline in business at any time before the layoff decision was assertedly made.¹⁹

Moreover, when Bove was later recalled to the stand, he attributed his layoff decision solely to his desire to avoid putting out the money for license plates for at least part of the trucks, in the face of an impending strike, and no further reference was made by him in this connection to any actual or anticipated withholding of patronage by Foster-Forbes or any other customer.²⁰ And, in its brief, Respondent cites as the

¹⁸ All witnesses agreed only that in this conversation Bove mentioned the desirability of settling the Union's dispute with Respondent before March 1, because the new registration fees would then be due.

¹⁹ That decision was asserted by Bove and Mason to have been made about noon on February 28. While Mason testified (see next footnote) that there was a sharp decline on February 28, the extent thereof could not have been determined until late in the afternoon of that day. Moreover, for reasons stated below, I do not credit Mason's testimony as to the decline in orders, nor is it believable, in any event, that Respondent would take such a drastic step as a 50-percent curtailment of its operations on the basis of a drop in orders on a single day.

²⁰ Mason, nevertheless, made an inept effort to support Bove's initial position that the layoffs were involuntary, and were due to actual or anticipated loss of business, as a result of the threatened strike. In this connection, he asserted that during February he ascertained that Foster-Forbes had actually diverted some of its business to other truckers. However, Foster-Forbes' representative at the hearing credibly denied that there was any such diversion and Mason himself, admitted that there was no actual decline in Respond-

reason for the layoffs, only Bove's alleged desire to avoid the outlay for license plates, in view of the strike threat. It is thus apparent that, presumably recognizing the absence of any evidentiary basis therefor, Respondent has finally abandoned its initial position as to the reason for the layoffs, shifting from an explanation that the layoffs were forced upon Respondent by an alleged decline in business to an assertion that they were a precaution voluntarily taken by Respondent to conserve cash during an anticipated strike.

Further light is shed on Respondent's motivation by the events leading up to the recall of the drivers. On March 23 Bove called Foster-Forbes and appealed for more business, asserting that he would otherwise have to lay off more men. In response to this appeal, Foster-Forbes gradually stepped up Respondent's share of Foster-Forbes' freight until it returned to its former level, and Respondent, on March 30, began to recall the laid-off employees as they were needed. There was no contradiction of Patrick's testimony, and I find that in the meantime, on March 25, in connection with a dispute with Bove over a matter not here relevant, he threatened to call a strike of Respondent's drivers.²¹

When asked at the hearing whether he was not still apprehensive of a strike when he began to recall the drivers, Bove answered that he no longer feared a strike because he had learned by that time that the addendum could not legally be eliminated.²² Bove acknowledged, however, that this circumstance did not preclude the possibility of a strike, and that the Union had given him no assurance that it would not strike.²³ When he was then asked, in effect, why, in the absence of any apparent change in the Union's attitude, he rescinded the layoffs, he merely remained mute.

There is thus presented a choice between (1) the General Counsel's contention that the layoffs were in reprisal for the drivers' resort to the grievance procedure to eliminate the addendum, which is buttressed, *inter alia*, by the credited testimony recited above concerning Bove's adverse reaction when the grievance was presented to him and his threat of reprisals therefor, as well as his threat about the same time to lay off some of the drivers if they persisted in their opposition to the addendum, and (2) Respondent's contention that the layoffs were due to its desire to mitigate the effects of an anticipated strike, which contention was advanced only after it became apparent at the hearing that its pretrial defense of an involuntary layoff was untenable, and which contention is further rendered suspect by Bove's inability to explain why, if he laid the drivers off because of fear of a strike, he began to recall them a month later, even though he not only had no intervening assurance from the Union that there would be no strike, but had in fact, only 5 days before, received from the Union the first direct threat of a strike.

Under all the circumstances, I deem the General Counsel's explanation for the layoff to be more cogent than Respondent's, and find that the layoffs were not motivated by a desire to conserve cash in the face of a strike, but were designed rather to coerce the drivers into abandoning their grievance over the addendum, and that it was only after Respondent ascertained that the grievance had been finally rejected by the grievance committee that Respondent relented and took steps to recover its former patronage, and to recall the drivers.²⁴

ent's overall business volume until February 28, when, according to him, there was a 50-percent drop in orders. Mason then attempted to attribute the layoff decision to this sudden, sharp decline in orders on the 28th, testifying that the decision was not made until about noon on that date, but, when pressed to explain how it was possible to determine by noon-time what the intake of orders would be for the entire day, he was at a loss for an answer.

²¹ Bove disputed only that this was the first strike threat by Patrick.

²² As noted above, the blanket grievance seeking elimination of the addendum was rejected by the grievance committee on March 10.

²³ On March 14 Patrick assured Bove only that he had no present intention of striking, and that he would give 48 hours' advance notice of any strike action.

²⁴ As a corollary to the above findings, I find that the timing of the layoffs, on the eve of the new registration date, was dictated not by Respondent's alleged desire to conserve cash in the face of a strike, but rather by its desire to conserve cash at a time when it was voluntarily curtailing its operations, and preparing to forego any profits, for as long as was necessary to achieve its coercive purpose. Thus, the February 29 date was an opportune one for two reasons: (1) the blanket grievance was then pending before the grievance committee, and (2) a layoff on that date postponed the need for a cash outlay of nearly \$2,500.

In view of the foregoing findings that the layoffs were not due to fear of a strike, there is, of course, no need to determine whether the cost of the license plates was the sort of special damage contemplated by *Betts Cadillac*, *supra*.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent Employer 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

Having found that the Respondent Employer has engaged in certain unfair labor practices, it will be recommended that Respondent be ordered to cease and desist therefrom, and take certain affirmative action.

Having found that the Respondent discriminatorily laid off 10 of its drivers on February 29, 1964, it will be recommended that Respondent make them whole for any loss of earnings they may have suffered by reason of the discrimination against them, by payment to them of a sum of money equal to that which they normally would have earned from February 29 to the date of Respondent's offer of reinstatement. Backpay will be computed in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, with interest as directed by the Board in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce and the Union is a labor organization, all within the meaning of the Act

2. By discriminating in regard to the hire and tenure of employment of 10 of its drivers, thereby discouraging membership in 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.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of facts and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby recommend that Respondent, Hi-Way Dispatch, Inc., Marion, Indiana, its officers, agents, successors, and assigns, shall.

1. Cease and desist from:

(a) Discouraging membership in any labor organization of its employees, or other concerted action by its employees for their mutual aid or protection, by discriminating in regard to their hire, tenure, or any other terms or conditions of employment.

(b) In any other manner, interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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.

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

(a) Make whole the employees listed in attached Appendix A, in the manner set forth in the section of this Decision 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 payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Recommended Order.

(c) Post at its headquarters in Marion, Indiana, copies of the attached notice marked "Appendix A."²⁵ Copies of such notice, to be furnished by the Regional Director for Region 25, shall, after being duly signed by an authorized representative of Respondent, be posted immediately upon receipt thereof, and be maintained by it

²⁵ If this Recommended Order is 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. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will be further amended by the substitution of the words "a Decree of the United States Court of Appeals, Enforcing an Order" for the words "a Decision and Order".

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.

(d) Notify the Regional Director for Region 25, in writing, within 20 days from the receipt of this Decision, as to what steps the Respondent has taken to comply herewith.²⁶

²⁶ If this Recommended Order is 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, as to what steps Respondent has taken to comply herewith."

APPENDIX A

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 discourage membership in Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or in any other labor organization of our employees, or discourage our employees from engaging in concerted activities for their mutual aid or protection, by discriminating in regard to hire, tenure of employment, or any term or condition of employment of any of our employees.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist the aforesaid 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.

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

Charles Belcher
Robert Bryan
Anthony DeBonis
Bobby Dixon
Charles Freeman

James B. Grosswiler
Richard McIntire
Lawrence Shanks
Alvin M. Walker
Robert Whelchel

HI-WAY DISPATCH, 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, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, Telephone No. Melrose 3-8921, if they have any question concerning this notice or compliance with its provisions.

Carlson Furniture Industries, Inc. and United Furniture Workers of America and Local 886 of the International Union, Confederated Industrial Workers of America, Party in Interest.

Case No. 21-CA-5996. June 21, 1965

DECISION AND ORDER

On February 24, 1965, Trial Examiner William E. Spencer issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and