

WE WILL NOT threaten employees to sell the plant or to engage in other reprisals because of their union sympathies or activities, coercively poll employees as to their union adherence, coercively question employees about union matters, offer benefits to employees to induce them to renounce union affiliation, assist employees in effecting their withdrawal from the Union in a coercive manner, coercively question employees concerning information given agents of the National Labor Relations Board.

All our employees have the right to form, join, or assist any labor organization, or not to do so, and we will not in any manner interfere with, restrain, or coerce our employees in the exercise of these rights.

MID-STATE BEVERAGES 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, 4th Floor, the 120 Building, 120 Delaware Avenue, Buffalo, New York, Telephone No. 842-3100, if they have questions concerning this notice or compliance with its provisions.

**Boro Motors, Inc. and District No. 47, International Association of Machinists, AFL-CIO.** *Case No. 22-CA-2117. June 21, 1965*

### DECISION AND ORDER

On April 5, 1965, Trial Examiner Thomas A. Ricci issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged 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 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 [Members Fanning, Brown, and Jenkins].

The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in the case, 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, as modified herein, and orders that Respondent, Boro Motors, Inc., Metuchen, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified:

153 NLRB No. 25.

1. Add the following as paragraph 2(b), the present paragraph 2(b) and those subsequent thereto being consecutively relettered:

“(b) Notify 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.”

### TRIAL EXAMINER'S DECISION

#### STATEMENT OF THE CASE

A hearing in the above-entitled proceeding was held before Trial Examiner Thomas A. Ricci on January 18, 19, and 20, and on February 15 and 18, 1965, at Newark, New Jersey, on complaint of the General Counsel against Boro Motors, Inc., herein called the Respondent or the Company. The principal issue is whether the Respondent violated Section 8(a)(3) of the Act in discharging five employees. Briefs were filed by the Respondent and the General Counsel.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

Boro Motors, Inc., a New Jersey Corporation, maintains its principal office and place of business at Metuchen, New Jersey, where it is engaged in the retail sale of new and used cars and trucks and related products and services incidental thereto. During the preceding 12-month period, a representative period, the Respondent received gross revenues valued in excess of \$500,000, and during the same period received goods valued in excess of \$50,000 which were transported to its New Jersey location directly from States of the United States other than that State. I find that the Respondent is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to exercise jurisdiction herein.

##### II. THE LABOR ORGANIZATION INVOLVED

District No. 47, International Association of Machinists, AFL-CIO, herein called the Union, is a labor organization as defined in Section 2(5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

###### A. *The issue*

In its total operations, including several departments and shops, this Company uses approximately 30 employees. Through its representative, John Otero, the Union began an organizational campaign at the start of September 1964; Otero first delivered a supply of authorization cards to employee James Brown, who in turn gave them to Reno Zorzi, apparently the principal distributor and collector of the eventually executed cards. By Wednesday, September 23, Otero had obtained what he believed to be a sufficient number of employee signatures, and wrote the Company asking recognition and bargaining. The demand letter was received on Saturday, September 26. At 4:50 p.m. on Friday, the day before, 40 minutes before quitting time, the Respondent discharged all five rank-and-file employees working in its body shop without notice; each of them had signed union cards. The complaint alleges that this was an act of retaliation in reaction to the union activity and therefore violative of Section 8(a)(3) of the Act. The charge is denied in the answer; affirmatively the Respondent contends that it decided to discontinue the body shop permanently because it was losing money. Two weeks later the Company renewed operations of the department “for convenience,” recalling only three of the former employees—Robert Hartman, Benjamin Nixon, and George Griesheimer. Louis Dengelegi, the most senior workman with 14 years of continuous service, and Zorzi, who had been employed steadily for over 8 years, were never recalled.

### B. *Union activity and Company knowledge*

To arrange with Brown for distribution of authorization cards Organizer Otero went twice to the Respondent's premises, each time at the garage near the body shop, once while the men were eating lunch. Zorzi, who then had the card signed, returned them to Brown, and Otero called at Brown's house the second week of September to receive them; there still remained unsigned cards with Zorzi or other employees. Otero found he did not have enough and on Saturday, September 19, telephoned Zorzi to ask could he obtain more. Zorzi did so and on Wednesday, about 5 p.m., Otero met him at the Knox Cafe, across the street from the shop to accept them.<sup>1</sup> The next day Otero wrote the demand letter; it was received in evidence and bears the date September 24. It must have been posted later, for the return receipt requested, also received in evidence, leaves no question but that John Kosko, the general manager, signed for it on the 26th.

James Brown, 3 years a stock clerk in the parts department and 5½ years with the Respondent, works under Frank Lankey, one of the owners of the Company. He testified that Lankey spoke twice to him about the Union on Friday, the 25th. According to Brown early that morning Lankey said, "Jimmy, come here," and then, in private talk, asked "Did anyone approach you with any cards?" When Brown said no, Lankey added: "I'll find out later on . . . The ones that signed wouldn't be here." Sometime later that day Lankey again brought up the subject with "was I sure I didn't sign any cards?" Again Brown denied. On Monday, still according to Brown, Lankey told him "Jimmy, I think you're lying . . . about the Union." Brown persisted in his denial.

Lankey's testimony is that on Monday morning "upon hearing of the Union" he did call Brown into his office and asked "if he knew anything of a Union," and Brown said, "No." According to Lankey "that was the extent of the conversation." He then denied all of the rest of Brown's testimony as to their talks. I credit Brown. For years and still an employee of the Company, he candidly admitted continued amicable relations with Lankey. In his straightforward and calm demeanor he was perhaps the most impressive witness of all at the hearing; there was not a trace of exaggeration or evasion in his story. On total appraisal I consider it of little moment that in an affidavit he recalled the second Friday talk with Lankey as after instead of before lunch. In contrast, Lankey's admission of calling Brown into the office to probe without warrant into his union activities reveals a basic intent not inconsistent with the tenor of Brown's recollection of their conversations. On the basis of the demeanor of both men I find, as Brown testified, that Lankey interrogated him respecting his union activities and, by clear implication, gave him to understand that the Respondent would make it its business to ascertain precisely who favored the Union, all in violation of Section 8(a) (1) of the Act.

Griesheimer, one of the five men discharged on Friday, testified that Foreman Strokus called him by telephone on Monday to ask had he signed a card and did he want to return to work. Griesheimer denied having signed and was told to come in the next day to speak to Orrin Sauber, used car manager and also an owner. Griesheimer came and Sauber took him out to the parking lot to talk. He first told Griesheimer "their attorney said not to hire anybody back right now," and that he would let Griesheimer know later. Sauber then asked Griesheimer had he "signed a Union card." Griesheimer feigned ignorance about unions and went home. Strokus denied generally that he had asked any employees whether they had signed union cards. He admitted, however, that when Griesheimer arrived on Tuesday he said to him: "George, you know anything about the Union?" and that the employee replied "No." Sauber explained that Griesheimer was called in because his wife had asked that he be rehired, and that that it was his assignment to get rid of the man. He went on to testify that when Griesheimer arrived he told him "our attorney advised against rehiring anybody." For the rest Sauber also denied generally that he had talked about the Union to any employees.

Considering, among other things, Strokus' admission that he asked Griesheimer that day whether he knew about the union activities, and Sauber's reference, out of a clear sky, to legal advice in a matter claimed to be of simple import, I credit the

<sup>1</sup> There is testimony that while Zorzi and Otero were talking, Strokus, foreman of the body shop, passed by and saw them. This fact does not contribute support to the finding that management was aware of the union activities because Hartman, another body shop employee, testified that at that moment Strokus asked him who it was talking with Zorzi, and Hartman replied, "an insurance agent or something."

employee fully as to his talks with both the supervisors. Sauber conceded that in fact as of that time no lawyer had been hired, and that no legal matter was pending, and the first charge in this case was not filed until 3 days later. In these circumstances, his assertion that he spoke of a lawyer "for use of a better word" is completely implausible. As will appear below, this is one of the many instances in this record where explanations by the Respondent are on their face unconvincing.

### C. *The prima facie case in support of the complaint*

Deferring for the moment consideration of the Respondent's assertion, and the evidence offered in support, that the body shop was closed on September 25 for purely economic reasons, a conclusion of illegal motivation is compelled by clear facts. The body shop serves several functions: (1) repair and rehabilitation of used cars received by the Company as trade-in elements of new car sales, (2) repair and service, in varying degrees, of new cars arriving for sale; and (3) customer service for automobiles brought in by the public and requiring straight repair of damage. The Respondent, under one name or another, has been dealing in automobiles for as many as 33 years and the testimony of General Manager Kosko shows in its totality that without a body shop of its own such a business cannot conveniently be carried on. Indeed, the Company resumed direct operation of this very body shop only 2 weeks later for the express reason, as its officials admitted, that they could not get along without it.

Of the five employees released two had worked for the principal owner of the Respondent for 7 or 8 years, and one 14. The Respondent placed the body shop immediately adjacent to its other properties, and in a very technical sense started operating it in its own name, in 1961. For years before that it had sent body work of all kinds out to a body shop called A & K, and the Respondent's witnesses attempted to create the impression that A & K had nothing otherwise to do with Boro Motors. General Manager Kosko said this had been only one of several body shops doing the Respondent's work. A & K had been in existence for many years; in 1961 it had a total of six employees, five operational men plus Strokus, even then supervisor over them. All six were transferred bodily to the Respondent's premises and continued as its body shop department. Kosko was asked why the Respondent had taken over the A & K operations, and said it was because A & K "was headed for discontinuance," and because "Tony Yelencis [the Respondent's president and major proprietor] felt sorry for the fellows," "because of Tony's compassion for the men, that's what it amounted to." The letters A and K are the initials for the first names of two of Mr. Tony Yelencis' brothers. Nixon, one of the five employees whose discharge is here involved, said he had been hired 8 years earlier at A & K by Joe Yelencis, still another brother. Dengelegi was hired in 1950, when A & K used to be called Metuchen Motors, by Tony Yelencis himself, an owner of that business. And when the physical transfer of the body shop took place in 1961 all six men were told that they carried seniority in employment with them. This condition of employment was emphasized after the September 1964 discharge when Dengelegi was paid off with 3 weeks' vacation instead of 2, only because the Respondent considered him as an employee having over 10 years of tenure.

The men were discharged summarily; no advance notice of any kind was given. Some of them testified they had never before been laid off even for a day. There was work in their hands to be done at that time, and no explanation was made as to why, even assuming an economic decision to change from direct use of a body shop to a contracting-out arrangement, the Company did not at least use them to complete the work in hand. When the department was reestablished 2 weeks later one automobile, on which Nixon had been at work when discharged, was still there. Foreman Strokus had painted it poorly and Nixon "had to do it over again."

Kosko, who as principal witness for the Respondent undertook to explain all, said he gave no notice because he feared vandalism by the employees in resentment for notice of discharge. He admitted none of them had ever given him cause for such fears. Kosko then added he intended to compensate for the lack of advance notice by giving them severance pay instead. If in fact such had been his earlier thinking, the probabilities are that just as vacation checks were fully prepared for the moment of sudden discharge, the severance checks would also have been ready. But Kosko said the amount of severance pay was not decided until later, and the men received it "a week later," or "several weeks" later, as they testified, after the charges were filed.

No attempt was made to reflect upon the relative skill of the five employees individually; this is essentially an auto body repair shop. Two men—Nixon and Hartman—were primarily painters and did only some body repair work. The real work horses on body repair were Dengelegi, Zorzi, and Griesheimer. Surely the most experienced must have been Dengelegi, the senior man. He used to act as foreman, in Strokus' absence, and wrote up orders for customers when Strokus was ill or on vacation. Zorzi was next with 8½ years' experience. The junior man of these was Griesheimer, 5 years with the Company. Of the three only Griesheimer was recalled; Zorzi was the leadman in obtaining union cards and Griesheimer had assured both Strokus and Sauber of his innocence concerning the Union. Against these facts, the assertion now that Griesheimer was selected from among the three because he was "cooperative" rings hollow.

The Company knew during the very period before the shutdown its employees were joining the Union. Owner Lankey's repeated questioning of Brown, with the critical accusation that Brown's denial was a lie, makes this very clear. The record does not reveal exactly how much the Respondent learned in detail but Lankey said he intended to find out and even told Brown that employees who had signed union cards "wouldn't be here."

Despite the announcement of complete and permanent abandonment of the body-shop operation, its Foreman Strokus was not released; he was retained, according to Kosko, in "an undecided capacity." Two weeks later Hartman, Nixon, and Griesheimer were recalled and the business resumed as usual. It was not shown, nor is it claimed, that Dengelegi and Zorzi was particular culprits in the alleged financial failure of the department. It therefore is not possible to understand how a reduced operation, with the same overhead costs, in some respects at least, was consistent with any policy of reducing losses. The answer may well lie in the fact that the Company's gross business during the first 8 months of 1964 totaled \$2,156,817, with gross profits of \$327,594. Against such an overall financial picture some small cost to operate a body shop as the Company always has done perhaps is merely a normal aspect of this type of business. Speaking about this quick reopening of the body shop, Kosko said he "recognized, however, the need for having our own body shop to handle these hurry-up jobs."

There is testimony in this case which, taken together with the foregoing, could well require a finding of unlawful purpose in the discharges even were it true that the body shop had been running at a loss. Both the general manager and the treasurer, or bookkeeper, said that each month a summary of operations income and cost on separate departmental basis is prepared and examined by the officers. But if the Company had long been aware of the cost of operating its own body shop, and did nothing about it until that critical moment when it learned of the organizational campaign, a powerful inference arises that economics had nothing to do with the sudden action taken. However that may be, there is no need to consider the case in such a posture, for the evidence purportedly proving a constant money loss in the body shop is not persuasive.

#### *D. The accountant's report*

To prove that the body shop had been losing money, the Respondent started by calling James Bornheimer, its treasurer and head bookkeeper. Bornheimer said that at Kosko's request, early in September, he made an analysis of the records, with special attention to the operations of the body shop, covering the period January 1 through August 31, 1964, and that his studies showed a loss over the 8 months' period of \$3,300. The Respondent offered into evidence the financial summaries which Bornheimer had prepared from the books, the General Counsel objected to the document as secondary evidence, and it was rejected. The Respondent then invited counsel for the General Counsel to verify Bornheimer's figures against the voluminous regular records of the Company, but he declined on the proper ground that he is not sufficiently versed in accounting matters. The Respondent then requested an adjournment for the purpose of having an impartial certified public accountant study the records and present a professional analysis of the operations of the body shop, and for this reason the hearing was continued for about 3 weeks.

At the resumed hearing the Respondent called Charles Petrics, a practicing certified public accountant. Petrics was Bornheimer's employer before the latter became full-time bookkeeper for the Respondent. Petrics has also for some years been outside auditor and accountant for the Company, preparing annual reports for it. His summary analysis of the body shop operations for the 8-month period was received in evidence; unlike Bornheimer's it ends with a loss picture of \$4,339.

Before the close of the hearing Aronson, for the General Counsel, checked some of the figures appearing on Petrics' report against the original records, and in consequence the following facts pertinent to the accountant's statement came to light.

The report starts with the total of sales made by the body shop; all work is performed pursuant to a written order on which is recorded the price paid by outsiders, by the used-car department, or by the new-car department. This figure appears as \$47,536. Against this are deducted three principal sums: (1) wages paid; (2) cost of parts purchased; and (3) general overhead expenses, some precise and some estimated, such as taxes, rent, insurance, office supplies, telephone, etc. These figures appear respectively as \$21,902, \$13,196, and \$16,177.

Petrics said that he reached his total sales figure by running a tape, or adding the individual sales appearing on the original order sheets contained in the Company's order book. These sheets are printed with sequential numbers, dated successively and chronologically as the orders are made out, and were produced at the hearing in the bound folder which the accountant used. The first order is numbered 6414 and the last 6878. Petrics identified this as the source material he used to calculate the total gross business of the department. The General Counsel then showed, and the Respondent agreed, that seven numbered order sheets, included within the span of numbers starting with the beginning of January and ending with the end of August, were missing. No explanation was offered of what had become of these order sheets or what volume of sales they may have represented.

For each order sheet there is also a hard back, or carbon bearing the same printed number; these too are kept among the Respondent's records. In addition to the seven orders already mentioned as having disappeared, eight others were found missing from the numerical span covered by the period. In his search of the company records the General Counsel did find the related carbon copies of this second group; the additional sales reflected on them totals \$207. And finally, order number 6845 was also missing from the bound folder which Petrics used to reach his total. This one was found among other records of the Company both in its original and carbon copy; it is dated July 27, 1964, the amount of the sale appears as \$935, and across the face of the sheet is written "Void, see order 6905." In the later records, not included in the accountant's report, order number 6905 appears, and is also dated July 27, again for \$935, and marked "paid 9-23-64."

Clearly the most important figure appearing in the accountants report—the amount of business done by the body shop—is incorrect to the extent that additional sales were directly proved, and unreliable fundamentally apart from that precise error. Conceivably the seven orders of which no trace was found might have been canceled and never used. The significant point here is that there is no way of knowing; certainly the unexplained absence from the sales order book of eight transactions later discovered in carbon copy, precludes any assumption that the totally missing seven did not in fact also represent work done and paid for. I do not infer that orders were consciously extracted from the sales order book for purposes of deception. The inference most favorable to the Respondent must be that it does not keep accurate and reliable records. But the very purpose of having a certified public accountant make the study was to resolve with finality and certainty the very question whether the body shop was or was not losing money.

As to the single sale for \$935 made in July but not included in the report, the Respondent explains it by the fact, with which the General Counsel agreed, that there are repair jobs which, because of delays encountered in obtaining parts, cannot fairly be credited entirely to only part of the period between date of order and the date of delivery and payment. No doubt some work on this one job was performed in the body shop after August 31, and paid for in September salaries not reflected in the accountants report. But if this is so, it follows that there were sales made in December of 1963, recorded in orders numbered before the sequence of numbers starting on January 1, not included in the total sales figure used by the accountant, but for which work was performed in January and paid for in January salaries, all of which are included in the reported cost of operating the body shop during the examined period. If, because of the nature of auto-body-shop operations, there is an inevitable fuzz at both ends of any fixed period in a financial report of this kind, as a minimum the sale reflected in order number 6845 should have been included here. And again, the fact that the Respondent chose to reexecute this one order at the time of payment instead of leaving it, like all the rest, at time of sale, casts a cloud upon both its records and the accountant's report.

There is more in Petrics' testimony that raises questions on the accuracy of his report. An important figure in his summary statement of operations is intended to reflect total labor sales, and appears as \$29,009. Confronted with other records of

the Respondent, including certain monthly reports prepared for the Ford Motor Company, Petrics admitted that those records show sales of labor to the body shop as \$23,302 from retail customer repairs, \$70 for service-car repairs, \$5,628 for used-car repairs, and \$2,401 for new-car warranty work—a total of \$31,401. Asked to explain this significant difference of \$2,400, which, if accurate, would alone offset more than half the asserted loss over the 8-month period, all he could say was: "I just can't account for it."

Of lesser significance, perhaps, but equally relevant to the question of profit or loss in the department, is the fact, also conceded by Petrics, that whereas outside customers of this body shop like all others in the industry, pay \$6 per hour for labor, the Respondent credits its shop only \$5 per hour for work performed on its own cars, new or used, and that for all parts purchased from its own parts department only 10 percent above cost is charged. Lastly, Petrics admitted another inaccuracy in his report. He said that the figure \$18,526 as the total of parts and accessory sales to the body shop did not include new-car parts sold to the department.

#### E. *Conclusion on the record as a whole*

The assertion that the body shop was losing money has not been established by probative evidence. The question presented, however, is not that one; nor is it whether or not the Respondent has proved affirmatively that such was its reason for discharging the five employees. As it must always be, the issue remains whether the preponderance of the substantial evidence on the record as a whole supports the basic complaint allegation that the true motivation was to curb the employees' union activities.

Whatever the financial operation of the body shop may have been the Respondent was at all times aware of them. Kosko admitted that the Company's regular monthly reports "show you whether the departments are making money or losing money." Bornheimer testified: "Every month I review all the departments, generally stating what the factors are and whether their profit margin is good, bad or indifferent." No complaint of money loss had ever been voiced to any of the employees, nor to their foreman. More than once each of the employees had been told the body shop was doing well, even carrying the truck shop, another operation of the department.

Despite the knowledge he must have had based upon monthly reports (which were not placed in evidence) General Manager Kosko said that what provoked him into suspecting the body shop was not any thought that it was losing money, but the fact that it was always too busy to receive more work when he needed to have it done.<sup>2</sup> He testified that he therefore said to himself: "Well, son of a gun, if they are so blasted busy down there they better show a pretty healthy financial picture, because if they are not making it now, they're never going to make it." Kosko then went on to say that when he learned, several weeks before September 25, that the shop was running at a loss, the Respondent decided to close it permanently for that reason. But when, for the first time, he informed the employees of his decision, he did not quite state the reason that way. He told them "the body shop is not making money"; he said nothing about losing any, and, of course, resumption of the department only 2 weeks later—assertedly "for convenience"—suggests strongly that nothing had ever really changed in the total situation except appearance, for the first time, of the decision of the employees to be represented by the Union in collective bargaining.

Manager Kosko was not a convincing witness. As principal operator of the Respondent's business he unquestionably knew the ownership relationship between the Boro Motors, Inc., and the A & K body shop. His repeated answer when asked why A & K had closed, was that it was "headed for discontinuance." This is only one example of his evasive attitude on the witness stand. Despite his knowledge of the pertinent facts, and his admission that what work was done at A & K was essential to the Respondent's successful business operations, he repeated that all that company's employees were taken on by the Respondent "for compassion." Again pressed for why Denegelegi who, according to Kosco, had only been employed by the Respondent for 3 years, was paid 3 weeks' vacation, he repeated the same "for compassion" phrase. His testimony lacked candor. He said he did not know who told the five employees of A & K to come to work for Boro Motors. He pretended not to know whether Denegelegi had received 3 weeks' vacation; he said "the girl" would know.

<sup>2</sup> If the report of the certified public accountant can be relied upon it means that for the single month of January 1964 the body shop lost \$2,145. Apparently this fact did not disturb Kosko at the time.

I find, on the record in its entirety, that by discharging the five employees of the body shop on September 25, 1964, the Respondent discriminated against them in their employment in violation of Section 8(a)(1) and (3) of the Act.

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

The activities of the Respondent set out in section III, above, occurring in connection with the operations of the Respondent set out 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 obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that the Respondent has committed certain unfair labor practices, I shall recommend that it be ordered to cease and desist from such conduct and to take certain affirmative action designed to dissipate the effect thereof. Hartman, Nixon, and Griesheimer, who were illegally discharged on September 25, have been returned to their regular employment; there is no contention that their reinstatement at that time was short of full and complete restoration to their prior employment. Therefore there is no occasion to require a reinstatement order for them. Dengelegi and Zorzi were still in discharged status at the time of the hearing, and therefore the Respondent must be ordered to reinstate them to their former employment. Moreover, all five of the employees must be made whole for any loss of earnings they may have suffered in consequence of the illegal discharges. The Respondent must also be ordered to cease and desist from hereafter interrogating employees, in a coercive manner, concerning their union activities, and from creating the impression that the Respondent is surveilling their union activities. In view of the nature of the unfair labor practices committed, the commission of similar and other unfair labor practices reasonably may be anticipated. I shall therefore recommend that the Respondent be ordered to cease and desist from in any manner infringing upon the rights guaranteed to its employees by 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 within the meaning of Section (2) of the Act.
2. The Union is a labor organization within the meaning of Section (2)(5) of the Act.
3. By discharging Robert Hartman, Benjamin Nixon, Louis Dengelegi, George Griesheimer, and Reno Zorzi on September 25, 1964, 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 foregoing conduct, by interrogating employees concerning their union activities, by telling employees that they are being surveilled in their union activities, the Respondent has interfered with, restrained, and coerced employees in their rights guaranteed in Section 7 of the Act, and thereby has engaged in and is engaging 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 Boro Motors, Inc., Metuchen, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
  - (a) Discharging or otherwise discriminating against employees because of their exercise of their right to self-organization or to join labor organizations.
  - (b) Interrogating employees concerning their union activities, or creating the impression that they are being surveilled in their union activities.
  - (c) In any other manner interfering with, restraining, or coercing employees in the exercise of rights to self-organization, to form labor organizations, to join or assist District No. 47, International Association of Machinists, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act, or to refrain from any or all such activities.

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

(a) Offer to Louis Dengelegi and Reno Zorzi immediate and full reinstatement to their former or substantially equivalent position, without prejudice to their seniority or other rights and privileges previously enjoyed.

(b) Make whole George Griesheimer, Robert Hartman, Benjamin Nixon, Louis Dengelegi, and Reno Zorzi for any loss of pay they may have suffered by reason of the discrimination against them, with interest at the rate of 6 percent per annum on any amount due.

(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 records necessary to analyze the amount of backpay due under the terms of this Recommended Order.

(d) Post at its place of business at Metuchen, New Jersey, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for Region 22, shall, after being duly signed by the Respondents representative, be posted by Respondent immediately upon receipt thereof and be maintained by it 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.

(e) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Decision, what steps the Respondent has taken to comply herewith.<sup>4</sup>

<sup>3</sup> 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".

<sup>4</sup> If this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 22, 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 our employees that:

WE WILL NOT discourage membership by any of our employees in District No. 47, International Association of Machinist, AFL-CIO, or in any other labor organization, by discharging or otherwise discriminating against employees in regard to their hire or tenure of employment, or any other term or condition of employment.

WE WILL offer Louis Dengelegi and Reno Zorzi immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

WE WILL make whole George Griesheimer, Robert Hartman, Benjamin Nixon, Louis Dengelegi, and Reno Zorzi for any loss of pay they may have suffered as a result of the discrimination against them.

WE WILL NOT interrogate our employees concerning their union activities, tell them that their union activities are being surveilled, or in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist any 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.

All our employees are free to become or remain or to refrain from becoming or remaining, members of any labor organization.

BORO MOTORS, INC.,  
Employer.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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.<sup>1</sup>

<sup>1</sup> 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.