

Director for Region 21, after being duly signed by an authorized representative of the Respondent, shall be posted by the 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.

(f) Notify the Regional Director for Region 21, in writing, within 20 days from the receipt of this Decision, what steps it has taken to comply herewith.²⁵

²⁵ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Decision, what steps 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 question our employees concerning their membership in or activities on behalf of Cabinet Makers & Millmen Union, Local 721, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, or any other union.

WE WILL NOT threaten our employees with loss of their jobs or take any other action against them if they elect to have a union represent them or if they join or assist a union.

WE WILL NOT promise to give a wage increase to any employee for the purpose of influencing him to accept or reject a union.

WE WILL NOT threaten to close the plant if the employees select a union to represent them.

WE WILL NOT interfere with any election conducted by the National Labor Relations Board.

WE WILL, if we have not already done so, immediately offer to Charlie Powell and to Clipper Duckworth the job each held before he was terminated, or a job like it, without loss of seniority or any other rights and privileges, and we will give each of them whatever backpay he has lost.

WE WILL bargain, upon request, with Cabinet Makers & Millmen Union, Local 721, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, as the representative of our employees.

Our employees have the right to join or assist, or to refrain from joining or assisting, any union.

WE WILL NOT in any manner interfere with our employees in exercising these rights.

WESTERN SAW MANUFACTURERS, 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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 849 South Broadway, Los Angeles, California, Telephone No. 688-5229.

A & A Maintenance Corporation and Renny Rose and Vincent Gucci. *Cases Nos. 2-CA-10491 and 2-CA-10491-2. December 7, 1965*

DECISION AND ORDER

On September 17, 1965, Trial Examiner Paul Bisgyer issued his Decision in the above-entitled proceeding, finding that the Respondent
155 NLRB No. 127.

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 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 these cases to a three-member panel [Chairman McCulloch and Members Brown and Zagoria].

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 Respondent's exceptions and brief, and the entire record in these cases, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner.

[The Board adopted the Trial Examiner's Recommended Order.]

¹The Respondent, in its exceptions and brief, disputes the Trial Examiner's credibility findings. It is the Board's policy, however, not to overrule a Trial Examiner's resolutions with respect to credibility unless, as is not the case here, the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F. 2d 362 (C.A. 3).

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding was heard before Trial Examiner Paul Bisgyer on June 9, 1965, in New York, New York, on the consolidated complaint of the General Counsel¹ and the answer of A & A Maintenance Corporation, herein called the Respondent. The question presented for decision is whether the Respondent, during the organizational campaign of Taxi Drivers Organizing Committee, AFL-CIO, herein called the Union, interfered with, restrained, and coerced employees in the exercise of their statutory rights and thereby violated Section 8(a)(1) of the National Labor Relations Act, as amended. At the close of the hearing, the General Counsel and the Respondent argued their positions orally and waived filing of briefs: The Respondent's motion to dismiss the consolidated complaint herein, on which ruling was reserved, is hereby denied in accordance with my findings set forth below.

Upon the entire record, and from my observation of the demeanor of the witnesses, and with due consideration given to the arguments advanced by the parties, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a New York corporation, and its 20 affiliated companies named in the consolidated complaint, are engaged in New York City as a single, integrated business enterprise, furnishing taxicabs and related services to the public. In the conduct of their business, the Respondent and its affiliated companies annually derive revenues in excess of \$500,000. They also annually purchase taxicabs, automobile parts, accessories, and other materials valued in excess of \$50,000 from enterprises located in New York State which, in turn, receive such goods from outside that State. The Respondent admits, and I find, that it is, and at all material times has been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act. I further find that it will effectuate the policies of the Act for the Board to assert jurisdiction herein.

¹The charge in Case No. 2-CA-10491 was filed on February 3, 1965, and a copy was served by registered mail on the Respondent the next day. The charge in Case No. 2-CA-10491-2 was filed on February 8, 1965, and a copy was similarly served on the Respondent the same day.

II. THE LABOR ORGANIZATION INVOLVED

The evidence plainly reveals that the Union is an organization in which employees participate and was formed for the purpose of improving the terms and conditions of employment of employees in the taxicab industry in New York City, by negotiating collective-bargaining agreements with their employers. Accordingly, I find, contrary to the Respondent's contention, that the Union is a labor organization within the meaning of Section 2(5) of the Act.²

III. THE ALLEGED UNFAIR LABOR PRACTICES

The consolidated complaint alleges that Stanley Wissak, the Respondent's president, at various times between September 1964 and March 1965 unlawfully interrogated employees concerning their union membership, sympathies, and activities, and threatened them with discharge and other reprisals for joining or supporting the Union which was then engaged in organizing the Respondent's employees. The evidence is clear that such a drive was in progress at all times relevant herein and, in fact, a shop committee of employees was functioning at the Respondent's garage in furtherance of these organizational efforts. As is not unusual in cases of this type, there is a serious conflict in testimony whether Wissak had engaged in the alleged conduct.

Vincent Gueci, formerly employed by the Respondent as a cabdriver, testified that he joined the Union about November 1964 and a few weeks later became a member of the shop committee and actively engaged in soliciting union memberships. He further testified that the day after he became a committeeman and reported for work he was greeted by Wissak with a remark that he understood that Gueci was a good union man. According to Gueci, he responded in the affirmative and walked away. A few days or a week later, Gueci testified, Wissak summoned him to his office and, in the presence of Manager Hyman Hershkowitz and the bookkeeper, expressed a fondness for Gueci, asked him what the Union was going to do for him and why doesn't he quit that organization, and stated, in effect, that otherwise they would not get along too well with each other. Gueci testified that his answer to Wissak was that whatever he gets through the Union was more than he then had and that he was going to remain in that organization and work with it. Gueci then left the office. Gueci's pretrial affidavit previously given to a Board agent, with which he was confronted on cross-examination, is substantially in accord with this testimony, except that part in which he stated that he and Wissak were not going to get along too well with each other.³ This latter assertion, however, appears to be more of a conclusion that Gueci drew from Wissak's indicated displeasure with Gueci's union adherence.

Gueci also gave testimony concerning Wissak's daily inspection of his cab which Wissak had never done before he joined the Union. Gueci testified that every day before he drove his cab out of the terminal Wissak would carefully examine his cab and warn him to watch himself and not get a scratch on the cab or he would be finished.

Ralph Talavere, another former cabdriver for the Respondent, related his experience with Wissak. Talavere, whose memory for dates was rather poor, testified that he joined the Union probably in September 1964 and sometime thereafter replaced employee Renny Rose as a shop committeeman following the latter's discharge,⁴ and became active in the Union's organizational drive. He further testified that: In one conversation Wissak inquired whether he had joined the Union and that he answered that he had;⁵ Wissak, in the presence of employees, would

² The Board so held in a prior case involving the Respondent. *A & A Maintenance Corp.*, 152 NLRB 1617.

³ Gueci's pretrial affidavit which Gueci testified was the more accurate version of this conversation, states, as follows:

Wissak told me, what are you fooling around with the Union, what can they give you? I said, even if they give me one benefit is more than I have now. I said, what are you worried about, you have a Board of Trade, why can't we have an organization? He said, you know, I like you. Why don't you do me a favor and quit? I said, Why should I quit, I like it here, and I walked out.

⁴ The charge filed in this case by Renny Rose indicates that he was discharged about January 18, 1965. The complaint, however, does not allege that his discharge was discriminatory.

⁵ Talavere also testified that Wissak had prodded him into exhibiting his union card. This incident of exhibiting his card was not included in his pretrial affidavit because, as Talavere testified, he did not think it was sufficiently important.

repeatedly call him an "old man," suggest that he "give up" and stop driving a cab, chide him that he needed oxygen to finish his shift, refer to Talavere's union membership⁶ and inquire why the Union would want an old man like him; every day Wissak would inspect Talavere's assigned cab to make "sure there were no scratches" on it; before Talavere joined the Union, Wissak never made the above remarks or subjected Talavere's cab to such scrutiny; and he (Talavere) quit his job because of the foregoing abusive treatment. Frank Paupeck, one of the Respondent's cabdrivers, and Salvatore Bellasi, a former employee, corroborated Talavere's testimony concerning Wissak's frequent disparaging references to Talavere's age and Wissak's inspection of Talavere's cab on several occasions.⁷

Talavere also testified that one day Wissak told him that if he (Wissak) got rid of him, Gucci, Paupeck, and Rose, he would have a peaceful garage. The named individuals were members of the shop committee and were involved in the Union's organizational campaign. When questioned under cross-examination by the Respondent's counsel whether Wissak ever promised him anything if he did not join the Union, Talavere recalled that Wissak told him that, if he were not a union man, the Respondent would give him a better job. Talavere testified that he rejected this offer. His pretrial affidavit, however, omits any reference to such statements by Wissak. In explanation for the omission, Talavere testified that the Board agent did not ask him this question and that the incident only came to mind during his cross-examination.

Frank Paupeck, another cabdriver still in the Respondent's employ, gave the following account of a conversation he had with Wissak. One day in November 1964, while Paupeck was on his way to work, he was approached across the street from the terminal by Renny Rose to join the Union. Paupeck agreed and signed a pledge card. When Paupeck was about to enter the garage, he met Wissak who inquired what Rose had asked him. Paupeck replied that Rose asked him to join the Union and that he did. Wissak thereupon retorted that "Of all the people, you joined the union—you are going to suffer." This ended the encounter and Paupeck walked away.

Paupeck also testified that Wissak, for a period of a month or two, would walk around his cab, examine it, and laugh before he (Paupeck) drove away on his tour of duty. He further testified that Wissak had never done this before he became a union member. Paupeck, who also became a member of the shop committee about the close of December 1964, gave additional testimony that in that month or January 1965, Wissak called him aside and told him that if he got rid of him, Talavere, and Gucci he would have peace in his garage. However, he admitted on cross-examination that he did not mention this incident in his pretrial affidavit which a Board agent prepared.

According to Salvatore Bellasi, a former cabdriver for the Respondent, he, too, was interrogated by Wissak concerning his union membership shortly after he joined in November 1964. Bellasi testified that when he answered that he was a member of the Union, Wissak expressed his disapproval because the union was no good and unnecessary. Bellasi also testified that Wissak questioned other drivers about their union interest. Although Bellasi conceded that his pretrial affidavit does not explicitly refer to such interrogation of other drivers, he testified that the thought is contained in the statement in his affidavit that "I have noticed that Wissak has been harassing Talavere, myself, Paupeck, Finneroff, Gucci and Rose and several others whose names I do not know." This is an apparent reference to other employees of the Respondent.

Bellasi further testified to a conversation he had with Wissak in which Wissak sharply criticized Rose, whom he regarded as the successor to a former employee, John Murphy, as the union leader in the garage. According to Bellasi, Wissak told him that, just as he had gotten rid of Murphy, he would get rid of Rose. Bellasi also alluded to an occasion when he gave Wissak a lift in his cab, at which time Wissak stated that he was going to get rid of Rose if it was the last thing he did. It is not clear whether this testimony related to the same incident in which Murphy's name was mentioned.

⁶ According to Talavere, when Wissak referred to Talavere's union membership, Talavere replied that it was Wissak's treatment of him that "bred" his interest in the Union.

⁷ Apparently to show that Paupeck and Bellasi could not witness the above incidents, the Respondent produced Manager Hershkovitz who testified that Talavere was normally dispatched from the terminal between 5 and 5:30 p.m., Paupeck between 3:30 and 4 p.m., and Bellasi between 4:15 and 4:45 p.m. However, Hershkovitz also conceded that drivers normally report for work earlier than the starting time.

Wissak categorically denied having ever had any of the above conversations to which the General Counsel's witnesses testified. With respect to one such conversation, recounted by witness Gucci, the Respondent's Manager Hershkowitz contradicted Gucci's testimony that he (Hershkowitz) was present. Wissak also testified that he never questioned employees concerning their union membership or activities or otherwise discussed that subject with them or made any threats or promises to discourage union membership or activities. Indeed, on cross-examination, Wissak expressed a complete indifference to the Union's efforts to organize the Respondent's employees or even to ascertain whether the Union was involved in the 1-day work stoppage the past New Year's Day. Regarding his inspection of the cabs driven by Gucci, Talavere, and Paupeck, Wissak testified that it has been his uniform practice to inspect the general condition of all of the Company's cabs at least once or twice a week.

From a careful consideration of the testimony and demeanor of all the witnesses, I am not persuaded, as the denials of the Respondent's witnesses would have me believe, that Gucci, Talavere, Paupeck, and Bellassi deliberately concocted conversations with the Respondent's president, Wissak, and imputed acts to him which had never occurred. Gucci, Talavere, Paupeck, and Bellassi impressed me as honest and sincere witnesses who endeavored to tell the truth as they recalled the events. While their recollection for details and dates may have suffered from the passing of time, their testimony, in essence, had the ring of truth. On the other hand, Wissak's contradictory testimony appeared to me to be lacking in candor, especially his purported complete indifference to the Union's organizational drive. Indeed, it is even more difficult to believe that the General Counsel's witnesses would fabricate incidents if Wissak's professed disinterested attitude toward the Union were a fact. I similarly reject Manager Hershkowitz' denial that he was present during the Wissak-Gucci conversation. If such a conversation had never taken place, it is hardly likely that other persons would be identified as being present.

Accordingly, I find, on the basis of the credited testimony, that: A day after Gucci became a member of the union shop committee Wissak apprised him that he was aware that Gucci was a good union man; about a week later, Wissak impertuned Gucci to quit the Union, suggesting that the Union could do nothing for him; after Gucci joined the Union, but never before, he regularly inspected Gucci's assigned cab with the warning that he should watch himself and not get a scratch on it or he would be finished; Wissak questioned Talavere as to whether he joined the Union; he continuously harassed Talavere after he became a union member by making disparaging references to his age and subjecting his cab to careful scrutiny for scratches; he told Talavere that if he got rid of him, Gucci, Paupeck, and Rose, all of whom were shop committee members and were active on behalf of the Union, he would have a peaceful garage;⁸ Wissak inquired of Paupeck, immediately after Paupeck was solicited by Rose to join the Union, what Rose had asked him and after Paupeck informed Wissak of the solicitation and that he had joined, Wissak expressed his disapproval of Paupeck's action and warned that he would suffer as a result; Wissak thereafter for a period of a month or two made it a practice, not previously engaged in, to walk around Paupeck's cab and laugh before Paupeck drove it away on his tour of duty;⁹ Wissak interrogated Bellassi and other employees concerning their union membership; and finally, he stated to Bellassi that he would get rid of Rose, a union leader, as he had gotten rid of Murphy, another union advocate. I find that Wissak's foregoing activities had the manifest purpose of discouraging the Respondent's employees from joining, or maintaining their membership in, the Union or participating in the Union's organizational campaign. Plainly, under settled law, such conduct, whether viewed individually or in its totality, was more than idle inquiries or the exercise of free speech but actually constituted interference, restraint, and coercion of employees, which Section 8(a)(1) of the Act prohibits.¹⁰

⁸ I make no finding based on Talavere's testimony that Wissak also told him that he could have a better job if he were not a union man since Talavere's pretrial affidavit does not mention this incident.

⁹ I find it unnecessary to determine whether Wissak also stated to Paupeck that if he got rid of him, Talavere, and Gucci, he would have peace in his garage. This statement was not included in Talavere's pretrial statement, and an affirmative finding would add nothing to the order hereinafter recommended.

¹⁰ I note that the Board on June 16, 1965, issued its Decision and Order in *A & A Maintenance Corp.*, 152 NLRB 1617, finding that the Respondent's president, Wissak, had engaged in other violations of Section 8(a)(1) of the Act.

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 operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and its free flow.

V. THE REMEDY

Pursuant to Section 10(c) of the Act, I recommend that the Respondent cease and desist from engaging in the unfair labor practices found and in like and related conduct and take the affirmative action hereinafter provided which is designed to effectuate the policies 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 engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By engaging in the conduct recited in section III, above, the Respondent has interfered with, restrained, and coerced employees in the exercise of their statutory rights within the meaning of Section 8(a) (1) of the Act.
4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon 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, I recommend that the Respondent, A & A Maintenance Corporation, New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:
 - (a) Coercively interrogating employees concerning their union membership, sympathies, and activities and those of other employees; threatening to discharge or take other action against employees in reprisal for their union membership, sympathies and activities; and harassing employees for the purpose of discouraging union membership,
 - (b) 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, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a) (3) of the Act.
2. Take the following affirmative action which I find will effectuate the policies of the Act:
 - (a) Post at its terminal in New York, New York, copies of the attached notice marked "Appendix."¹¹ Copies of said notice, to be furnished by the Regional Director for Region 2, shall, after being duly signed by the Respondent's representative, be posted by the 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.

¹¹ In the event that this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order 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."

(b) Notify the Regional Director for Region 2, in writing, within 20 days from the date of receipt of the Trial Examiner's Decision as to what steps the Respondent has taken to comply herewith.¹²

¹² 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, as to 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 coercively interrogate employees concerning their union membership, sympathies, and activities or those of other employees; or threaten to discharge or take other action against employees in reprisal for their union membership, sympathies, and activities; or harass employees for the purpose of discouraging union membership.

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 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, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) (3) of the Act.

A & A MAINTENANCE CORPORATION,
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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Fifth Floor, Squibb Building, 745 Fifth Avenue, New York, New York, Telephone No. 751-5500.

The J. L. Hudson Company and Building Service Employees' International Union, Local No. 79, AFL-CIO, Petitioner and Local Union No. 58, International Brotherhood of Electrical Workers, AFL-CIO, Petitioner and Local Union No. 547, International Union of Operating Engineers, AFL-CIO, Petitioner and Painters District Council No. 22, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO, Petitioner and Carpenters Local 337, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Petitioner. Cases Nos. 7-RC-6692, 7-RC-6731, 7-RC-6749, 7-RC-6750, and 7-RC-6751. December 7, 1965

DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held
155 NLRB No. 133.