

Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify said Regional Director, in writing, within 20 days from the date of receipt of this Decision, what steps Respondents have taken to comply herewith.¹³

¹³ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read, "Notify said Regional Director, in writing, within 10 days of this Order, what steps the Respondents have taken to comply herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a 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 promulgate or maintain in effect any rule prohibiting employees during nonworking time from engaging in union solicitation or from distributing union literature in nonselling areas of our premises .

WE WILL NOT question our employees concerning their union sympathies or attitudes.

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

PUEBLO SUPERMARKETS, INC. AND PUEBLO
SUPERMARKETS OF ST. THOMAS, 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, P.O. Box 11007, Fernandez Juncos Station, Santurce, Puerto Rico, Telephone No. 724-7171.

Young Motor Truck Service, Inc. and Local 653, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case No. 1-CA-4433. January 7, 1966*

DECISION AND ORDER

On July 14, 1964, Trial Examiner James V. Constantine 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. He further found that the Respondent had not engaged in other unfair labor practices alleged in the complaint. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a supporting brief. The Respondent did not except to the Trial Examiner's Decision.¹

¹ The Respondent requested, and was granted, an extension of time to file exceptions and a brief, but did not do so.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner only insofar as they are consistent with the Decision herein.

1. The Trial Examiner found that the Respondent violated Section 8(a) (5) and (1) of the Act by refusing to bargain collectively with Local 653, the statutory representative of its Taunton employees, about the effects on such employees of the decision to sell the major part of its business, its oil truck operation. The Trial Examiner accordingly recommended that the Respondent be ordered (1) to cease and desist from refusing to bargain as to the effects of any decision to sell one or more truck operations within the appropriate unit represented by Local 653, and (2) affirmatively to bargain with Local 653 on request with respect thereto, and embody in a signed contract any understanding reached.

The Respondent filed no exceptions. Accordingly, we adopt the Trial Examiner's finding and recommendation *pro forma*.

2. The Trial Examiner further found that the Respondent did not violate the Act by certain economically motivated unilateral actions: (1) deciding to sell, and selling, the oil truck operation; and (2) relocating the minor sand truck operation at another terminal and closing the Taunton terminal pending continued efforts to sell the sand truck operation. In making these findings, the Trial Examiner made certain erroneous interpretations of the Act, such as that Section 8(a) (5) does not impose any obligation on an employer to refrain from unilateral action with respect to a proposed sale or transfer of his business.

The General Counsel excepts. While in appropriate circumstances we would find merit in these exceptions,² we note that the Trial Examiner here found as a basic fact, with sufficient record support and contrary to the General Counsel's assertions, that the Respondent *did* advise Local 653, in September 1963 and thereafter, that its entire Taunton business was for sale. Neither the Trial Examiner's finding nor the record indicates any request by Local 653 to bargain with respect to the proposed discontinuance by the Respondent of its Taunton operation. On the contrary, Local 653 apparently acquiesced

² *Fibreboard Paper Products Corporation*, 138 NLRB 500, *aff'd*, 379 US 203; *New York Mirror, Division of the Hearst Corporation*, 151 NLRB 834; *Standard Handkerchief Co., Inc.*, 151 NLRB 15; *Apea Linen Service of Columbus, Inc.*, 151 NLRB 305; *International Shoe Company*, 151 NLRB 693; and *Garwin Corporation, et al.*, 153 NLRB 664.

in the closing, and restricted its bargaining to the purchaser in an effort to obtain employment for the Respondent's Taunton employees who would be displaced by the impending sale.³

In these circumstances we find that the General Counsel's exceptions, insofar as they relate to the Trial Examiner's ultimate findings and conclusions, are not supported by the record. It follows that there is no occasion to consider the remedy which the General Counsel asserts would be appropriate if the Respondent had committed the alleged, but unproved, violations.

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

³ We note, moreover, that notwithstanding the Respondent's contention that it offered to bargain about the effects of the transfer of the sand truck operation, the General Counsel failed to meet his burden of establishing that the Respondent refused so to bargain.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

On a charge filed on January 3, and an amended charge filed on February 26, 1964, by Local 653, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, herein called the Union or Local 653, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 1 (Boston, Massachusetts), issued a complaint dated March 2, 1964. Said complaint, naming Young Truck Service, Inc., as Respondent, in substance alleges the commission of unfair labor practices contravening Section 8(a)(1) and (5), and affecting commerce as defined in Section 2(6) and (7), of the National Labor Relations Act, as amended, herein called the Act. Respondent has answered admitting some facts but putting in issue the unfair labor practices.

Pursuant to due notice, this case came on to be heard and was tried before Trial Examiner James V. Constantine on April 2, 1964, at Taunton, Massachusetts. All parties had full opportunity to adduce evidence, examine and cross-examine witnesses, submit briefs, and offer oral argument. Briefs have been received from Respondent and the General Counsel.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Massachusetts corporation, is engaged as a motor carrier in the business of transporting goods, products, and commodities. Annually it receives directly from points outside the Commonwealth of Massachusetts trucks, trailers, and materials valued in excess of \$50,000. During 1963 it performed services valued in excess of \$50,000 in States other than Massachusetts.

I find that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction over it.

II. THE LABOR ORGANIZATION INVOLVED

Local 653 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. Background

From 1949 until the events giving rise to the complaint in this case, Respondent was engaged as a motor carrier in the business of transporting general commodities, principally petroleum products and sand, with a terminal at Taunton, Massachusetts. For the last 15 years Respondent has recognized and bargained with Local 653 as the exclusive collective-bargaining representative of employees in a unit composed of "all drivers employed by Respondent at its Taunton, Massachusetts terminal, exclusive

of office clerical employees, professional employees, guards, and all supervisors as defined in Section 2(11) of the Act." I find said unit to be appropriate for the purposes of collective bargaining under both Sections 9(a) and 8(a) of the Act. Composition of the unit is not an issue in the case. From 1928 to 1949 the business had been operated as a sole proprietorship by Curtis H. Young, Respondent's president and treasurer, who incorporated the business and transferred it to Respondent on January 2, 1949. From about 1944 to 1949, Curtis Young also recognized and bargained with Local 653 for the employees in the unit described above.

As of December 1963, Respondent employed 13 drivers. The latest collective-bargaining contract between Respondent and Local 653 covering these drivers were executed for the period from November 1, 1961, to October 31, 1964. It contains, among other things, a provision that if Respondent contemplates opening or closing any terminal within the jurisdiction of Local 653, no such changes shall become effective until the details, "which are properly the concern of" Local 653, "have been arranged in conference with the Union." See article I(c).

B. *The alleged refusal to bargain*

1. The sale of the oil truck operation

That part of Respondent's business transporting petroleum products (such as oil, asphalt, and chemicals) is known as its oil truck operation. During 1963, Respondent negotiated with several concerns to sell its business, but without success. President Young testified that the fact that the business was for sale was common knowledge in the industry. However, sometime in September 1963, Respondent began negotiations with D. J. Cronin, Inc., East Providence, Rhode Island, to sell Cronin its oil truck operation. These negotiations culminated in an agreement, signed on November 1, 1963, by Respondent and Cronin (which is also engaged in the business of transporting commodities) whereby Cronin agreed to buy Respondent's oil truck operation. Because this purchase and sale agreement required the approval of the Interstate Commerce Commission before the transfer of the oil truck operation could become effective, Respondent and Cronin on the same day also signed a "temporary lease arrangement and application for sale" pending such I.C.C. approval. About the same time Respondent applied to I.C.C. for permanent approval of the sale and also for temporary approval pending final disposition of the application for permanent approval.

The foregoing temporary lease arrangement provided *inter alia* that as soon as temporary I.C.C. approval of the sale was granted, Cronin would take over the oil truck operation of Respondent, and the lease would then become effective. All 49 pieces of equipment owned by Respondent, 10 tractors, 37 trailers, 1 pickup truck, and 1 pleasure car, were affected thereby. Temporary approval of the sale was given by the I.C.C. on December 23, 1963. Permanent approval had not been granted as of the date of the hearing herein on April 2, 1964.

As a result of this temporary approval, Respondent on December 31, 1963, transferred its oil trucks and equipment to Cronin in East Providence. This was done because Respondent lacked the funds to pay for insurance and registration fees due on January 1, 1964. Thus this equipment was insured and registered by Cronin although title, as distinguished from possession, had not passed to it. Cronin commenced the oil truck operation itself on January 2, 1964. The sale of the oil truck operation necessitated the layoff of Respondent's drivers affected thereby. They were terminated on December 31, 1963.

At no time prior to November 1, 1963, did Respondent inform Local 653 of the foregoing negotiations or the above purchase and sale agreements made with Cronin, although Curtis Young saw or spoke to representatives of Local 653 during that period. And between November 1 and December 31, 1963, Respondent did not inform Local 653 of the sale of the oil truck operation to Cronin although Curtis Young saw or spoke to representatives of Local 653 in that period.

At the trial Respondent introduced evidence to show that it was losing money on its operations, that its application for I.C.C. approval to sell to Cronin disclosed such losses, that unless the sale was approved, bankruptcy and seizure of Respondent's assets as well as seizure of the assets of Mr. and Mrs. Curtis H. Young were imminent, and that Respondent is now insolvent. I credit this evidence. During the past 5 years, Curtis Young often complained to George O'Donnell, business agent for Local 653, that Respondent could not remain in business if nonunion competitors, who paid lower than union wages, underbid Respondent's tariffs. O'Donnell replied that his organization was "doing its best to bring these carriers in line."

In December 1962 Curtis Young also warned Henry Gross, secretary-treasurer of Local 653, that Respondent "couldn't operate under the conditions we were operating, and . . . would have to discontinue the operation" in 1963, thereby causing loss of employment to its drivers. Gross replied that he was going to put Respondent out of business and would have other jobs for the drivers who lost their jobs thereby. I do not credit the contradictory testimony of Gross.

On December 17, 1963, Cronin President and Treasurer Richard Cronin, accompanied by John T. Walsh, his counsel, met with Business Agent George O'Donnell and Charles Madeiros, business agent of Local 251 of the Teamsters. No representative of Respondent was present, and no one present was authorized to act for it. In fact, Respondent was ignorant of the meeting on December 17 until Richard Cronin several days later informed President Young of it. I find that Young's silence thereafter did not amount to ratification of what transpired at that meeting. This is so because I find that Young was not required to disavow that meeting to avoid any adverse consequences flowing therefrom. Said Local 251, located in Providence, Rhode Island, represents the employees of D. J. Cronin, Inc. The above mentioned purchase and sale agreement and the leases had already been signed. Walsh informed the union representatives that an application had been filed with I.C.C. to sell the oil truck operation of Respondent to D. J. Cronin, Inc., and that D. J. Cronin, Inc., had entered into an agreement with Respondent whereby, if temporary authority were given by I.C.C., D. J. Cronin, Inc., was to purchase certain equipment and operating rights of Respondent. These rights were described as transportation of petroleum products in Connecticut and Massachusetts and general commodities in Rhode Island. Walsh continued by stating that this meeting had been called to make sure that D. J. Cronin, Inc., would have no trouble with Local 251; to arrange, if possible, for some of Young's employees to be hired by D. J. Cronin, Inc.; and to ascertain whether these employees could transfer into Local 251. O'Donnell and Madeiros agreed to such transfer into Local 251.

During the meeting, O'Donnell obtained an oral agreement "in principle" from Richard Cronin that Cronin would honor seniority in hiring Respondent's drivers (except for "lemons") but subject to the greater seniority of two members of Local 251. O'Donnell testified that although Richard Cronin suggested that Respondent drivers report for interviews, O'Donnell opposed this as inconsistent with seniority (because Cronin, according to O'Donnell, knew the men), and that Cronin did not hire Young's drivers according to seniority. I make no finding on the testimony of the preceding sentence as it does not bear upon any issue in the case.

After some discussion of these matters, "it was left" that, when temporary authority by I.C.C. was granted (and the persons present saw no reason for its being denied) O'Donnell would either give D. J. Cronin, Inc., a list of Young's employees or arrange to make one available, and that D. J. Cronin, Inc., would hire therefrom those "who were suggested . . . if our local business agent had no objection." When Business Agent Madeiros stated he had no objection, Cronin asked him and O'Donnell to ascertain which employees of Respondent would be willing to move to Rhode Island and to notify Cronin of their names.

By Friday, December 27, 1963, Cronin had not heard from either O'Donnell or Madeiros. However, the I.C.C. had granted the temporary authority on December 23. So on December 27 Richard Cronin asked President Young to send a list of Respondent's drivers and their performance and accident records. From this list Cronin selected four men who, when offered positions by Cronin, accepted and were hired. However, they were taken on as new employees without any rights under Respondent's contract, as Cronin did not assume the collective-bargaining contract between Local 653 and Respondent.

Henry Gross, secretary-treasurer of Local 653, testified that he attended in January 1964 two meetings called by the Mediation Service of the Commonwealth of Massachusetts to settle, if possible, issues arising out of the sale to Cronin and the transfer of the sand truck terminal from Taunton to North Dighton. At these meetings Young did not discuss any of the issues as stated by Gross.¹ The issues as there put by Gross were 1964 vacations, a return of the sand truck terminal to Taunton, "to

¹ At the hearing I admitted *de hene*, and later struck on motion of the General Counsel, testimony that Curtis Young offered to bargain with Gross "concerning any issue that the Union had with the Company concerning the cessation of business and concerning the location of the sand operation in any particular locality." Since this offer was made in January 1964, after the actual transfers had occurred, this evidence did not show a willingness to bargain about the decision to make the transfers. Hence, the motion to strike was granted.

put the men on the sand trucks that belonged to Local 653," to pay sums due the Union for pension, health, and welfare plans, and to "put the men to work with" Cronin, as Young is said to have agreed, in order of seniority.

In December 1963 Respondent maintained a seniority list for all its drivers; there was no separate list for either the oil truck or sand truck drivers. This is because the drivers operated both kinds of trucks. The three men at present driving the sand trucks were not on the seniority list at all because they belonged to the Fall River local of the Teamsters. The Fall River local, rather than Local 653, has jurisdiction over North Dighton. Respondent since 1950 has been operating trucks also out of Fall River and has recognized the Fall River local of the Teamsters as the collective-bargaining agent of such drivers. However, some of Respondent's Taunton drivers who were terminated in December 1963 had considerable seniority over the three drivers now operating sand trucks out of North Dighton.

Respondent is also negotiating for the sale of the sand truck operation at the present time. But it has not discussed with or informed the Union about this, except that the Union now knows it from disclosure of such intent at the hearing.

In late September 1963 as a result of rumors conveyed to him by some of Respondent's drivers, Business Agent George O'Donnell of Local 653, telephoned Curtis Young, Respondent's president and treasurer. O'Donnell asked Young if Young was selling out. Young replied, "Have you got a million dollars? You want to buy the business? You know anybody that's got a lot of money?" On cross-examination O'Donnell testified that Young told him that the business was for sale but did not refer to any negotiations with D. J. Cronin, Inc. From then until December 17, 1963, O'Donnell called Young two or three times to ascertain whether Young was planning to sell Respondent's business; each time Young gave substantially the same answer as in September, i.e., that the business was for sale. I find, if material, that Local 653 was told that the business was for sale.

At a meeting held in January 1964 in the office of counsel for Respondent, at which several drivers were present, Henry Gross, secretary treasurer of Local 653, asked President Young of Respondent about both the cessation of the oil truck operation and the transfer to the North Dighton terminal of the sand truck terminal. At this time Young told Gross of the temporary lease agreement with Cronin and the application for I.C.C. approval of a permanent purchase of the oil truck operation by Cronin. Young referred to Respondent's financial condition in the course of the conversation.

Another meeting was held later in the month, with several drivers, Gross, and Curtis Young present. When Young asked Gross to specify "the issues" and the purpose of the meeting, Gross refused to disclose either the issues or such purpose because Business Agent O'Donnell, who was handling the situation and was more familiar with it, was out of town. However, Young again mentioned its agreement with Cronin and that Cronin had met with O'Donnell.

Five of Respondent's drivers are now employed by Cronin. They were hired under circumstances above described in connection with the meeting of December 17, 1963. As there noted, these drivers were taken on by Cronin as new employees without being given credit for their service while employed by Respondent.

2. The transfer of the sand truck operation terminal from Taunton to North Dighton

As a result of Cronin's acquiring the oil truck operation, Respondent was left with only its sand truck operation. It retained four tractors, four trailers, two trucks, and two station wagons therefor. On December 31, 1963, it employed on the latter operation one part-time and two full-time drivers. Formerly these three drove both oil and sand trucks. However, in 1963 three others (Porell, Dolan, and Mealey) "habitually" operated the sand trucks. These latter three were the "regular drivers" of the sand trucks in 1963. None was retained after the transfer to North Dighton. Porell and Dolan are now employed by D. J. Cronin, Inc.

On December 1, 1963, Respondent orally leased space in North Dighton, Massachusetts, for its sand truck operation. The landlord is Dighton Industries. This location is approximately 4 or 5 miles from the Taunton terminal. In late December 1963, Respondent moved its sand truck operation terminal from Taunton and Dighton to its North Dighton terminal. It appears from the record that for an undisclosed time prior to this, some of Respondent's sand trucks (and oil trucks also) were operating out of a terminal at Francis Garage on Route 138 in Dighton, Massachusetts.

The three drivers now assigned to drive sand trucks out of North Dighton had, prior to December 31, 1963, driven both oil and sand trucks. Two of them had been employed by Respondent for 13 years and the other had been so employed "off and on" since 1947 or 1948.

Between November 1 and December 31, 1963, Respondent did not inform Local 653 of the transfer of the sand truck operation to North Dighton or the decision to transfer.

At Taunton, Respondent's terminal was situated at 12 Grosvenor Street in a building about 340 feet long and 50 feet wide, to which was attached an 80 by 35 foot ell and two other "additions." This building, which is owned by the wife of Curtis H. Young subject to a mortgage in an undisclosed amount, is currently, and has been since December 1963, up for sale. The sand truck operation is also up for sale. Because of this, Respondent has avoided entering into a written lease of the North Dighton terminal.

C. Discussion and concluding findings

Respondent's mandatory obligation to bargain with Local 653 must be determined by an analysis of three sections of the Act. Section 8(a)(5) enjoins an employer "to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a)"; and Section 9(a) provides that majority representatives shall be the exclusive collective-bargaining agent "in respect to rates of pay, wages, hours, of employment, or other conditions of employment . . ." Section 8(d) is also involved as it defines "to bargain collectively." The question in the instant case is whether the sale to D. J. Cronin, Inc., or the transfer of the Taunton terminal to North Dighton, or both, were bargainable matters under Section 8(a)(5).

Preliminarily I find that Respondent did not, prior to deciding to sell the oil truck operation, notify Local 653 of or discuss with it the negotiations, the impending sale, or the sale of this branch of its business. It is true, and I find, that Local 653 learned from some of its members of rumors that Respondent was seeking to dispose of its business. But I further find that acquisition by Local 653 of such knowledge—if it may be characterized as knowledge—does not fulfill Respondent's duty to bargain, assuming such a duty is imposed on it as to the matters involved. It is also true that Curtis Young testified that Respondent's search for a buyer during 1963 was common knowledge in the industry. But I am unable to find that such common knowledge was conveyed to Local 653. Further, I find that, upon inquiry by Business Agent O'Donnell of Local 653, Respondent's President Young in effect told him that Respondent's business was for sale. But I further find that such reply did not discharge Respondent's statutory duty to bargain, if such a responsibility exists as to the subject matter under consideration. *Hartmann Luggage Company*, 145 NLRB 1572, is distinguishable. Likewise, I find that Respondent's liability to bargain, if any, was not satisfied by the meeting of December 17, 1963, at which Local 653 learned of the forthcoming cessation of the oil truck operation from Richard Cronin. This is because no one present at that meeting was authorized to represent or act on behalf of Respondent.

Also, I find as a preliminary or subsidiary fact that Respondent entertained no antiunion motives in the sale to Cronin and the transfer to North Dighton; that such sale and transfer were made in good faith as a matter of sound business judgment, and were not prompted by hostility to Local 653; and that the sale was made because it was economically unsound to continue in the business of transporting petroleum products and chemicals. Finally I find that the transfer of the sand truck terminal from Taunton to North Dighton was not motivated by hostility to Local 653; that it was made in good faith as a matter of business judgment; and that it was not intended to undermine or disparage Local 653 as the bargaining agent.

The issue thus has become a legal one, i.e., on the facts found above is an ultimate conclusion warranted that Respondent has refused to bargain collectively within the contemplation of Section 8(a)(5) and 8(d) of the Act. Analysis of the problem discloses two areas of inquiry: Whether Section 8(a)(5) was transgressed by (a) the failure to notify Local 653 of or to discuss or negotiate, the *decision* to sell the oil truck rights and the transfer of the location of the sand truck terminal, and (b) the failure to discuss or negotiate the *effects* of the foregoing decision upon the tenure of the employees and their terms and conditions of employment. These two areas have been recognized by the Board. *Shamrock Dairy, Inc., et al.*, 119 NLRB 998, 1006, and 124 NLRB 494, 498; *Brown Truck and Trailer Manufacturing Company, Inc., et al.*, 106 NLRB 999, 1000; *Weingarten Food Center of Tenn., Inc.*, 140 NLRB 256, 257.

1. As to the failure to notify Local 653 of, or to discuss or negotiate, the decision to sell the oil truck operation

Several cases in the last few years have touched upon the question of whether a decision in good faith to abandon part of a business is the subject of mandatory col-

lective bargaining.² These have chiefly concerned subcontracting. Thus the Board has held that the decision to subcontract one or more operations, even when motivated solely by economic considerations, is a subject of mandatory collective bargaining. *Town & Country Manufacturing Company, Inc., and Town & Country Sales Company, Inc.*, 136 NLRB 1022, 1026, 1027, enfd. 316 F. 2d 846 (C.A. 5); *Fibreboard Paper Products Corporation*, 138 NLRB 550, cert. granted 375 U.S. 963; *Adams Dairy, Inc.*, 137 NLRB 815 (pending on certiorari [379 U.S. 644])³ No cases have been found expressly determining whether the decision to sell or abandon an operation is bargainable. *Weingarten Food Center of Tenn., Inc.*, 140 NLRB 256, 257, and *M. Swack Iron and Steel Co.*, 146 NLRB 125, avoided the question.

But I am of the opinion that a sharp and substantial distinction exists between subcontracting an operation and permanently disposing of it in good faith. I so find. When subcontracting occurs, the employer is still engaged in the operation involved and depends upon such operation as an integral part of his business. Thus a subcontract actually results in the employer's (or contractor's) use of another's employees to perform one or more steps in the contractor's work of producing a product or rendering a service. Manifestly this affects the Union's designation and status as bargaining agent, because the work of the unit for which the Union has been selected as such bargaining agent is still being performed for the employer who is lawfully bound to recognize and bargain with the Union.

But when an employer permanently disposes of part of his business the purchaser is not performing on behalf of the employer any of such employer's work any more than a purchaser of an employer's products may be said to be performing the employer's work. Hence the employer who sells part of his business is in effect no different than an employer who sells a product or services. In each case the selling employer by the sale has permanently removed himself from any connection with the production⁴ process. Since an employer need not negotiate with the collective-bargaining agent concerning the sale of merchandise or services which he produces or offers, he need not bargain or negotiate respecting the disposing of his production processes, so long as such position is not tainted by a desire to disparage or undermine the collective-bargaining agent.

Accordingly, I am of the opinion, and find as an ultimate fact, that the sale or other permanent disposition in good faith of part of a business is not a subject of mandatory collective bargaining. Hence I find that Respondent was not under any statutory compulsion to notify Local 653 of, or to discuss or negotiate with it, the decision to sell the oil truck operation to D. J. Cronin, Inc.⁵

The foregoing result, in my opinion, does not clash with any Board or court decisions. As noted above, the Board has not squarely passed on the question, and its adjudications regarding subcontracting of operations are distinguishable. Nor does *Order of Railroad Telegraphers et al. v. Chicago & North Western Railway Co.*, 362 U.S. 330, compel a different conclusion. That case held that to abolish some railroad stations constituted a labor dispute within the meaning of "any controversy concerning terms or conditions of employment" under Section 13(c) of the Norris-La Guardia Act. See 362 U.S. at 335. But the tenor of that decision connotes that the Supreme Court considered the effect of the abolition of the stations upon job security as a bargainable matter. See, e.g., 362 U.S. at 336, 340-341. It appears that the decision to close was not involved there.

Another cogent reason for finding that the decision to sell is not bargainable may be traced in the principle that other congressional policies affect the situation. This principle has been applied in *Southern Steamship Company v. N.L.R.B.*, 316 U.S. 31,

² If it is not mandatory, then Local 653 cannot insist upon bargaining thereon. *N.L.R.B. v. Wooster Division of Borg-Warner Corporation*, 356 U.S. 342, 344.

³ *Darlington Manufacturing Company*, 139 NLRB 241, reversed 325 F. 2d 682 (C.A. 4), now pending on certiorari [377 U.S. 903], is inapposite because the Board there found union animus on the part of the employer.

⁴ The word "production" is used to connote all steps in accomplishing the final product or service which is sold by an employer.

⁵ Respondent has not argued that the contract (article I, clause (c)), constitutes a waiver of the right to bargain as to the decision to sell. Hence I do not pass on the question of waiver. Cf. *The Jacobs Manufacturing Company*, 94 NLRB 1214, 1219-1220. Nor has the General Counsel contended that Respondent has breached such contractual provision. Cf. *United Telephone Company of the West and United Utilities, Incorporated*, 112 NLRB 779.

47-48. Cf. *Allen-Bradley Co., et al. v. Local Union No. 3, International Brotherhood of Electrical Workers, et al.*, 325 U.S. 797. The congressional objective of requiring approval of the I.C.C. to the sale from Respondent to D. J. Cronin, Inc., thus relieves Respondent of an obligation to bargain about the decision to sell and places responsibility on the Interstate Commerce Commission on this issue. Adequate safeguards, including judicial review, to protect the interests of Local 653 and the public before the I.C.C. have thus compensated for the fact that Section 8(a)(5) to this extent has been modified by Congress. Upon this branch of the law *Pan American World Airways, Inc. v. United States*, 371 U.S. 296, points the way. *United States v. Philadelphia National Bank, et al.*, 374 U.S. 321, 350-352, in my opinion is distinguishable because no judicial review of the administrative decision was there available.

2. As to the failure to negotiate or discuss the effects of the sale

Manifestly the sale of part of a business affects the tenure and terms and conditions of employment of employees displaced by such disposition of the business, and I so find. It follows, and I find, that the effect of the decision to sell is a subject of mandatory collective bargaining. Hence Respondent was charged by Section 8(a)(5) and 8(d) of the Act with the duty to bargain with Local 653 concerning this effect, which conceivably would cover at least severance pay, the right to bump on other jobs, vacations, health, pension, and welfare benefits, and a host of other matters intimately associated with tenure and terms and conditions of employment. As I have found that Respondent failed to discuss or negotiate regarding the effects of the decision to sell, I further find that such failure transgresses Section 8(a)(5).

Although no case has been found precisely in point upon this segment of the law, I am of the opinion that the following cases virtually dictate the proposition that the effect of the sale is a matter of compulsory bargaining: *Town & Country Manufacturing Company*, 136 NLRB 1022; *Fibreboard Paper Products Corporation*, 138 NLRB 550, *Adams Dairy, Inc.*, 137 NLRB 815; *Order of Railroad Telegraphers*, 362 U.S. 330; *The Renton News Record*, 136 NLRB 1294, 1296; and *Shamrock Dairy, Inc., et al.*, 119 NLRB 998, 1006, and 124 NLRB 494, 498.

3. As to the transfer of the sand truck terminal

I find that the relocation of the sand truck terminal from Taunton to North Dighton is not a subject of compulsory bargaining. Hence the unilateral transfer thereof and the failure to discuss the effects ensuing therefrom were lawful without consultation with Local 653. Cf. 77 *Harv. L. Rev.* 1100, 1109 (a note on plant relocation). See *Jewel Tea Co., Inc. v. Local Union Nos. 189, 262, 320, 546, 547, 571 and 638, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, et al.*, 274 F. 2d 217 (C.A. 7), holding that "where the business will be located . . . [and] the furnishing of a place . . . of employment . . . are the prerogatives of the employer," and implying that such matters are not conditions of employment. *Jewel Tea Co., Inc. v. Local Unions Nos. 189, 262, et al., Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO*, 274 F. 2d 217, 221 (C.A. 7), is to the same effect with regard to management prerogatives. See *N.L.R.B. v. American National Insurance Company*, 343 U.S. 395, holding that management prerogatives are recognized by the Act.

A contrary result is not required because North Dighton is within the territorial jurisdiction of another local of the Teamsters; for the business of Respondent still is under contract with Local 653. Cf. *John Wiley & Sons, Inc. v. David Livingston, etc.*, 376 U.S. 543. Hence Respondent must still recognize and bargain with Local 653 at North Dighton because the Board does not give effect to understandings or agreements between unions allocating territorial jurisdiction between them. *North American Aviation, Inc.*, 115 NLRB 1090, 1091, footnote 3. The case of *United Textile Workers of America, AFL-CIO (Personal Products Corp.) v. Textile Workers Union of America*, 258 F. 2d 743 (C.A. 7), is distinguishable because there, unlike here, no collective-bargaining agreement was involved; rather, the facts in that case presented the question of whether a union's agreement not to organize in another union's territory was enforceable under Section 301 of the Act.

Assuming that article I(c) of the contract with Local 653 has been repudiated by the Respondent, nevertheless a violation of Section 8(a)(5) of the Act cannot be established thereby. This may amount to a breach of contract for which Section 301 of the Acts provides a remedy. I make no finding as to whether a breach of contract has occurred.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent found to be an unfair labor practice 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 of commerce.

V THE REMEDY

Having found that Respondent has engaged in an unfair labor practice, I shall recommend that it cease and desist therefrom and also take certain affirmative action designed to effectuate the policies of the Act. Since I have found no violation in Respondent's unilateral decision to sell the oil truck operation or the transfer of the site of the sand truck terminal, I do not reach the question of the correctness of the proposed remedy of the General Counsel as submitted in his complaint. An abridgement of that remedy discloses that, among other things, Respondent would be required to return the sand truck operation to the Taunton terminal, to the extent jobs are available; offer reinstatement to certain employees affected by the transfer of the sand truck terminal and the sale of the oil truck operation; place all other employees so affected on a preferential hiring list; make all such employees whole; and bargain collectively with Local 653 as to the decision to shut down the Taunton terminal.

Since the unfair labor practice found was not motivated by hostility to Local 653, and the record does not reveal either other past unfair labor practices or any union animus on the part of Respondent, it will not be recommended that Respondent be subjected to a broad order, i.e., the remedy should be restricted to granting relief for the violation found without addition of the words "and like or related conduct" or "in any other manner." Cf. *Communications Workers of America, AFL-CIO and Local No. 4372, etc. (Ohio Consolidated Tele. Co.) v. N.L.R.B.*, 362 U.S. 479.

Upon the basis of the foregoing findings of fact and the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Local 653 is a labor organization as defined by Section 2(5) of the Act.
2. Respondent is an employer within the meaning of Section 2(2), and is engaged in commerce within the contemplation of Section 2(6) and (7), of the Act.
3. All drivers employed by Respondent at its Taunton, Massachusetts, terminal, exclusive of office clerical employees, professional employees, guards, and all supervisors as defined in Section 2(11) of the Act, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Sections 9(b) and 8(a) of the Act.
4. By failing to bargain with Local 653 as to the effects of the decision to sell its oil truck operation, which is part of the appropriate unit above, Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(5) of the Act. Said unfair labor practice also derivatively, but not independently, contravenes Section 8(a)(1) of the Act.
5. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.
6. Respondent has not committed any other unfair labor practices alleged in the complaint.

RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law and the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Board, as amended, I recommend that Respondent, Young Motor Truck Service, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to bargain with Local 653 as to the effects upon tenure or term of employment, or other terms or conditions of employment, of any decision to sell one or more truck operations within the above-narrated appropriate unit

2. Take the following affirmative action designed to effectuate the policies of the Act:

- (a) Upon request bargain collectively with Local 653 as to the effects upon employees' tenure or term of employment, or other terms or conditions of employment, of any decision to sell any of its truck operations within the above-mentioned appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its terminals at Taunton and North Dighton, Massachusetts, copies of the attached notice marked "Appendix."⁶ Copies of said notice, to be furnished by the Regional Director for Region 1, shall, after being signed by a duly authorized representative of Respondent, be posted by it 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 displayed. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 1, in writing, within 20 days from the receipt of this Decision, what steps Respondent has taken to comply herewith.⁷

It is finally recommended that unless Respondent shall within the prescribed period notify the said Regional Director that it will comply, the Board issue an order requiring Respondent to take the aforesaid action.

⁶ 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. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order."

⁷ 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 receipt of this Order, 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 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, upon request, bargain collectively with Local 653, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the representative of all the employees in the bargaining unit described below with respect to the effects upon employees' tenure or term of employment, or other terms and conditions of employment, of any decision to sell any of our truck operations. If an understanding is reached, WE WILL embody such understanding in a signed agreement.

The bargaining unit is:

All drivers employed by us, exclusive of office clerical employees, professional employees, guards, and all supervisors as defined in Section 2(11) of the Act.

YOUNG MOTOR TRUCK SERVICE, 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, 24 School Street, Boston, Massachusetts, Telephone No. 523-8100, if they have any questions concerning this notice or compliance with its provisions.

Braswell Motor Freight Lines, Inc. and Barry James Looney.
Case No. 26-CA-2064. January 7, 1966

DECISION AND ORDER

On October 8, 1965, Trial Examiner George A. Downing issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices