Overnite Transportation Company *and* Teamsters Local 822, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Cases Nos. 5–CA–3201 and 5–RC–5162. May 16, 1966*

DECISION AND ORDER

On March 7, 1964, Trial Examiner George A. Downing issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that Respondent had not engaged in other unfair labor practices alleged in the complaint, and recommended that such allegations be dismissed. He further found that Respondent had interfered with an election held on July 7, 1965, and recommended that it be set aside and that a new election be held. Thereafter, the General Counsel, the Charging Party, and Respondent filed exceptions to the Trial Examiner's Decision and the General Counsel and the Charging Party filed supporting briefs.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this proceeding, and hereby adopts the findings, conclusions,[1] and recommendations of the Trial Examiner.

[The Board adopted the Trial Examiner's Recommended Order.][2]

[The Board dismissed the complaint insofar as it alleges violations not found herein.]

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[1] We place no reliance, however, upon the Trial Examiner's conclusion that Respondent engaged in further interference with the free choice of the employees in the election herein merely by granting Cox a week's vacation with full knowledge that he would use the time to campaign against the Union. The evidence shows that Respondent granted Cox his vacation only after Cox requested it, that he was entitled to a 1-week vacation, and that this was the only vacation given him in 1965. The evidence also shows that it was not unusual for Respondent to grant an employee his vacation immediately upon the latter's request.

[2] The telephone number for Region 5, appearing at the bottom of the Appendix attached to the Trial Examiner's Decision, is amended to read: Telephone No. 752–8460, Extension 2159.

[The Board set aside the election held in Case No 5–RC–5162 on July 7, 1965, and remanded the case to the Regional Director for Region 5 for the purpose of conducting a new election at such time as he deems that circumstances permit the free choice of a bargaining representative]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

The above complaint proceeding brought under Section 10(b) of the National Labor Relations Act, as amended (61 Stat 136, 73 Stat 519), was heard before Trial Examiner George A Downing at Norfolk, Virginia, on November 16 and 17, 1965, pursuant to due notice Consolidated for hearing therewith by order of the Regional Director were certain objections to an election by the Union in Case No 5–RC–5162

The complaint in Case No 5–CA–3201, which was issued on September 8, 1965,[1] by the General Counsel on charges and amended charges dated June 30, July 12, and September 7, alleged in substance as amended at the hearing that Respondent engaged in unfair labor practices proscribed by Section 8(a)(1) and (3) of the Act by specified acts of interference, restraint, and coercion on June 28 and July 1, and by discriminatorily discharging William Hardison and Joshua T Hardison on June 29 because of their union membership and activities and/or their concerted activities The objections to the election on which the Regional Director ordered a hearing related essentially to the same conduct with which Respondent was charged in the complaint case

Respondent answered, denying all unfair labor practices

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

FINDINGS OF FACT

I JURISDICTIONAL FINDINGS, THE LABOR ORGANIZATION INVOLVED

I find on facts alleged in the complaint and admitted by answer, and as found by the Regional Director in Case No 5–RC–5162, that Respondent, a Virginia corporation, with its principal offices at Charlotte, North Carolina, is engaged in commerce within the meaning of the Act and that the Charging Union is a labor organization within the meaning of the Act

II THE UNFAIR LABOR PRACTICES

A *Introduction, the representation case, the issues*

These proceedings involve Respondent's Norfolk, Virginia, terminal at which some 35 over-the-road and local cartage drivers are employed On May 5 the Union filed a representation petition concerning those employees and, following a hearing, the Regional Director issued on June 9 a Decision and Direction of Election in which he found appropriate a bargaining unit consisting of "all truckdrivers (including over-the-road and local cartage drivers), warehousemen, and checkers at the Employer's Chesapeake, Va terminal, excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act"

The Union lost the election, held on July 7, but filed objections which, so far as possessed of merit,[2] the Regional Director found to relate to virtually the same conduct as that alleged in his complaint

The issues as litigated herein are whether employees were interrogated and promised benefits by Respondent and whether the Hardison brothers were discriminatorily discharged Preliminarily, however, it is necessary to consider a new issue concerning the status of the dispatchers which was injected by union counsel in the closing moments of the hearing

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[1] All events herein occurred in 1965

[2] The Regional Director overruled the Union's objection based on alleged improper statements contained in Respondent's letter to employees dated June 25

B. *The status of the dispatchers*

In the representation proceeding Respondent sought to have the dispatchers included in the unit whereas the Union sought to exclude them as *office clerical employees.* The Regional Director excluded them on the latter basis. There was no contention that the dispatchers were supervisors.

The General Counsel based no complaint allegations on the conduct of the dispatchers and makes no contention here that they are supervisors. Union counsel, however, relying on certain testimony of Terminal Manager Pittman, contends that Willie Parker (night dispatcher) is a supervisor and, recalling William Hardison, made an offer of proof that Parker made a statement that the Company knew who signed union cards and that the employees would be better off to vote the Union out. That contention was based on the fact that on cross-examination Pittman accepted the suggestion of union counsel that the dispatchers were in "the chain of command" and testified that they "assigned the work" to the employees and "would direct them" in their work.

Ordinarily the very nature of a dispatcher's job is such that a certain amount of direction and assignment is necessarily involved, though usually involving purely routine details of the job, such as messages and calls (over radio or otherwise) concerning deliveries and pickups of freight. There was no evidence here that the "direction" was otherwise and none that independent judgment was exercised in matters involving responsible direction. The Union's position in the hearing before the Regional Director plainly squared with that view, for it then claimed the dispatchers to be mere office clericals.

I therefore conclude and find, in view of the positions of the parties in the representation proceedings, the Regional Director's ruling on their contentions, and the General Counsel's disclaimer of supervisory status that Pittman's testimony here did not establish that the dispatchers *responsibly* directed or assigned employees or that the authority which they exercised required the use of *independent judgment.*

C. *Promises of benefit*

Louis A. Barden testified (without denial) that Terminal Manager Pittman called him into the office about a week before the election and in the presence of Lonnie Marks, vice president and head of Respondent's safety department, presented him with a 4-year safe driving award and a new pin. While Barden answered a telephone call, Marks entered into a discussion of the Union with Barden, during which Marks compared the Company's retirement plan with the Union's, and discussed with Barden employee complaints concerning hours and work. Marks stated that if the Union did not come in the Company proposed to make arrangements for better hours by hiring additional employees and commented further that the terminal was due for a raise which was generally given employees every year but that it could not give the raise because of the pending union matter.

So far as the wage increase was concerned, Barden admitted on cross-examination that his affidavit to the Board stated that Marks told him the Company could not give the wage increase at the time because it would violate the law, but he testified that Marks did not "word it that way" but left it "hanging." On redirect examination Barden testified that Marks stated that the Company could not give the raise at the time "on account of this stuff that is pending" and because "the company is in negotiations for a union."

The General Counsel also sought to attribute to Respondent certain statements made by Charles Adams (to James O. Turner) concerning a wage raise and shorter hours if the Union did not come in. Responsibility is claimed on two bases: first, that Adams was a supervisor and, second, that he was in any event an agent of Respondent because he occupied a strategic position and served as a conduit to translate or communicate management's position to the employees and that the employees looked to him as a person occupying a special position in which they could reasonably expect he was speaking with some authority for management.

The evidence supports neither of those contentions. Though Adams testified that he was "shop foreman in charge of maintenance," his further testimony showed plainly that he was not a supervisor within the meaning of the Act. Thus Adams spent his entire time engaged in manual work as a mechanic engaged in repairing trucks during the daytime hours. Another mechanic, William Ferd, did the same work during the night hours. Neither had an assistant, though sometimes their working hours overlapped according to the kind of breakdowns which had occurred.

The other contention is based on Adams' testimony to the following effect: Adams was the oldest employee in point of service and his duties necessitated meeting daily with Pittman concerning the problems arising from truck breakdowns. He also sometimes met with Pittman and Vice President Marks when Marks was in Norfolk, concerning safety questions and mechanical work on damaged trucks. As Adams described his job, drivers out on the road who had difficulties with their trucks would call in to the dispatcher on the radio and the dispatcher would get in touch with Adams, who would then go out to see about getting the trucks back into operation. The mechanic on the night shift operated in the same fashion.

Adams testified that a good many of the employees discussed with him their dissatisfaction with the job and that as a result he asked Marks why they could not get a raise. He did not tell anyone he was going to speak to Marks, but he reported back to the employees what Marks had told him, though he did not inform Marks that he was going to tell the men anything. On direct examination Adams testified that Marks stated the employees would be up for a raise but could get one because the Union was trying to get in. On cross-examination, however, Adams testified that Marks referred to a letter which he had from the Union which stated that it would be a violation of the law to give a raise with the union election coming up and which demanded or suggested that there be no change in wages during the campaign. Marks did not inform him that if the employees voted the Union out they would get a raise, nor did Adams tell the employees any such thing.

On the foregoing record it is plain that to the extent that Adams may have served as a "conduit," he stood either as a volunteer or as one of the employees' choosing. Furthermore, his testimony concerning discussions with management contained nothing emanating from the latter which constituted a promise of benefits to the employees and nothing which authorized Adams to make such promises on its behalf. I therefore conclude and find that the General Counsel failed to establish responsibility on Respondent's part for Adams' conduct.

The General Counsel sought further to attribute to Respondent full responsibility for certain conduct of employee Donald Cox, who engaged in, with Respondent's knowledge and acquiescence, an antiunion campaign among the employees. The case for agency and authorization rests entirely on the testimony of Cox himself, who though called by the General Counsel, proved a most unwilling witness.[3] His testimony may be summarized as follows:

Cox, a driver, signed a union card about a week before the election but thereafter changed his mind about the Union after talking with other employees, including Larry Wright. Cox then voluntarily sought out Marks and Pittman and "just confessed everything," i.e., that he had signed a union card but had changed his mind. Cox informed them that he would like to talk to the other employees about his change of heart and asked if he might do so. When Pittman and Marks inquired how he proposed to see the other employees, Cox stated that he would take a week off on his own and, with their permission, would use the week's vacation which was due him. They agreed.

Cox denied that Pittman and Marks directed him to see the employees and try to talk them out of the Union, denied that they said anything about a raise, and denied there was any discussion with Pittman or Marks of what he would say to

[3] The General Counsel attempted on searching cross-examination permitted by me to have Cox affirm the correctness of an unsigned statement or summary which a Board representative had allegedly prepared in an interview during the investigation, and he claimed surprise when Cox refused to adopt the statement. Cox testified, however, that before he was called to the stand he twice informed the General Counsel he did not affirm the statement. The first occasion was on the morning the hearing opened when the General Counsel attempted to review Cox's testimony with him An angry exchange occurred as a result of which Cox left the hearing without permission, claiming that he was frightened by the General Counsel's attitude. The second occasion occurred that evening when the General Counsel visited Cox at his home and when Cox again refused to adopt the alleged summary of the interview. Against that immediate background the General Counsel nevertheless called Cox to the stand the next morning, sought again to have him affirm the contents of the alleged statement, and claimed surprise when he did not do so. Furthermore, without attempting direct impeachment of Cox (or the neutralizing of his testimony) the General Counsel argues for the drawing of inferences which are directly contrary to Cox's testimony and which are founded on the assumption that Cox had been impeached.

the employees, but testified that "[T]hey left it up to me." Cox testified further that he told no one he was going in to see Pittman, that he kept it to himself, and he denied that when he came out of the office he spoke to the Hardisons (as they testified). As for his visit with the Hardisons on the evening before their discharge (see section D, *infra*), Cox testified that they inquired why he changed his mind and that he told them the same things he had told Pittman and Marks, i.e., "I worked every day of the week. I have never been laid off. I got paid for every day I have been there. Now the union, if you get laid off they lay you off. You go on strike at any time .... I wouldn't get no pay. I couldn't afford to be out of work. I don't think some of the other boys could either."

Issues concerning Respondent's responsibility for the above conduct are resolved in section E, *infra.*

D. *The discharge of the Hardison brothers*

William Hardison and his brother, Joshua, truckdrivers, were discharged by Pittman on June 29, after he caught them at their homes, off their delivery routes, shortly after they left the terminal. William had been employed for approximately a year and Joshua for approximately 6 weeks. Joshua did not join the Union until after he was discharged (though he represented to the Board in his affidavit that he joined before his discharge), and he engaged in no union activities whatever. William represented in his affidavit to the Board that his only union activity consisted of signing a union card, though he claimed as a witness that he also "talked to some guys in the terminal" and that he attended a single union meeting in Portsmouth.

There is no evidence that Respondent had knowledge of the foregoing facts, but General Counsel and Union would infer knowledge of the union sentiments of both brothers from the timing and the circumstances of the discharges which occurred on the day after the nocturnal visit of Donald Cox and a further inference that Cox reported back to Pittman on the prounion sentiments which the Hardisons expressed to Cox during their visit. There is no evidence, however, that Cox reported to Pittman concerning his visit with the Hardisons, and though the General Counsel questioned Cox at length, he made no inquiry on the point.[4] As the circumstances of the visit itself and Cox's testimony concerning his conversation with Pittman and Marks afford no basis for drawing the inferences contended for, we turn to the facts surrounding the discharges.

Respondent's terminal was located south of the town of Chesapeake and some 7 or 8 miles from downtown Norfolk. It was some 2 or 3 miles from the homes of the Hardisons, which were located near each other and several blocks off of one of the normal main routes (Campastella Road) from the terminal to the city. William Hardison's delivery area was downtown Norfolk, which was some 3 or 4 miles from Hardison's home and across the Elizabeth River. Joshua's delivery area was in Chesapeake itself, which lay between the terminal and the city.

Both Hardisons had been reprimanded by Pittman for stopping their trucks off their regular routes. On an earlier occasion Joshua had met with another driver to get coffee at a location off his route and Pittman stopped by and asked them what they were doing there. When they explained they were getting a cup of coffee, Pittman said that he had complaints about trucks stopping there before and that though he did not mind them getting a cup of coffee, he did not want them to take too long.

William testified that possibly some 6 months before his discharge, he had stopped at his home for a few moments on the way back to the terminal and while he was there the dispatcher called him on the telephone, saying that he could not get Hardison on the (truck) radio, and directed him to make another pickup before returning. The dispatcher also told him to see Pittman when he got in.

When Hardison spoke to Pittman, Pittman asked whether he had stopped at his home before, and Hardison admitted that he had. Pittman stated that he had had complaints about that, that he could not tolerate "that kind of stuff" because it was very important to get the freight back to the terminal, onto the trailers, and down the road. Hardison admitted that Pittman made it plain that he was not going

[4] There was obviously scant opportunity for such a report, for Joshua Hardison fixed the time of Cox's visit at 11:25 p.m. and the brothers left the terminal around 10 a.m. the next morning.

to have that kind of conduct. Hardison testified further that he asked Pittman whether he could stop for lunch at his home and that Pittman agreed that he could if it did not take over an hour and if he were not too far away.

Joshua Hardison testified in turn that his instructions from Pittman concerning lunch were that he was to use his own judgment and that he might have an hour. Pittman did not tell him where he could eat lunch or that he could not go home for lunch.

Both Hardisons loaded up and left the terminal around 10 a.m. on the day of their discharge and both of them went to their homes after leaving the terminal, though Joshua made one delivery first. There was no evidence of an understanding between them, and Joshua testified he did not know how he and his brother happened to be at home at the same time.

Joshua testified that he drove by his home to pick up his lunch and some ice water and that he was on the point of leaving, Pittman drove up, stopped, and asked what he was doing there. When Hardison explained, Pittman commented, "It took you a right good while to get it," and directed Hardison to report to Pittman's office when he returned from his route.

William testified that he reached his home shortly before or shortly after 10 o'clock and that he went in to get something to eat. Just as he walked in, he heard a horn blowing outside and saw that it was on his brother's truck which was passing by. (At a later point Hardison admitted that he was actually in the house some 5 or 10 minutes.) He also saw the company car pull up alongside and he went back out, got in his own truck, started to pull away. Pittman pulled alongside and asked what he was doing, and he told Pittman he had stopped to get something to eat. Pittman ordered Hardison to see Pittman when he got in that evening. Hardison admitted that when he looked out and saw Pittman, he ran out, jumped in his truck, and headed away, but he explained, "I wanted to see what was going on."

The two Hardisons went in to see Pittman when they returned to the terminal after making their deliveries, and Pittman told them that he was going to have to let them go because of stopping at home. William asked Pittman why, and Pittman replied that he had had too many complaints about Hardison stopping at home. Hardison reminded Pittman that Pittman had told him he could stop for lunch but not to stop in the evenings, and Pittman replied, "Well, I had too many complaints about your stopping at home I got to let you go." Joshua's testimony was in substantial accord with the foregoing.

Though William denied at one point that he had ever been told anything about not taking his truck off the route, he later admitted that the company rules which he had read provided that drivers were not to take their trucks off the pickup and delivery route for any reason, that company equipment was not to be used for any purpose except company business, and that freight must never be delayed without a legitimate reason.

E. *Concluding findings*

1. Promises of benefit; conduct affecting results of the election

Barden's testimony established, and I find, that Marks made to him promises of benefit if the Union did not come in. Indeed, the promise was explicitly made as concerned the shortening of hours of work, and Barden's full testimony showed that he understood or inferred from Marks' statement that the granting of a raise was to depend also on whether or not the Union came in. But regardless of whether Marks sufficiently hedged his reference to the wage increase, a promise of benefits was otherwise plain. By such conduct, Respondent interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

Being violative of Section 8(a)(1), such conduct was *a fortiori* conduct which interfered with the exercise of a free and untrammeled choice in the election, *Playskool Manufacturing Company*, 140 NLRB 1417, 1419; for as the Board explained in *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782, 1786. "This is so because the test of conduct which may interfere with the 'laboratory conditions' for an election is considerably more restrictive than the test of conduct which amounts to interference, restraint, or coercion which violates Section 8(a)(1)." And see *Excelsior Underwear Inc.*, 156 NLRB 1236, at footnote 7 thereof, citing *General Shoe Corporation*, 77 NLRB 124, 126–127.

I also conclude and find that Respondent engaged in further interference with the free choice of the employees in the election by granting Cox a week's vacation with full knowledge that he would use the time to campaign against the Union. That finding is plainly required regardless of legal questions concerning Cox's status as an agent, of the extent of his authorization, and of Respondent's responsibility for what he may have said and done among the employees. Those questions, however, chargeable with 8(a)(1) conduct because of statements and promises which the complaint charges that Cox made as its *agent.*

On this record Cox's testimony stands unrefuted concerning the agency point and the extent of his authority, for ultimately the General Counsel made no attempt to neutralize his testimony by calling the Board agent who might have established a prior inconsistent statement (see footnote 3, *supra*).[5] Indeed, there is no other testimony is of probative weight on the issue of Cox's agency so that the point must needs be decided on Cox's testimony alone, which showed, in sum, the following:

Having changed his mind about the Union, Cox voluntarily sought out Pittman and Marks, told them of his change of feelings and the reasons for it, and asked to be given his week's vacation so that he might talk to the other employees. Respondent gave Cox the time off, knowing that he proposed to conduct an antiunion campaign, but without any discussion concerning what Cox would say to the employees.

Under Cox's testimony there was no discussion of whether benefits were to be promised for rejection of the Union or of reprisals to be inflicted if the Union were chosen. If Cox did any of those things (the complaint charges him with interrogations and promises of benefit), it is not possible to conclude from his testimony that Respondent had authorized him to do so and that it is legally bound by his conduct.

I therefore conclude and find that the General Counsel did not establish Cox's agency to engage on Respondent's behalf in the unlawful conduct described in the complaint allegations.

2. The discharges

Though the circumstances of the discharges were in certain respects suspicious (e.g., in timing and in the catching incident), they were not sufficient to overcome basic deficiencies in the General Counsel's case and to lay an adequate basis for inferring two essential facts: (1) That Pittman somehow learned between 11:25 p.m. and 10 a.m. of the prounion sentiments of the Hardisons, and (2) that he discharged them because thereof.

On the first point there was no evidence that Cox reported back to Pittman between 11:25 p.m. and 10 a.m. what he had learned of the prounion sentiments of the Hardisons and there is none that Respondent otherwise had knowledge of their meager union activities (nil in Joshua's case).

On the second point the Hardisons admitted that Pittman had previously informed them of complaints concerning their unauthorized deviations from their routes and had pointedly warned William in plain language that he would no longer tolerate William's practice of going by his home. The fact that Pittman agreed that they might have *lunch* at home (where the circumstances warranted) afforded no excuse for their actions on the 29th, for it is difficult to understand how the Hardisons could reasonably consider such permission to cover a stop made at 10 a.m., immediately after leaving the terminal. Indeed, their conduct showed that they had no bona fide belief to that effect and that they realized to the contrary that they had been caught *flagrante delicto* in improper conduct.[6]

Furthermore, the reason which Pittman assigned was consistent with the evidence concerning not only the prior warnings, but with the misconduct in which the Hardi-

[5] Even in that case such a statement would not have been admissible as affirmative evidence to prove the truth of what it affirmed but only as matter tending to show that Cox was not a credible witness because he changed his story. *N.L.R.B.* v. *Quest-Shon Mark Brassiere Co, Inc.*, 185 F. 2d 285 (C.A. 2), which also quoted from Wigmore on *Evidence* that, "It is universally maintained by the Courts that Prior Self-Contradictions are not to be treated as having any *substantive or independent testimonial value.*"

[6] I.e., the suspicious coincidence of the two stops; Joshua's warning to his brother by blowing his horn; Williams' conflicting testimony concerning the time he spent inside his home; his hasty exit; and his obvious attempt to "escape" before Pittman could catch him.

sons had engaged. Nothing was said from which it might be inferred that the discharge was not for the reason assigned, and certainly nothing suggestive either of knowledge of union activity or of a discriminatory motivation. The circumstances otherwise were wholly inadequate to establish a basis for inferring the latter facts, without which the General Counsel's case falls for lack of proof.

I therefore conclude and find that the General Counsel failed to establish that the Hardisons were discharged because of their union activities or sentiments.

III. THE REMEDY

Having found that Respondent engaged in certain unfair labor practices I shall recommend that it cease and desist therefrom and that it take certain affirmative action of the type which is conventionally ordered in such cases as provided in the Recommended Order below which I find necessary to remedy and to remove the effects of the unfair labor practices and to effectuate the policies of the Act.

As I have found that Respondent's conduct improperly affected the results of the election I shall recommend that the election be set aside and that another election be conducted.

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. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent engaged in unfair labor practices proscribed by Section 8(a)(1) of the Act.
2. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
3. Respondent's conduct as found in section E, 1, *supra,* improperly affected the results of the election.
4. Respondent did not engage in unfair labor practices proscribed by Section 8(a)(3) of the Act as alleged in the complaint.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record and pursuant to Section 10(c) of the Act, I recommend that Respondent, Overnight Transportation Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promising employees economic benefits if they refrain from supporting the Union.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the purposes of the Act:

(a) Post in its terminal and offices at Norfolk, Virginia, copies of the attached notice marked "Appendix."[7] Copies of said notice, to be furnished by the Regional Director for Region 5, shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 5, in writing, within 20 days from the date of the receipt of this Decision, what steps Respondent has taken to comply herewith.[8]

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[7] 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."

[8] If this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 5, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

IT IS FURTHER RECOMMENDED that the election which was conducted on July 7, 1965, be set aside and a new election held at an appropriate time to be fixed by the Regional Director.

IT IS FURTHER RECOMMENDED that the complaint herein be dismissed insofar as it alleges violations of Section 8(a)(3) of the Act.

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 offer employees economic benefits if they refrain from supporting the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist Teamsters Local 822, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America or any other labor organization to bargain collectively through representatives of their own choosing or to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities.

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

OVERNITE TRANSPORTATION COMPANY,
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 questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Sixth Floor, 707 North Calvert Street, Baltimore, Maryland, Telephone No. 752-2159.

Cherryvale Manufacturing Company, Inc. ***and*** **Helen M. Britts and Betty Stacy, Petitioners, and The United Garment Workers of America, AFL-CIO, Local 413.** *Case No. 17-RD-293. May 16, 1966*

DECISION ON REVIEW AND ORDER

On December 14, 1965, the Regional Director for Region 17 issued a Decision and Direction of Election in the above-entitled proceeding. Thereafter, in accordance with the National Labor Relations Board's Rules and Regulations, the Employer and the Union filed requests for review of said Decision and Direction on the ground that the Regional Director had erred in finding that the current collective-bargaining agreement between the Employer and the Union was terminable at will and, consequently, did not constitute a bar to the instant decertification proceeding. The Board, by telegraphic order