

with Harrison.⁷ And certainly, so far as the Christmas party was concerned, management knew the "concerted" nature of the activity.⁸

But the basic fact is that DeBuigny's discharge was not based, in whole or in part, on his discussion of the Christmas party. Indeed, it would not be an exaggeration to say it was his *refusal to discuss plans for the Christmas party* which set in motion the unfortunate series of events which resulted in his discharge. Although DeBuigny had not been included in the original arrangement for the meeting on October 7, Harrison admitted him without question or comment. Both Harrison and Gifford, a fellow employee, testified credibly that they tried to have DeBuigny discuss the party but he persisted in complaining of wages and working conditions, which were, at best, purely collateral and tangential to the matter for which Harrison and Gifford had arranged the meeting. After DeBuigny's departure, Harrison and Gifford did proceed to discuss the business at hand, namely, plans for the party.⁹

It is my opinion that, on the particular facts of this case,¹⁰ DeBuigny exceeded the scope of any statutory protection he might have had when he persisted in his complaints concerning wages and working conditions after repeated reminders that the meeting had been called for discussion of plans for the Christmas party.¹¹

I accordingly find that the General Counsel has not shown that DeBuigny was discharged for engaging in concerted activities and accordingly will recommend that the complaint be dismissed.

CONCLUSIONS OF LAW

1. Norfolk Conveyor, Division of Jervis B. Webb Company, Respondent, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Peter DeBuigny, the Charging Party, was an employee of Respondent entitled to the protection of the Act.

3. Respondent has not engaged in an unfair labor practice as alleged in the complaint.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, it is hereby recommended that the complaint be dismissed in its entirety.

⁷ But cf. *N.L.R.B. v. Tanner Motor Livery, Ltd*, 349 F.2d 1 (C.A. 9).

⁸ Thus, as in prior Board cases, it is unnecessary to decide whether knowledge by the company of the concerted nature of activities is a necessary ingredient in an 8(a)(1) violation in this type of situation. *Walls Manufacturing Company, Inc.*, 137 NLRB 1317; *Indiana Gear Works, supra*, footnote 7. Cf. *N.L.R.B. v. Burnup & Sims, Inc.*, 379 U.S. 21, 23.

⁹ The record does not disclose whether a Christmas party was eventually held.

¹⁰ I expressly disclaim any attempt or intention to spell out or apply any general rule or principle for defining the scope of the activities "protected" by Section 7.

¹¹ It is not within my province to decide whether Harrison acted with due restraint, discretion, and judgment or whether discharge was an unwarranted disciplinary action. Cf. *Mushroom Transportation Co. v. N.L.R.B.*, *supra* at 685. As previously observed, the discharge was made the subject of a grievance under the collective-bargaining agreement, but it never reached arbitration.

Carmen Addario d/b/a Addario's Express and Orleans Express Co., Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 25. Case 1-CA-5189. June 16, 1966

DECISION AND ORDER

On March 4, 1966, Trial Examiner David E. Davis issued his Decision in the above-entitled proceeding, finding that Respondent
159 NLRB No. 52.

had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommended that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief¹ and the General Counsel filed a brief in support of the Trial Examiner's Decision.

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

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings,² conclusions, and recommendations of the Trial Examiner.

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

¹ Respondent's request for oral argument is hereby denied, as the record including the exceptions and briefs adequately presents the issues and positions of the parties.

² In finding a discriminatory discharge of Diamond, the Trial Examiner related several conversations between Sordello and Addario and credited Sordello's versions which were generally, but not specifically, denied by Respondent. In addition to those conversations reported in the Trial Examiner's Decision, we find that the record reveals a personal visit by Sordello to Addario's office on August 25, 1965, wherein Addario stated that Diamond "wasn't any good and was instrumental in the Union and he didn't intend to put him back. . . ." In reaching our determination, we have considered this conversation which, similar to the conversations credited by the Trial Examiner, was generally, but not specifically, denied by the Respondent.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

The original charge in this proceeding was filed on October 13, 1965, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 25, herein called the Union, against Addario's Express. An amended charge was filed on November 26, 1965, against Carmen Addario d/b/a Addario's Express and Orleans Express Co., Inc., herein jointly called the Respondent. Thereafter, on November 26, 1965, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board by the Regional Director for Region 1, issued a complaint against the Respondent alleging that Respondent had engaged in unfair labor practices violative of Section 8(a)(1), (3), and (5) of the Act.

Pursuant to notice, a hearing was held before Trial Examiner David E. Davis on February 2, 1966, at Boston, Massachusetts. The complaint was duly amended at the commencement of the hearing by counsel for the General Counsel.¹ The amended complaint alleged that on or about August 10, 1965, the Respondent discharged Howard T. Diamond because he joined or assisted the Union or engaged in other concerted activity for the purpose of collective bargaining or other mutual aid or protection, and has since failed and refused to reinstate Diamond to his former or substantially equivalent employment. The Respondent through counsel was permitted by me to file an oral answer to the amended complaint in which it denied the commission of any unfair labor practices.

¹ Herein called General Counsel

Counsel for Respondent presented oral argument at the conclusion of the hearing and filed a brief. The General Counsel also filed a brief. Both briefs and the oral argument have been considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Carmen Addario had for 20 years been the sole owner of Addario's Express. The original complaint alleges, the answer filed in behalf of Addario admits, and I find that Addario's Express derived gross revenue in excess of \$50,000 annually for transporting goods between various States of the United States from various interstate common carriers operating between and among the various States of the United States, and from services performed for various enterprises, each of which annually sends goods valued in excess of \$50,000 directly out of the State wherein it is located. I find that Addario's Express, at all times material herein, is and has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Counsel for Respondent filed two answers to the original complaint, one for Addario's Express and one for Orleans Express Co., Inc. As stated above, the answer filed on behalf of Addario's Express admitted the jurisdictional allegations contained in paragraph 4 of the complaint. The answer filed by the same counsel on behalf of Orleans denied these allegations. Evidence adduced at the hearing by the General Counsel through the testimony of Carmen Addario established that in September or October 1965 the business was incorporated under the Orleans name, that there was no change in the business, no discernible hiatus between the cessation of the operation under one name and commencement under the new name,² that the corporation was completely owned by the Addario family, that the purpose of incorporation was to bring Addario's sons into the business, and that the business, the assets, telephone number, and locations were identical under both names.³ Under these circumstances I find that Orleans Express Co., Inc., is a continuation of Addario's Express, is in fact the same business, and, is at most the *alter ego* of Addario's Express. Accordingly, I find that the two enterprises together constitute a single employer, herein called the Respondent, and that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent in his answers denied that the Union is a labor organization within the meaning of the Act. As will further appear, *infra*, George Sordello, business representative of the Union, acting in his official capacity did represent the employees in various disputes with Addario in August,⁴ filed the original charge in behalf of the Union on October 13, and made claim on behalf of the Union that it represented Addario's employees. Moreover, the Board has on numerous occasions found that Local 25, the Union herein, is a labor organization within the meaning of the Act.⁵ I find, therefore, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The issues and contentions of the parties*

The remaining issues concern the alleged restraint, coercion, interference and whether or not Diamond was unlawfully discharged and unlawfully refused reinstatement by the Respondent. The complaint alleges the illegality of the discharge

² The testimony was that business stopped over the weekend.

³ The record further establishes that Addario's sons, Carmen Addario, Jr., and Richard, were in fact involved in the enterprise before its incorporation and that the trucks apparently were insured in the names of all three Addarios.

⁴ All dates refer to 1965 unless otherwise stated.

⁵ See, for example, *Local 25, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (J. C. Driscoll Transportation, Inc.)*, 148 NLRB 845, 847. Additionally, counsel for the Respondent stipulated during the course of the hearing that the employees were interested in the Union (Local 25) and consulted Sordello

and refusal to reinstate. The answer denies these allegations. At the hearing, Respondent's defense emphasized that Diamond's discharge was for cause and not for union activity. The cause claimed chiefly concerned Diamond's alleged deficiencies as a truckdriver by reason of his involvement in four or more alleged accidents in the approximately 5 weeks of his employment. Other defenses included Diamond's alleged failure promptly to report his accidents and his unavailability because he could not be reached at the address he gave to Respondent. General Counsel argues that Respondent knew of Diamond's union activity prior to his discharge and that it was a motivating cause. The Respondent denies any knowledge and adheres to the defenses set forth above. The evidence concerning crucial dates and events is greatly in conflict and I will therefore make resolutions of credibility to reconcile the conflict in a manner which, I believe, will place them in the appropriate sequence.

B. *The facts*

1. Preliminary findings

On August 2, four truckdrivers employed by Respondent went to the union headquarters and signed membership application cards which designated the Union as their collective-bargaining representative. Diamond, one of the four, was selected by the others to be their steward when and if the Union obtained recognition. The foregoing evidence and the cards were adduced through the credited and uncontradicted testimony of Diamond and two other employees, James R. Moccia and George J. Mahoney, Jr. Thereafter, on August 9, a petition for certification of representatives was filed by the Union at the Regional Board Office. It is established that August 9, 1965, was a Monday. As is customary in Regional Offices, a copy of the petition was mailed to the Employer. Neither evidence of mailing nor evidence of receipt by Addario's Express was submitted by the General Counsel although General Counsel intimated that such proof would be forthcoming. Addario, on the other hand, testified at one point that on Wednesday, August 11, he knew of the petition and at other times he did not receive a copy of the petition until either Wednesday, Thursday, or Friday. As I found Addario an excitable, voluble witness prone to making speeches and to engaging in elaboration of his answers to questions by inserting and repeating matters which he thought would put his case in a more favorable light, I discredit his testimony where it is in conflict with the logical sequence of events which I find below and where it is in conflict with other credited evidence.

Based upon the clear preponderance of the available evidence, especially documentary evidence, discussed *infra*, I find that Addario in fact received the petition on the morning of August 10, 1965, and not as he testified on August 11 or later.

About 9:30 a.m. on August 10, Addario discharged Moccia and paid him for his services for the week.⁶

Prior to the discharge according to Moccia's credited testimony, Carmen Addario, Jr., called him upstairs asked him if he was satisfied with his pay and informed Moccia that they had received a letter from the Union. At that point Carmen Addario, Sr. walked in and Moccia asked him why he was being blamed, whereupon Carmen Addario, Sr., replied "Yes, I'm blaming you, and there will be two or three more gone before the day is over. You're fired." Addario in his testimony did not allude to this conversation but stated that he discharged Moccia because he had mishandled a refrigerator.

After his discharge Moccia called Business Representative Sordello and arranged to meet with him at 1 p.m. Sordello and Moccia, together, went to see Addario.

⁶In reconstructing this event, which is not the subject of any unfair labor practice charge, I am finding that the date was August 10, contrary to Moccia's insistent testimony and Addario's agreement that the discharge and subsequent events concerning Moccia occurred on August 11, 1965. My reason for this finding, apart from the logic which is apparent when all of the testimony is studied, is the fact that the check for \$30 which was paid to Moccia is dated August 10 (see Respondent's Exhibit 6-B). Clearly \$30 represents the amount Moccia would have received for work lasting 1½ days at \$20 per day, which was his rate of pay. I find Respondent's Exhibit 4 to be unreliable. Moreover, it appears that an attempt was made to change the date August 10 appearing on the exhibit to some other date. As appears later Moccia returned to work on Friday, August 13, was paid \$22.50 for that day (apparently 1 hour overtime) and did not work again, as he testified, until early in September.

Sordello went in first and, according to his credited testimony,⁷ asked why Moccia was discharged and Addario told him that he was an old "25" member himself, that Local 25 was not going to enter his place and was not going to tell him what to do. After a conversation which lasted about 20 to 30 minutes, Sordello recommended that Addario put Moccia back to work. Sordello further testified that about 1 hour after he left he received a telephone call from Addario stating that he would put Moccia back to work but would have to let another man go for a few days as work was slack.

2. Discharge of Diamond

Diamond testified that he was one of four of Respondent's employees who went to the union hall on August 2 and signed a union authorization card. He stated that he commenced working for the Respondent early in July as a truckdriver and warehouseman; on August 11 he was told by fellow employees George Mahoney and Ricky Livote that Addario was "taking the fellows into his office and finding out who signed the union cards"; Addario did not talk to him about the Union but about 4:30 Addario told him to take his truck to the Revere garage and to wait for him; and he took the truck there and when Addario arrived Addario said, "Give me the keys. You're all done."

Diamond stated that he did not discuss the reason for his discharge with Addario, but that he went to the "unemployment" office on August 12 and was given a slip of paper to take to Addario to have him sign for his earnings during that week, as the layoff occurred in the middle of the week. Diamond went to see Addario on Friday, the 13th, and Addario signed the slip, put "lack of work" as the reason for Diamond's termination. Diamond was also paid for the work he did that week and noticed that a new man was working; he got in touch with Sordello and complained to him. Sordello called Addario and told him that he had a new man working there and that Addario should put Diamond back to work. Pursuant to Sordello's instructions, Diamond made several calls to Addario over a period of 2 weeks in an attempt to secure reinstatement. Counsel for Respondent introduced into evidence the payroll ledger sheet⁸ relative to Diamond. It shows that Diamond was paid \$40 on August 10. As Diamond testified that he was paid at the rate of \$2.50 per hour and \$20 represented 1 day's pay, it appeared that Diamond was discharged on the evening of Tuesday, August 10, and was paid \$40 on that date. Despite searching cross-examination by counsel for the Respondent and questioning by me on the basis of the payroll ledger sheet, Diamond adamantly maintained that he was discharged on August 11, and received his check on Friday, August 13. Thereafter, Respondent's Exhibit 6-A was introduced in evidence. This exhibit clearly establishes that Diamond's insistence that he was discharged on August 11 was fully justified. This exhibit is a check made out to Diamond in the sum of \$54.21 and dated August 13, 1965. It is apparent that this sum, after some deductions, represents 3 days' work at a gross total of \$60. Accordingly I find that Diamond in fact was discharged on August 11, 1965.⁹ I also find Diamond to be a forthright credible witness who meticulously gave testimony concerning matters of which he had knowledge even though the testimony might cast an unfavorable light on his case.¹⁰ His memory of events reflected a true ability to recall and though, as stated above, subjected to searching cross-examination on this and other events to be discussed below, he displayed a stubborn adherence to his recital which eventually was supported by documentary evidence tendered by Respondent, such as Respondent's Exhibits 1, 2, 3, and 6-A. Accordingly, I fully credit Diamond's testimony.

Sordello in his testimony fully corroborated Diamond with regard to calls made by Diamond and himself to Addario regarding Diamond's reinstatement. Indeed Addario, himself, admitted that both Sordello and Diamond repeatedly called him concerning this matter. Addario, however, testified, and I do not credit this testimony, that he told Sordello he would not rehire Diamond under any circumstances and that Diamond had too many accidents. Addario further gave testimony, which

⁷ Sordello also places these events as occurring about August 11, 1965. However, inasmuch as all parties agree that Sordello went with Moccia to see Addario on the same day on which Moccia was discharged, I find that the conversation took place on August 10.

⁸ Respondent's Exhibit 5. I have found, above, that the payroll ledger sheets are unreliable.

⁹ Contrary to the contention of counsel for Respondent, there was no stipulation that Diamond was discharged on August 10.

¹⁰ See, for instance, *infra*, his admissions concerning the accidents.

is not credited, that he was told by his insurance broker to get rid of Diamond or his insurance would be canceled, that Diamond failed to promptly report his accidents, and that Diamond had four or five accidents in his 4 or 5 weeks of employment that he did not know Diamond was involved in union activity, that he discharged Diamond on August 10 at a time when he had no knowledge of the union petition or any union activity, and finally that he had written "lack of work" for the reason of his layoff because he had received a letter¹¹ from his insurance broker which said that Diamond had to get through or his insurance would be canceled. The lack of merit in the latter statement is demonstrated by the fact that this letter is dated August 27, 1965, more than 2 weeks after Diamond's discharge. Moreover this letter merely cautioned that accidents had been reported late and, as appears later, incorrectly accused Diamond as one driver guilty of failing to promptly report an accident.

3. The accidents

Diamond testified he had three accidents while in Respondent's employ. Apparently none of these accidents caused great damage and the last one was extremely trivial involving the breaking of two window panes about 1 foot square for which Diamond offered to pay himself and for which the claimant apparently never pressed his claim beyond one telephone call. Again Respondent's Exhibit 2 and 3 establish that Diamond's first accident, occurring on July 6, was reported by him on that same day, while the accident, occurring on July 29 at 4:15 p.m. was reported on July 30. Clearly Diamond was extremely prompt in reporting his accidents. The first accident, that of July 6 resulted in the scraping of some siding off a building, tearing off several shingles. Diamond at that time was driving a truck-trailer, the truck was owned by Addario while the tractor or trailer was owned by Hertz Corporation and leased to Addario.¹² Addario testified that he was under threat of losing his insurance because of Diamond, the available evidence does not support this testimony and I do not credit it.¹³

C. Concluding findings

I find, as indicated above, that on August 10, Addario received a copy of the union petition and thereafter, on the same day, interrogated employees, Moccia, Mahoney, and other unidentified employees, promised benefits to George Mahoney if he would renounce his union adherence, and stated to Moccia that because of the union activity two or three more would be discharged. Only the latter statement was alleged in the complaint to be violative of Section 8(a)(1) and I so find.

George Mahoney credibly testified that Carmen Addario, Jr., came to him sometime in August and said that they had received a letter which stated that the employees wanted to join the Union. Mahoney then went out to make his deliveries but was called on the two-way radio in his truck and told to report to the warehouse. He arrived there about 4 p.m. and was asked by Carmen Addario, Sr., why he wanted to join the Union, stating that he would in time, if the employees voted against the Union, give them an insurance policy, a raise, and other benefits for themselves and their families. Addario then asked Mahoney how he stood and Mahoney replied he wanted to talk it over with his wife. Addario thereupon complained that he couldn't understand "you fellows going home and talking it over with your wives." Mahoney further testified that later in September Addario threatened to "paste him in the mouth" if he "opened his mouth about the Union

¹¹ Respondent's Exhibit 1.

¹² See Respondent's Exhibit 2 which consists of two reports of this accident, one by Hertz and one by Addario; also Addario's covering letter dated July 6 which is part of this exhibit. It should be noted that Addario and counsel for Respondent intimated that the Hertz incident was a separate accident, however the insurance reports establish that but a single accident was involved.

¹³ To completely discredit Addario, as I have, is a serious undertaking. Accordingly, I believe that I am not belaboring the matter by recapitulating my reasons for doing so. Not only have I considered Addario's demeanor and manner of giving testimony but was mindful of his unfounded accusations with regard to late reporting of accidents, the attempt to exaggerate the number and seriousness of the accidents, the obvious attempt to transpose the dates when Moccia and Diamond were discharged when the documentary evidence of the paychecks was in Addario's possession, and his manifest hostility to the union organizational attempt of his employees

again." This testimony stands undenied on the record and I fully credit it. I find that the threat to "paste" Mahoney was violative of Section 8(a)(1) of the Act. I further find that Addario's interrogation of Mahoney occurred on August 10, after Addario received a copy of the Union's petition and learned that his employees were seeking union representation. As the General Counsel has made no allegation concerning the above interrogation, I am not finding that incident to be violative of the Act. I have, however, considered the interrogation to establish Respondent's knowledge of the union activity of the employees and Diamond's participation therein.

I am unimpressed by Addario's repeated assertions that he did not know of Diamond's union adherence. Several times Addario emphasized lack of this knowledge in response to completely unrelated questions. It was clear to me that such unresponsive and self-serving declarations were made because Addario was aware that knowledge of Diamond's union adherence was an important element in the case. Moreover, I believe Addario's widespread interrogation of the employees on August 10 revealed to him that Diamond was the prospective steward and therefore a prime target for his demonstrated union animus. None of the employees were reticent in admitting their union sympathies when interrogated and therefore Addario's failure to question Diamond or even to discuss the Union with him is quite understandable because Addario knew all that was necessary. In this regard, the conversations between Sordello and Addario are quite significant. Sordello testified that, in his telephone conversation with Addario when Addario stated he would reinstate Moccia,¹⁴ Addario said he would have to lay off another employee, Diamond, because business was slack and Diamond had the least seniority. Sordello replied that the layoff would be in order if that were so. Sordello then testified that in his next telephone conversation with Addario, probably on August 16, he asked Addario why he had not called Diamond back and had instead hired some one else. Addario replied he was unable to reach Diamond. Thereafter Sordello called Addario again about August 19, after Diamond, pursuant to instructions from Sordello, had called Addario several times. In this telephone conversation of August 19, Sordello testified that he asked Addario why he was using other people when he had said he would call Diamond back. Addario, according to Sordello, stated that Sordello was not going to run his business; that Diamond was no good; that there were three or four others who had gone to the Union and he would not call them; but, at the conclusion of the conversation Addario again said he would recall Diamond. I credit Sordello's version which was generally but not specifically denied by Addario. On the basis of the above-credited evidence, together with the demonstrated lack of merit in the justifications pleaded by Addario as a defense, I find that Diamond's alleged deficiencies were mere pretexts and that he was discharged because of his union sympathies and desires in violation of Section 8(a)(1) and (3) of the Act.¹⁵

No evidence was presented to substantiate paragraph 16(b) of the complaint and, therefore, that allegation is dismissed.

IV. THE REMEDY

I shall recommend that the Respondent be ordered to cease and desist from the unfair labor practices found above, that it offer to reinstate Diamond with back-pay computed in accordance with the formulas set forth in *F. W. Woolworth Co.*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716, and that it post an appropriate notice. The nature of the unfair labor practices is such that a broad cease and desist order appears warranted. *N.L.R.B. v. Eniwistle Mfg. Co.*, 120 F.2d 532, 536 (C.A. 4); *N.L.R.B. v. Bailey Co.*, 180 F.2d 278, 280 (C.A. 6).

CONCLUSIONS OF LAW

1. Carmen Addario d/b/a Addario's Express and Orleans Express Co., Inc., the Respondent herein, constitutes a single employer within the meaning of Section 2(2)

¹⁴ I have found, above, that this conversation took place on the date of Moccia's discharge, August 10.

¹⁵ Counsel for Respondent asserts in his brief that Diamond was offered reinstatement on two occasions but failed to respond. As no evidence of this was adduced at the hearing and as Addario repeatedly testified that Diamond was "no good" and that he would not take him back for that reason, the inconsistent and contradictory defenses of the Respondent are again sharply illustrated.

of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 25, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening to discharge employees for engaging in union activities and by physically threatening an employee if he expressed union sympathies, the Respondent had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a) (1) and 2(6) and (7) of the Act.

4. By discriminating with respect to the employment and discharge of Howard T. Diamond, as found above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Sections 8(a) (3) and (1) and 2(6) and (7) of the Act.

5. All other allegations of the complaint as to which findings of violation have not been made are hereby dismissed.

In light of the preceding conclusions, the Respondent's motion to enter an order of dismissal, on the ground that the evidence does not support the complaint, is without merit and is denied.

RECOMMENDED ORDER

Upon the basis of the foregoing findings and conclusions and on the entire record, I recommend, pursuant to Section 10(c) of the Act, that the Respondent, Carmen Addario d/b/a Addario's Express and Orleans Express Co., Inc., Boston, Massachusetts, its officers agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in or activity on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 25, or any other labor organization by discriminatorily discharging or in any other manner discriminating in regard to hire, tenure, or condition of employment.

(b) Threatening any employee with physical violence or discharge for having joined or engaged in activity on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 25.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

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

(a) Offer to reinstate Howard T. Diamond to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges, and make him whole in the manner described in the portion of this Decision entitled "The Remedy" for any loss of earnings suffered by reason of the discrimination against him.

(b) Notify Howard T. Diamond if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Military Training and Service Act, as amended, after discharge from the Armed Forces.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Recommended Order.

(d) Post at its premises in East Boston, Massachusetts, copies of the attached notice marked "Appendix."¹⁶ Copies of said notice, to be furnished by the Regional Director for Region 1, shall, after being duly signed by the 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 the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

¹⁶ If this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "a 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."

(c) Notify the Regional Director for Region 1, in writing, within 20 days from the date of the receipt of this Decision, what steps have been taken to comply herewith.¹⁷

¹⁷ 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 from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations 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 offer Howard T. Diamond his former job and pay him for wages he lost since August 11, 1965.

WE WILL NOT threaten to discharge or discriminate against employees because of their union activities or threaten them with violence for engaging in union activities or interfere with them in any way because of their union activities.

All our employees have the right to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 25, or any other union, to engage in other concerted activities for mutual aid or protection, or to refrain from any or all such union or concerted activities.

CARMEN ADDARIO D/B/A ADDARIO'S EXPRESS AND
ORLEANS EXPRESS Co., INC.,

Employer.

Dated _____ By _____
(Representative) (Title)

NOTE.—We will notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 20th Floor, Federal Office Building, Cambridge and New Dudley Streets, Boston, Massachusetts 02108, Telephone 223-3300.

Rudnick Land & Cattle Co., and its Divisions—Piute Packing Co., and Rudnick Truck Lines and Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America

Kern Valley Packing Co. and Teamsters, Chauffeurs, Warehousemen & Helpers Local Union No. 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Cases 31-CA-62 (formerly 21-CA-6617) and 63 (formerly 21-CA-6618). June 16, 1966

DECISION AND ORDER

On March 25, 1966, Trial Examiner Louis S. Penfield issued his Decision in the above-entitled cases, finding that the Respondent 159 NLRB No. 38.