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, Second Floor Commerce Building, 744 North Fourth Street Milwaukee, Wisconsin 53203, Telephone 272–8600, Extension 3879.

Continental Oil Company *and* Frank Edward Bruso. *Case 27–CA–1906. November 15, 1966*

DECISION AND ORDER

On August 16, 1966, Trial Examiner Martin S. Bennett issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in certain unfair labor practices and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Decision together with a supporting brief, and the Respondent filed an answering brief in opposition to the General Counsel's exceptions.

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

The Board has 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, conclusions, and recommendations of the Trial Examiner, except as modified below.[1]

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

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[1] The Trial Examiner found, in effect, that even though Bruso may have engaged in protected concerted activities, the Respondent was unaware of this and had discharged Bruso for cause. Whether or not Respondent had such knowledge, the record clearly establishes that Bruso was indeed discharged solely for cause and for reasons unrelated to Section 7 of the Act.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This matter was heard before Trial Examiner Martin S. Bennett at Denver, Colorado, on April 7, 28, and 29, 1966. The complaint[1] alleges that Respondent,

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[1] Issued January 7, 1966, and based upon a charge filed September 21, 1965, by Frank Edward Bruso, an individual.

After the close of the hearing, the parties jointly moved for the correction of certain errors in the transcript of testimony. The motion is hereby granted and the pleading received in evidence as Trial Examiner's Exhibit 1.

Continental Oil Company, has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act. Briefs have been submitted by the parties.

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

FINDINGS OF FACT

I. JURISDICTIONAL FINDINGS

Continental Oil Company is a corporation maintaining offices in various States of the United States including one at Denver, Colorado, where it is engaged in the exploration, production, and distribution of oil, gasoline, and related products. It annually purchases, transfers, and delivers to its Colorado operations products valued in excess of $50,000 directly from points outside the State of Colorado. It also annually sells and distributes products valued in excess of $50,000 from its Colorado operations directly to points outside the State of Colorado. I find that the operations of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Introduction; the issue*

Frank E. Bruso, a transport driver at Respondent's Denver, Colorado, operation, was discharged on July 23, 1965. The General Counsel contends that Bruso was discharged because he engaged in protected concerted activities including discussions and meetings with other employees about Respondent's policies concerning the wearing of uniforms, the reporting time for work and work on Saturdays. It is the position of Respondent that Bruso was discharged because of his dissatisfied attitude toward his job and repeated personal complaints or "griping" concerning working conditions over a lengthy period of time and, more particularly, Bruso's unwillingness to work on two Saturdays immediately preceding his discharge. There is little conflict of fact.

B. *The facts*

Frank Bruso entered the employ of Respondent in 1953 and in July of 1958 became one of six regular transport drivers. His immediate superior was Garage Superintendent James Latimer of the Denver terminal. Latimer is under Raymond Stewart, regional director of transportation for Respondent's Rocky Mountain region, and Stewart, in turn is subordinate to W. R. Toller, regional manager of the transportation department for that region.

Shortly before July 20, Stewart and Latimer decided that Bruso should be terminated. They so recommended to Toller who, on July 20, made the decision to discharge Bruso. The reasons for his discharge are set forth in the following interoffice communication to Toller from Latimer and Stewart. On July 23, Latimer informed Bruso of his discharge and read the seven items appearing at the close of the document to him:

Denver, Colorado
July 21, 1965

TO: Mr. W. R. Toller
SUBJECT: TERMINATION—FRANK BRUSO, DENVER TRANSPORT DRIVER

Jimmie Latimer, Superintendent of our Denver Garage, and I recommend that Frank Bruso be terminated from Continental Oil Company as a transport driver. This recommendation is not being made because Frank has not qualified as a transport driver within itself, but because of his attitude, disposition, and agitation of other employees. We feel that considerable efforts have been made to correct this situation with very little or no results. We feel that this type of constant dissension can only be detrimental to our operation.

The following are characteristics involving this employee:

1. Not satisfied with established hours and pay.
2. Has refused working on Saturdays, hindering utilization of transports.
3. Reluctant to make changes for betterment of operation.
4. Objectionable to drivers uniform until finally forced into wearing it.
5. Objection to Garage maintenance and repair program as established on the transports.
6. Criticizing of company's recent posting of profit plaque cards.
7. Creating disturbance and agitation among the drivers regarding practically all phases of the Denver transport operations.

C. *Analysis and conclusions*

The General Counsel perforce relies on the seventh reason as reflecting Respondent's decision to discharge Bruso for engaging in concerted activities, more particularly his purported discussions with fellow employees concerning the wearing of uniforms, reporting time, and Staturday work. As will appear, Respondent explains this away, showing that this reflects rather Bruso's continual griping which upset his fellow drivers who in turn, and the record so shows, relayed their feelings to management.

There is much evidence in the record that Bruso was a habitual griper. Indeed, on his own testimony, he found fault with just about every decision by management in areas such as days of work, the wearing of uniforms, and the type of equipment used by Respondent and did state his views without reserve both to management and fellow workers.

The General Counsel stresses one matter as purportedly bringing Bruso within the protection of Section 7 of the Act. It is argued that Bruso was engaged in a protected concerted activity, when in April of 1965, Driver Naeve after discussion with Bruso, arranged a meeting at which Respondent and five of its six drivers discussed the new requirement that the drivers wear uniforms.

It is further argued that this is one of the reasons for his discharge and it is reflected, according to the General Counsel, in reason 7 of the statement read to Bruso. The General Counsel also adduced evidence to the effect that in May of *1964* the drivers, including Bruso, made one contact with a labor organization and that Respondent was aware of this. It would immediately seem that this last matter was long dormant. And while Bruso was a most outspoken and long-winded speaker, the record does not disclose that he was the leader in this activity.

In essence, the General Counsel relies on Bruso's opposition to the requirement that uniforms be worn. Respondent, in turn, has come forward with a plethora of material, all to the general effect that Bruso opposed many management decisions and that his unwillingness to work Saturdays, and particularly so on July 10 and 17, plus dictating the choice of a casual replacement driver for him on July 17, led to his discharge.[2]

The record well demonstrates that Bruso, although amiable, was belligerent and intractable. He was manifestly more articulate than his supervisor, Latimer, and indeed voiced his low regard of Latimer's intellect to higher echelons of management.

Respondent works its drivers on Saturdays approximately 98 percent of the time. It prefers to use its regular drivers at premium pay rather than casual weekend fill-ins at straight time because of the experience of the former group, thus avoiding mishaps and errors. Bruso, who happens to own stock in Respondent, dislikes Saturday work on principle. And, solicitous of the truck he drove, he also objected to any casual driver other than one, Johnson, driving his truck, when he, Bruso chose not to work on Saturdays.[3]

Respondent has introduced unchallenged documentary evidence that Bruso worked by far the lowest percentage of weekends of any driver.[4] Bruso admittedly informed management that he wished Saturdays off like the mechanics in the shop. Not only did he refuse to work on July 10 and 17, but he challenged the temporary dispatcher, Bodger, who substituted for Latimer on the latter date, not to place a casual driver on the truck who did not meet with Bruso's approval. These last two refusals to work on Saturdays were the final precipitating causes of his discharge according to Respondent, and I so find.

By way of immediate background, Bruso strongly resisted Respondent's decision to place its drivers in uniform. A July 1, 1965, deadline was imposed for the wearing of uniforms and I find that Bruso contrary to his testimony, was the only driver not in uniform in the entire Rocky Mountain region on that date. While

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[2] Bruso's uncle formerly held the position now enjoyed by Regional Manager Toller. The inference is warranted that Bruso's uncle "carried," as it were, his nephew and that, after his uncle's retirement, Bruso found fault with many management decisions.

[3] Bruso did not flatly refuse to work on Saturdays. He voiced his unwillingness to work, adding that he would work if a replacement could not be found. Respondent found it more politic or practicable not to force his hand. I find that Bruso rebelled at management decisions to work him on Saturdays.

[4] This was not true in 1963 when Bruso worked 3 long days per week. His enthusiasm for Saturday work cooled immediately when Respondent placed him and driver Naeve on a straight 5-day week.

he alllegedly had a problem of his pants not fitting, perhaps a more reliable indication of his views is his statement that the uniform did not improve his driving ability and his reference to it as a "monkey suit."

This leads to the purported concerted activities relied on by the General Counsel. Bruso and coworker Dean Naeve who drove the same truck decided to ask Toller to meet with the drivers and discuss the cost of the new uniforms. Naeve telephoned Toller and arranged a meeting for April 10, 1965. The various drivers met with Toller on this occasion and discussed the cost of the uniforms, upkeep, and the portion thereof that Respondent would assume.

There is no evidence that Toller or any other representative of management was aware of the previous discussion between Bruso and Naeve which led to this meeting. The record also reveals that Bruso never suggested to any other employee that he be their spokesman and, similarly, he was never so authorized by any employee. Nor did Bruso ever so indicate to management. And, assuming arrangements for the April meeting were a concerted activity with respect to the cost and maintenance of the uniforms, the fact is that what management found fault with was rather Bruso's personal unwillingness to wear a uniform.

There is much evidence of Bruso's intractability and finding fault with company policies in a number of other areas, but I believe that it would unduly burden this Decision to set it forth. Suffice it to say that (1) Bruso was discharged for cause and reasons unrelated to engagement in protected concerted activities, namely, his continuous manifestation of personal dissatisfaction with numerous aspects of his job and constant complaining concerning management decisions as they affected, him, Bruso; and (2) if Bruso was engaged in protected concerted activities, Respondent was not aware of this fact. The incidents most clearly related to the time of discharge were his individual refusals to work Saturdays and his delay in complying with the deadline for wearing uniforms. See *Disneyland, A Division of Walt Disney Productions,* 157 NLRB 1342.

As stated by the Supreme Court in *N.L.R.B.* v. *Burnup and Sims, Inc.*, 379 U.S. 21: "In sum, Section 8(a)(1) is violated if it is shown that the discharged employee was at the time engaged in a protected activity, that *the employer knew it was such.* . . ." [Emphasis added.]

In view of all the foregoing considerations, I shall recommend that the complaint be dismissed in its entirety. *Mushroom Transportation Co.* v. *N.L.R.B.*, 330 F.2d 683 (C.A. 3); *N.L.R.B.* v. *Office Towel Supply Company Incorporated,* 201 F.2d 838 (C.A. 2); *N.L.R.B.* v. *Westinghouse Electric Corporation (Ansonia Plant)*, 179 F.2d 507 (C.A. 6); *Borg-Warner Corp.*, 155 NLRB 1087; and *Continental Manufacturing Corp.*, 155 NLRB 255. See *Cumberland Shoe Corp.*, 156 NLRB 1130, and *Norfolk Conveyor,* 159 NLRB 464.

CONCLUSIONS OF LAW

1. The operations of Respondent, Continental Oil Company, affect commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

RECOMMENDED ORDER

In view of the foregoing findings of fact and conclusions of law, it is recommended that the complaint be dismissed in its entirety.

Newman-Green, Inc. ***and*** **Charles J. Fortune, Jr.** *Case 13–CA–7109. November 16, 1966*

DECISION AND ORDER

On June 14, 1966, Trial Examiner W. Edwin Youngblood issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor