

Robert Schreiber d/b/a Schreiber Trucking Company and/or Robert Schreiber Trucking, Inc. and Forrest R. Drudge and Ivan Albertson. Cases 25-CA-2670 and 25-CA-2704

August 8, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND ZAGORIA

On May 31, 1967, Trial Examiner John M. Dyer issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of such allegations. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision.

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.

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 and the entire record in this case, including the exceptions, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, Robert Schreiber d/b/a Schreiber Trucking Company and/or Robert Schreiber Trucking, Inc., Valparaiso, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified.

1. Delete from the second sentence of paragraph 2(d) of the Trial Examiner's Recommended Order the words "Copies of such notice to be furnished . . .," and substitute in lieu thereof the following: "Copies of said notice, on forms provided. . . ."

2. Add the following immediately below the signature line at the bottom of the notice attached to the Trial Examiner's Decision:

"NOTE: We will notify the above-named employees if presently serving in the Armed Forces of the United States of their 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."

IT IS FURTHER ORDERED that those portions of the complaint as to which no violations have been found are hereby dismissed.

¹ In view of our concurrence in the Trial Examiner's finding that Respondent's discharge of employee Albertson was a violation of Section 8(a)(1), and in his recommendation of reinstatement and backpay for Albertson, we find it unnecessary to pass on the General Counsel's contention that the discharge was also a violation of Section 8(a)(3).

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JOHN M. DYER, Trial Examiner: Robert Schreiber is the proprietor and owner of Schreiber Trucking Company and the principal incorporator of Robert Schreiber Trucking, Inc.,¹ which companies are herein referred to as Respondent Schreiber. Charges and amended charges were filed by individuals Drudge and Albertson against Respondent Schreiber in December 1966² and January 1967 alleging that they were individually discharged by Respondent Schreiber in November in violation of Section 8(a)(3) of the National Labor Relations Act, as amended. General Counsel's original complaint issued in January 1967 alleging Drudge was discharged in violation of Section 8(a)(3) and a second complaint issued in February 1967 alleging Albertson's discharge as violative of Section 8(a)(3), at which time the cases were ordered consolidated. Respondent Schreiber wrote a letter in answer to the original complaint, and at the hearing, which was held February 28, 1967, in Valparaiso, Indiana, Respondent Schreiber was permitted to answer orally to both complaints. The receipt of the various charges and amendments and of the complaints, that he was engaged in commerce within the meaning of the Act, and that General Drivers, Warehousemen, and Helpers Local Union No. 142, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein referred to as the Union, was a labor organization within the meaning of Section 2(5) of the Act, were admitted by Respondent Schreiber, but he denied committing any violations of the Act. All parties were accorded full opportunity to examine and cross-examine witnesses and a brief filed by the General Counsel has been considered.

¹ A motion to amend Respondent's name as it appears in the caption was granted at the hearing. Robert Schreiber testified that he is the sole proprietor of Schreiber Trucking Company and that Robert Schreiber Trucking, Inc., was incorporated in 1966, but does not exist as a going concern since none of the business or assets of Schreiber Trucking Company have been turned over to it and it has no business or assets of its own. Further, Schreiber Trucking Company operated until February 20, 1967, when it was placed in receivership. At the time of the hearing Robert Schreiber did not know whether the business would be continued or under what name.

² All dates herein occurred in 1966 unless specifically noted otherwise.

On the complete record in this case and on my evaluation of the reliability of the witnesses based both on the evidence received and my observation of their demeanor, I make the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS AND THE LABOR ORGANIZATION

At all times material herein, Respondent Schreiber was engaged as an individual proprietor in the business of interstate transportation of bulk commodities by motor vehicle, having his place of business at Hebron, Indiana, until January 9, 1967, and thereafter at Gary, Indiana. During 1966, Respondent Schreiber derived revenues valued in excess of \$50,000 for the transportation of commodities in interstate commerce between different States of the United States and admits and I find that he is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent admits and I find that the Union herein is a labor organization within the meaning of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *Background and Issues*

With one truck Respondent Schreiber started a business of hauling bulk commodities in tractor and semitrailer dump units, operating from a yard behind his house. Harry Brown started as his mechanic and stayed with him to become the dispatcher and Schreiber's assistant. Through the years they added additional units and Schreiber's father, as did other individuals, became brokers, leasing their trucks to Schreiber and providing drivers therefor. Most of Respondent Schreiber's business originated in the area around Gary and Hammond, Indiana. Since the trucks were serviced and maintained at Schreiber's establishment at Hebron, Indiana, Respondent Schreiber told drivers as he hired them that their pay would start when the truck started producing revenue, usually at Gary or Hammond, although they were to drive the trucks to that point from Hebron. As Robert Schreiber described it, he felt he was furnishing the drivers a \$20,000 taxicab to take them to work.

Some 5 or 6 years previous to the hearing Respondent Schreiber signed an agreement with the Union. Schreiber stated that on numerous occasions he said signing up with the Union was the best thing he had done for his Company, noting additionally that a number of the firms with which he did business were unionized and it made things easier for them. A new union contract signed by the parties on August 15, 1966, retroactive to June 1, provided a new wage rate and other new terms. The contract contained wage rates for garage employees although the garage employees at Respondent Schreiber's shop were not union members, and apparently were not considered by the parties as being in the unit.

During the summer of 1966, some of the drivers expressed dissatisfaction with having to drive the trucks to the revenue point and not being paid for at least some part of it. An employee named Stahlbaum became a spokesman for the employees and voiced complaints and grievances regarding the number of hours for which employees were paid. It appears that some employees were turning in the total hours they worked beginning and end-

ing in Hebron, while some drivers knocked one-half to 1 hour from such time to compensate for driving to and from the revenue point. Respondent Schreiber in determining wages and deducting additional hours to make up for the approximate 45-minute drive each way. Thus if an employee was deducting one-half hour daily as his contribution to driving time to and from the revenue point, Respondent Schreiber on a 6-day week might knock off 6 hours or more for this driving time. One of the drivers testified that on trucking jobs where Respondent Schreiber was not making much money, additional driving time would sometimes be knocked off. The confusion of practices led to a large measure of dissatisfaction and a number of grievances, the source of which Schreiber laid to employee Stahlbaum. According to Schreiber, Stahlbaum would wait outside on payday and check the men's pay to see how much time was "chopped" and would then bring up grievances. During the summer of 1966 several meetings were held by Schreiber and the employees to discuss these problems and when the retroactive pay would be paid by Schreiber.

In September, Stahlbaum was made union steward for Respondent Schreiber's shop and held that position until sometime in December 1966. During that period Stahlbaum estimates he took up 15 or 16 grievances with Schreiber. Schreiber estimates there were many more than that, complaining that most of his evenings were ruined by Stahlbaum. As Stahlbaum testified, a good deal of personal friction between Schreiber and Stahlbaum was generated.

There is no testimony to indicate that Respondent Schreiber had a union steward before Stahlbaum's appointment. Apparently prior to the summer of 1966, things ran smoothly at Respondent Schreiber, with the Union being a distant entity to which dues and health and welfare payments were submitted and with very little if any immediate personal contact. The rising tide of grievances brought about bitter personal feelings between Stahlbaum and Schreiber, with Schreiber attributing the problems to personal vindictiveness on Stahlbaum's part, believing Stahlbaum unable to run a business of his own, and seeking to run Schreiber into the ground with a multiplicity of grievances in a company which employed 25 drivers. I cannot determine whether Stahlbaum sought to police the contract with zeal, or with excessive zeal, because of his desire to aid his fellow drivers or because he had a grudge against Schreiber. But in either event, Schreiber thought Stahlbaum was out to ruin him and considered Stahlbaum as an identity somewhat apart from the Union he had been accustomed to deal with. There are occasions hereafter described when apparently Schreiber considered Stahlbaum as "the union" and other times when he considered him as an enemy out to get him using the Union as a tool.

A copy of the uniform rules and regulations which had been approved by the Union and the negotiating committee for the Indiana Truckers Association was followed by Respondent Schreiber. One of the rule provisions was that a violation of a State, Federal, or city law governing motor vehicles when the driver was negligent, such as an overweight or insecure load, was a penalty against a driver, except where bulk commodities were involved. It appears from the testimony that Respondent Schreiber paid the overload fines where employees were caught with overweight loads on their trucks up until the fall of 1966. At that time the State authorities began cracking down and Schreiber posted a sign in the terminal office

proscribing overloaded trucks. One of the employees testified that Schreiber specifically told employees not to overload, saying that if they did so, they would have to pay their own fines. On occasions prior to this Schreiber had told employees to overload their trucks on some short runs, particularly where it was not a well-paying job. After starting the new practice, the first employee caught with an overload, and fined was Stahlbaum. Schreiber paid the overload fine but deducted it from Stahlbaum's pay. Since that time two other employees were caught and paid their fines. General Counsel urged that the deduction of the fine from Stahlbaum's pay showed animus toward the Union since Stahlbaum was the union steward. However, under the circumstances I cannot agree with General Counsel's contention.

When Schreiber was unable to get an agreement with Stahlbaum and the employees in regard to the payment of traveling time on the trucks, the terminal was moved to Gary, Indiana, on January 9, 1967, where it remained until the business was put into receivership on February 20, 1967.

The principal questions in this case are (1) were the discharges of mechanic Albertson and driver Drudge for cause or because they individually engaged in, or Respondent Schreiber thought they engaged in, union or concerted activities; and (2) whether Respondent Schreiber engaged in threats of discharge and threats to move the terminal and whether the terminal was moved to Gary, Indiana, to dissuade union membership or support and whether Respondent Schreiber informed employees that other employees had been discharged because they had engaged in union or concerted activities.

B *Albertson's Discharge*

While attending school, Ivan Alberston started working for Respondent Schreiber at night learning to be a mechanic. He left in 1964 and returned in May 1965 at an increased wage of \$2 per hour which with three intermediate raises had become \$3 an hour in October 1966. Sometime during the summer of 1966, presumably after the new union contract was signed, Albertson asked Chief Mechanic Holmes about payment for hours of work over 40 at an overtime rate. Albertson had been working as much as 70 hours per week but was being paid straight time. Holmes' response was to shrug his shoulders. Albertson stated he did not pursue the matter further and never asked Bob Schreiber about payment of overtime. On November 23, after he had finished work, Holmes told him what his duties would be the next day, and then he was called to Schreiber's office.

Robert Schreiber testified he received a telephone call from a person he did not want to identify, in the evening of November 23. This person said Albertson was talking in his community that he was going to sue Schreiber for overtime, but was going to wait until after the holidays apparently to make the suit bigger. Schreiber called Albertson into his office and told him about receiving the call. Although Albertson denied the allegations, Schreiber said he thought Albertson had no loyalty left and he did not need him any longer and that he heard Albertson was waiting until after the holidays to bring suit, but not to wait till after Christmas but do it now, start on Friday after Thanksgiving. Schreiber said Stahlbaum was pushing Albertson and telling him how to get the backpay and when he got the opportunity he would fire Stahlbaum and was looking for a reason to fire him. Schreiber

testified that he thought Stahlbaum was leading Drudge and Albertson around with their grievances and that being the union steward he should have stayed with the truckdrivers and not concerned himself with the mechanics who never wanted to get into the Union.

Shortly after Albertson's discharge a union meeting was scheduled to be held in Schreiber's office, but since Schreiber was working there, Stahlbaum moved the meeting to the garage. The men were in the garage only a short time when Schreiber came in and told Stahlbaum that he did not want him in the garage, that Stahlbaum had pumped mechanic Albertson so full of bull about the Union he did not know whether he was coming or going and got him fired and Schreiber was not about to have it happen again. He told the men to get back to the office and hold the meeting but to stay out of the garage.

On the basis of Schreiber's testimony as to why and the manner in which he discharged Albertson, I conclude and find that Albertson was discharged because Schreiber felt he was engaged in concerted activities with Stahlbaum to secure overtime pay. Albertson thought was due him. Whether Stahlbaum and Schreiber were actually working in concert is immaterial since Schreiber concluded they were and for that reason fired Albertson. I therefore conclude and find that Schreiber discharged Ivan Albertson because Schreiber thought Albertson was engaged in concerted activities and that such discharge was in violation of Section 8(a)(1) of the Act. There may be some question as to whether Schreiber thought Albertson was developing an interest in union activities but in the circumstances here, I feel that Schreiber thought Stahlbaum was coaching Albertson to agitate Schreiber and considered it another example of Stahlbaum's supposed effort to get him. The reference to Albertson's lack of loyalty and Stahlbaum's leading him around convinces me that Schreiber saw Albertson in the light of consorting with the enemy. The later statement in the garage while indicating some suspicion that Albertson was engaged in union activity, was I believe engendered by the circumstance of the union meeting being held in the garage and did not indicate Schreiber's thought when he discharged Albertson. Therefore I do not feel that this discharge violated Section 8(a)(3) but I am recommending that Albertson be reinstated and reimbursed for any loss of wages he may have suffered.

C. *Drudge's Discharge*

Forrest R. Drudge, a driver, started for Respondent Schreiber at the beginning of October 1966 and worked the first 5 days in the garage. Thereafter, during the rest of October until November 21, Drudge drove 18 days on various trucks including 6 days for a broker of Schreiber's. Drudge was never assigned a truck of his own. After driving for a broker from November 15 through 18, Drudge on Friday, November 18, saw Schreiber and asked when he would be put to work permanently on the trucks. Schreiber said he was trying to buy another company and had some trucks being repaired and when they got them he would put him on steady. Drudge says he asked Schreiber about another employee, Cummings, who was working steady while he wasn't. Schreiber said that he had a truck down and when he got it repaired, would put him on it. Sometime between November 18 and 21, Stahlbaum asked Schreiber why Drudge was not working while Cummings, with lower

seniority, was. Schreiber said he didn't like Drudge, he was no good, and that he was going to cause him a lot of trouble with the Union and he didn't want him anymore. On Monday, November 21, Drudge asked Schreiber what he should do and Schreiber said that as long as he had to pay him he could work in the garage. In the 8 to 9 hours he worked, he cut a brake drum, swept, and did some odd jobs in the garage. Before leaving he told Dispatcher Harry Brown he was getting ready to go home and Brown handed him his check, saying that this was it, he was fired. When he asked why Brown replied that Schreiber never did like his work and it was Schreiber's orders. On that same day, Stahlbaum learned of Drudge's discharge and asked Schreiber about it. Schreiber said he was going to keep Cummings but not Drudge since everytime Drudge loaded his truck he stopped for coffee and talked and just didn't hustle for the Company. He concluded saying Drudge had given him union trouble and had only been there a short time and if he was there longer he didn't know what would happen. Stahlbaum told Drudge he couldn't do him any good and Drudge should go to the Union. When he reached home Drudge called Schreiber and asked why he was fired. Schreiber testified he told Drudge he had only been with him 30 days and already Drudge was going to the Union and he wondered what it would be like in 6 months. Drudge testified that Schreiber said he had to put up with another driver named Redford but was not going to put up with him. Drudge complained that driver Cummings had less seniority and was still employed. Schreiber told him to come in the next morning and they would talk to the Union then.

On the following morning Drudge went to the union hall and saw Business Agent Abshire about his discharge. While conferring, Robert Schreiber called Abshire on the telephone.³ After the telephone conversation Abshire told Drudge to go back out there and go to work. Drudge reported to work on November 23, and asked Schreiber what he was to do. Schreiber told him to go wash his car. During the day Drudge performed other odd jobs and before quitting for the day asked Brown if there was something further he should do. Brown told the secretary to make out Drudge's check, that he was fired. Drudge asked why. Brown replied he was doing what Schreiber told him to do and Drudge said they would have to pay him for both days. Schreiber came in and told the office girl to make out the check for one day's pay at drivers wages and mark it paid in full. Drudge walked out saying he would not accept a check marked paid in full.

Essentially Schreiber's testimony was that he considered Drudge a poor driver who wouldn't hustle and consequently wasn't producing enough revenue and he couldn't afford to keep him. Schreiber also complained that every time Drudge took a truck out something went wrong with it, to the point where he considered Drudge a jinx. The biggest problem concerned damage which occurred when Drudge while hauling a load of sand, and

after crossing a railroad track, had the truck springs break and it became necessary to shovel the load of sand into another truck and make temporary repairs until the truck could be brought back to the garage. Schreiber testified that Drudge must have hit the railroad tracks at an excessive rate of speed in order to break either the strap hanger or the springs. Drudge testified he crossed the tracks at approximately 8 to 10 miles an hour which he considered from his previous experience to be reasonable. The damage occurred in a mill yard where the ordinary speed was 15 miles an hour. This accident besides the damage, tied up two trucks for most of a night. On an occasion, which seems to have occurred later, a truckdriver told Schreiber that Drudge was speeding and that if he wasn't slowed down Drudge's speed might get them thrown off the job. Schreiber warned Drudge that he was paid by the hour and not by the number of loads carried and to slow down. Schreiber also testified Drudge had driven a trailer with a flat tire and that he had received a report that Drudge had made a U-turn on a freeway. Drudge at the hearing denied the U-turn incident and Schreiber prior to the discharge never mentioned the report to Drudge.

Schreiber stated he considered all drivers to be apprentices for 30 days since they did not have to join the Union until the 31st day. Schreiber may have meant that he considered the 30-day period as a probationary period, and mixed the terms considering that there is no probationary period provided in the union contract but a rate for apprentice drivers is set out. In any event neither of the parties offered a definitive interpretation.

It is difficult to assess all of the matters Schreiber considered before discharging Drudge and whether some of the reasons now advanced were discovered retrospectively.⁴ It seems that Schreiber thought he was insulated in discharging Drudge for any reason during the 30-day period after he started driving. His testimony that he told Drudge he was already running to the Union would seem to bear this out and is again illustrative of the bad feelings between Union Steward Stahlbaum, and Schreiber.

From Stahlbaum's testimony it would appear that prior to the discharge Schreiber had decided that he didn't like the way Drudge worked nor his driving ability and more than that did not like Drudge's lack of hustle. However, considering Schreiber's promises to Drudge on October 18 to put him on a truck steadily as soon as one was repaired, it would appear that the discharge was ignited by the fact that Stahlbaum talked to Schreiber concerning Cummings working while Drudge did not. Schreiber's main statement both to Drudge and Stahlbaum was that Drudge had been with Respondent less than 30 days and already was going to the Union and he couldn't conceive of the difficulties he would have with him in 6 months. Schreiber apparently thought that since Drudge had driven for him less than 30 days, he was on probation and could be fired for any reason including Drudge's use of the Union in airing his complaints. At the hearing Schreiber sought to distinguish the statement from the

³ Abshire told Schreiber that since Drudge had seniority over Cummings, Respondent could retain both or Drudge but not Cummings over Drudge. Respondent Schreiber had both on the payroll on November 23 and then fired both. He rehired Cummings on a new application after Cummings told Schreiber he was in debt and had his wife in the hospital. Cummings remained about 10 days before leaving Respondent Schreiber's employ

⁴ Schreiber further sought to deprecate Drudge's ability by introducing a transcript of Drudge's traffic violations. This record requested from the

State of Indiana more than 2 months after Drudge's discharge showed he had no outstanding violations that would impair his ability to drive and had a currently valid chauffeurs license. Schreiber also questioned whether the period Drudge drove for a broker broke his seniority with Respondent Schreiber. Since none of these questions had been raised or spoken of by any of the parties prior to or at the time of discharge, they did not enter into Schreiber's decision to discharge Drudge, and I will not consider them

discharge by saying he didn't make the remark about running to the Union until after he had discharged Drudge. Considering all of the circumstances, including Drudge's unadmitted statements attributed to Schreiber that Drudge would be given a permanent assignment on a truck (November 18), the animosity between Stahlbaum and Schreiber, Albertson's discharge, as well as Schreiber's admitted statements in which he considered Drudge running to Stahlbaum as running to the Union, I conclude that the principal reason for the discharge was Drudge's use of Stahlbaum to grieve against Respondent Schreiber regarding seniority in assignment to a truck. Schreiber, an individual who had built up his Company from a very humble beginning, could not stand to see Stahlbaum acting as the union steward, a person he greatly disliked, seek to tell him the conditions under which he had to employ his drivers. I find and conclude that Forrest Drudge's discharge is in violation of Section 8(a)(3) and (1) of the Act.

D. *Independent Violations of Section 8(a)(1)*

1. Robert Schreiber was charged with threatening his employees with discharge and other reprisals including moving of the facility if they did not refrain from becoming or remaining members of the Union or giving assistance or support to it. Basically this allegation is concerned with Schreiber's repeated statements to employees and to Union Steward Stahlbaum in particular, that if they could not come to some kind of agreement in regard to traveling time between Hebron, Indiana, and the point at which the trucks started to produce revenue, Schreiber was going to move the terminal from Hebron to Gary, Indiana.

On one occasion while discussing a grievance Schreiber told Stahlbaum he was tired of him and employee Lippert running his trucking business and it was no business of Stahlbaum's who Schreiber sent out and who he had working in the garage, and that the two of them were going to put his operations in the north end (meaning in or near Gary, Indiana). Although this statement could be interpreted as a threat against Stahlbaum's general union activities, I consider it to be aimed at the principal source of all the grievances, the traveling-time problem. One of the employees stated that the question of traveling time was the cause of 90 percent of the grievances and dissension. In his original letter answer to the complaint Schreiber stated that he did tell the drivers that if they didn't start to make money he would find it necessary to move the operation.

I think it is clear from the testimony of Schreiber and Stahlbaum as corroborated by Wilkey and Lippert, that the main difficulty between the drivers and Schreiber was the matter of hours spent in traveling between the terminal and where the job commenced and whether the employees were to donate those hours to management or be paid for them. The employees in most cases, charged the employer for those hours and were getting some of their time "chopped" by Respondent Schreiber. This problem was aired at several meetings between the drivers and Robert Schreiber. Schreiber testified the problem was caused by Stahlbaum's agitation and that at one meeting he so told the men. He also testified without contradiction that union officials had advised them to work out the problem between them. Schreiber maintained he could not economically run his business if he had to pay traveling time and so informed his men, adding that if they

could not agree, he would move the terminal. The question was not resolved by the parties and Respondent Schreiber moved the terminal to Gary. The move was not made for the purpose of inhibiting the employees from becoming union members or giving assistance or support to the Union but rather to remove the principal cause of employee dissension which was a subject for negotiation. Respondent Schreiber's move is analogous to a unilateral action after negotiation and impasse. Since agreement was not forthcoming the removal of the source of the contention appears to me to be a legitimate resolution and I find that neither the threat nor the move violated Section 8(a)(1) and accordingly I recommend the dismissal of said allegations.

2. The complaint further alleges that Harry Brown on November 23, and Robert Schreiber on November 21 and 29 and on other dates in November and December told the employees Respondent Schreiber had discharged some of its employees because they became or remained members of the Union or gave assistance or support to it or because they engaged in concerted activities. Counsel for the General Counsel stated that as to dispatcher Harry Brown there was no evidence of an independent violation of Section 8(a)(1), but that the allegation referred to the discharge of Drudge and that such discharge itself constituted a threat to other employees, or otherwise stated, the discharge of Drudge was an inherent 8(a)(1) violation. From the testimony, Brown made no statement to Drudge, or in the presence of other employees, to indicate that Drudge's discharge was caused either by Drudge engaging in union or concerted activities. Therefore I conclude and find that the allegation as to Brown should be dismissed.

Stahlbaum's testimony regarding Schreiber's remarks to him on November 21, was set forth above. This remark about Drudge giving him union trouble, in the context of the discharge, I find is violative of Section 8(a)(1). Schreiber's remarks to the men in the garage about Stahlbaum getting a man fired (see above) presumably occurred about November 29. I find that these remarks also violated Section 8(a)(1). These two statements were first a warning to Stahlbaum and secondly a warning to Stahlbaum and all the employees as to what might happen if the employees worked in concert with Stahlbaum or if Stahlbaum continued to file and pursue numerous grievances.

Schreiber while discharging Albertson told him Stahlbaum was pushing him and presumably other employees in pursuing what Stahlbaum considered their rights under the contract and Schreiber was going to bring Stahlbaum's activities to an abrupt halt by discharging him the first time he found a reason to do so. I find and conclude that this remark to Albertson was violative of Section 8(a)(1) of the Act.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent as set forth in section II, above, and therein found to constitute unfair labor practices in violation of Section 8(a)(3) and (1) of the Act, occurring in connection with Respondent's business operations as set forth 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.

IV. THE REMEDY

Having found that Respondent engaged in unfair labor practices as set forth above, I recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act as follows:

Respondent having discharged and thereafter having refused to reinstate Ivan Albertson and Forrest Drudge because of their concerted and union activities, I recommend that Respondent offer them immediate and full reinstatement to their former positions or if such positions are unavailable through a change in Respondent's operations, to a substantially equivalent position, without prejudice to their seniority or other rights and privileges, and that Respondent make them whole for any loss of pay they may have suffered by reason of Respondent's discrimination against them, by payment to them of a sum equal to that which they would normally have received as wages from November 21 and 23, 1966, the date of their discharges, until the date Respondent reinstates them, less any net earnings for the interim. Backpay is to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, with interest at the rate of 6 percent per annum to be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716. I further recommend that Respondent make available to the Board on request, payroll and other records in order to facilitate checking of the amount of backpay due and the rights of Ivan Albertson and Forrest Drudge.

Respondent has also interfered with employees' rights by informing employees that it had discharged other employees for engaging in union activities or engaging in concerted activities. It is therefore recommended that Respondent be ordered not to infringe upon the rights guaranteed its employees by violating the Act in the same or in any similar manner.

On the basis of the foregoing findings, and the entire record, I make the following:

CONCLUSIONS OF LAW

1. Robert Schreiber d/b/a Schreiber Trucking Company and/or Robert Schreiber Trucking, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By discriminatorily discharging Ivan Albertson on November 23, and Forrest Drudge on November 21 and 23, 1966, and thereafter refusing to reinstate them because of their union sentiments, membership, and activities and because they engaged in concerted activities, Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(3) and (1) and 2(6) and (7) of the Act.

4. By informing employees that other employees had been discharged because they engaged in union or concerted activities Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

⁵ In the event that 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

RECOMMENDED ORDER

On the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case considered as a whole, I hereby recommend that Respondent Robert Schreiber d/b/a Schreiber Trucking Company and/or Robert Schreiber Trucking, Inc., of Hebron and Gary, Indiana, its respective officers, agents, successors, or assigns and/or its receiver, shall:

1. Cease and desist from:

(a) Discouraging membership in and activities on behalf of General Drivers, Warehousemen, and Helpers Local Union No. 142, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization by discriminatorily discharging and not reemploying its employees.

(b) Discouraging its employees from engaging in concerted activities for their mutual benefit and protection in violation of Section 7 of the Act by discriminatorily discharging and not reemploying its employees.

(c) Informing its employees that it had discharged some of its employees because they engaged in union activities and/or concerted activities.

(d) In any like or similar manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, and to join and assist General Drivers, Warehousemen, and Helpers Union Local No. 142, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, to bargain collectively through representatives of their own choosing and to engage in concerted activities for purposes of collective bargaining or other mutual aid or protection.

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

(a) Offer to Ivan Albertson and Forrest Drudge immediate reinstatement in accordance with the recommendations set forth in that part of this Decision entitled "The Remedy."

(b) Make Ivan Albertson and Forrest Drudge whole for any loss of pay they may have suffered by reason of Respondent's discrimination against them in accordance with the recommendations set forth in that part of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary to analyze the amount of backpay due and the rights of Ivan Albertson and Forrest Drudge under the terms of this Recommended Order.

(d) Post at its Hebron and Gary, Indiana, terminals and shop, copies of the attached notice marked "Appendix."⁵ Copies of such notice, to be furnished by the Regional Director for Region 25, Indianapolis, Indiana, after being signed by a responsible agent of Respondent, shall be posted by Respondent immediately following 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 ensure that said notices are not altered, defaced, or covered by any other material.

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"

(e) Notify the Regional Director for Region 25, in writing, within 20 days from receipt of this Decision, what steps the Respondent has taken to comply herewith.⁶

IT IS FURTHER RECOMMENDED that the allegations not specifically found herein be dismissed.

⁶ 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 Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

Following a trial in which the Company, the Union and the General Counsel of the National Labor Relations Board participated and offered their evidence, a Trial Examiner of the Board has found that we violated the law and has ordered us to post this Notice and to abide by what we say in this Notice.

WE WILL NOT try to discourage you from becoming or remaining members of General Drivers,

Warehousemen, and Helpers Union Local No. 142, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by unlawfully discharging any of our employees or by telling our employees that we have discharged other employees because they assisted the Union or engaged in concerted activities.

WE WILL offer Ivan Albertson and Forrest Drudge their former jobs with all their rights and any backpay due.

All our employees are free to become or remain union members.

ROBERT SCHREIBER D/B/A
SCHREIBER TRUCKING
AND/OR ROBERT SCHREIBER
TRUCKING, 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, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204, Telephone 633-8921.