

**B & P Motor Express Incorporated and Joyce Proctor, Judith Lopuch, Elizabeth Staigvil, Norbert Weixel.** Cases 6-CA-4058-1, 6-CA-4058-2, 6-CA-4058-3, and 6-CA-4058-4

June 12, 1968

## DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On March 27, 1968, Trial Examiner Louis Libbin issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision. Subsequently, the General Counsel filed a brief in support of 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, the exceptions, the brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

## 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, B & P Motor Express Incorporated, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

LOUIS LIBBIN, Trial Examiner: Upon charges filed on October 5, 1967, by the four individuals listed in the caption, the General Counsel of the National

Labor Relations Board, by the Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), issued a consolidated complaint, dated November 20, 1967, against B & P Motor Express Incorporated, herein called the Respondent. With respect to the unfair labor practices, the complaint alleges, in substance, that Respondent discharged the four named complainants on or about October 3, 1967, and thereafter refused to reinstate them, because of their concerted activities "and in order to discourage union membership," and thereby violated Section 8(a)(1) and (3) of the Act. In its duly filed answer, Respondent denies the discharges, the refusal to reinstate, or that the complainants engaged in protected concerted activities, and also denies all unfair labor practice allegations.

Pursuant to due notice, a hearing was held before Trial Examiner Louis Libbin at Pittsburgh, Pennsylvania, on February 9, 1968. The General Counsel and Respondent were represented at the hearing and were given full opportunity to participate in the hearing, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally on the record, and to file briefs. Thereafter, the General Counsel and the Respondent filed briefs, which I have fully considered.

For the reasons hereinafter stated, I find that Respondent violated Section 8(a)(1) of the Act.

Upon the entire record in the case, and from my observation of the demeanor of the witnesses while testifying under oath, I make the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF RESPONDENT

Respondent B & P Motor Express Incorporated, a Delaware corporation with its principal office located in Pittsburgh, Pennsylvania, is engaged in business as an interstate carrier by motortruck. During the 12-month period preceding the issuance of the instant complaint, Respondent received in excess of \$100,000 for services rendered in connection with the transportation of goods and materials across State lines to and from the Commonwealth of Pennsylvania.

Upon the above-admitted facts, I find, as Respondent further admits, that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

### II. THE UNFAIR LABOR PRACTICES

#### A. *Introduction; the Issues*

As previously noted, Respondent is an interstate carrier by motortruck. At all times material herein, Joyce Proctor, Judith Lopuch, Elizabeth Staigvil, and Norbert Weixel were employed by Respondent in its billing department at its terminal office in Irwin, Pennsylvania. Weixel was employed as a

manifest clerk, and the other three were employed as billing clerks. Also employed in the billing department were two rate clerks and Carol Lopes, a part-time billing clerk. The billing clerks prepared the invoices or bills for Respondent's customers. The duties of the manifest clerk consisted of going to the freight dock to bring the bills of lading to the billing department where they were sorted, and then preparing the manifest which was given to the driver delivering particular loads from the bills prepared by the billing clerks. The billing department was a night-shift operation, and the four employees herein involved were normally scheduled for the following hours: Proctor, 6 p.m. to 2:30 a.m.; Lopuch, 7 p.m. to 3:30 a.m.; Staigvil, 8 p.m. to 4:30 a.m.; Weixel, 7 p.m. to 3:30 a.m. Proctor had worked for Respondent since 1964; while Lopuch and Weixel had been hired in January 1967 and Staigvil in March 1967.

Respondent's supervisory hierarchy with respect to the billing department employees is as follows: Robert Peoples, terminal manager, has overall responsibility for the operation of the Irwin terminal; Melvin Messner, office manager, is responsible for the clerical operations at the Irwin terminal on both the day and night shifts; and Pierson Grandey, night dispatcher, had some responsibility for overseeing the night-shift billing department in addition to his dispatching duties. Messner normally is not present in the billing department during the night shift, and leaves instructions for Grandey who, in turn, makes the work assignments. Respondent stipulated that both Messner and Peoples were supervisors within the meaning of the Act.

On October 3, 1967, the four employee complainants, acting in concert, ceased work and left the office during their shift in protest against what they regarded as a grievance. The next day, Lopuch had a telephone conversation with Terminal Manager Peoples concerning what had occurred the preceding night. Thereafter, replacements were hired by Respondent, and none of the four complainants have been reemployed.<sup>1</sup>

The principal issues litigated in this proceeding are (1) whether the four complainants were engaging in a protected concerted activity when they ceased work and left the office during their shift on October 3, 1967; (2) whether they were discharged by Terminal Manager Peoples on October 4 for having engaged in such activity; (3) whether a valid unconditional offer to return to work was made on behalf of all complainants; and (4) whether the failure to reinstate the complainants violated Section 8(a)(1) and (3) of the Act.

<sup>1</sup> The facts set forth in the preceding paragraphs are not in dispute.

<sup>2</sup> Unless otherwise indicated, the findings in this section are based on credited testimony and evidence which is either undenied or admitted.

<sup>3</sup> For example, during these discussions the employees found out that Messner would telephone Mrs. Proctor and would tell her that Judy Lopuch had said certain things about her, and then he would telephone Mrs. Lopuch and tell her that Joyce Proctor had said certain things about her. They also learned that on one occasion Messner had told Mrs. Staigvil

## B. Sequence of Events<sup>2</sup>

### 1. Friday, September 29

#### a. Meeting of complainants

Prior to September 29, 1967, the four complainants, who worked in close proximity to each other, were unfriendly to each other and had not gotten along well with one another. In the early morning of Friday, September 29, the four got together during working hours and had a discussion as a result of which they decided that they wanted to have a meeting with Office Manager Messner to discuss certain grievances and working conditions. One of the grievances they discussed concerned numerous telephone calls which Messner made in the afternoon to the women at their homes. All women employees were married and had children. They became aware that while Messner dealt with business matters in some of the telephone calls, in others he disparaged the work and abilities of some of the employees, circulated gossip about them, and made suggestions and advances which they regarded as improper. In the words of Mrs. Proctor, "it seemed like he was calling me and calling Judy [Lopuch], he was pitting one employee against the other."<sup>3</sup> The amount of overtime they were putting in was also discussed. Staigvil and Weixel had worked considerable overtime during the preceding week and even Lopuch and Proctor, who normally worked no overtime, had also worked some overtime. Proctor and Weixel, both of whom had prior experience in the trucking industry, pointed out that the level of business normally increased from October through the Christmas holidays and, thus, more overtime could be expected in the future. They decided that additional help was needed to avoid overtime and that that could be accomplished by having Carol Lopes, the part-time biller, become a full-time biller. They also discussed the fact that Staigvil, whose duties included assisting Manifest Clerk Weixel for part of her shift, had seldom done so and had not learned the manifest clerk duties, and that Weixel had not yet received the raise which was due him in July.<sup>4</sup>

As a result of all the foregoing which came out in these discussions, the four complainants decided to "band together" and to meet as a group with Mr. Messner that evening in his office to discuss the adjustment of their various grievances. They felt that Messner would call one of them at home that afternoon, and decided that the one whom he called would request the meeting. About 3 p.m. that

on the telephone that he was going to fire Lopuch and give her job to Staigvil, and that on another occasion he told Mrs. Lopuch on the telephone that Weixel, who was due for a raise, was not going to get his raise because he was not worth it

<sup>4</sup> As previously noted, Mrs. Lopuch mentioned in this connection that Messner had once told her on the telephone that Weixel was not going to get his raise because he was not worth it

Friday, Messner telephoned Mrs. Lopuch. The first thing she said was, "Mr. Messner, we'd like to have a meeting tonight." He asked, "Who is we?" She answered, "Well, Joyce, Norbert, Elizabeth and I want to talk to you." Messner stated that he did not "like the sound of this" and asked, "What's it about?" Mrs. Lopuch replied, "Well, you be there at 7 o'clock tonight or we're not going to go to work," and hung up the telephone.

*b. Complainants, as a group, meet with Messner*

When Messner did not arrive at the office at 7 p.m., the four complainants<sup>5</sup> waited about 15 minutes and then informed Night Dispatcher Grandey that they would await Messner at a nearby diner. Shortly thereafter, Messner arrived at the diner and asked why the employees had left the office. However, the employees declined to discuss their grievances in the diner or in the parking lot and insisted on returning to Messner's office.

When the four complainants had returned with Messner to his office, Messner opened the meeting by looking at Lopuch and saying to her, "all right, let's have it." Lopuch thereupon stated that the first thing they wanted was to have the afternoon telephone calls to their homes eliminated and to have an employer-employee relationship established. She pointed out that he had been pitting one employee against another. Messner answered, "agreed." Lopuch then went on to say that they wanted the part-time billing clerk, Carol Lopes, to be assigned to full time as a billing clerk in order to reduce the amount of overtime. Messner again answered, "agreed." In connection with the overtime problem, Lopuch had pointed out the amount of overtime that Weixel and Staigvil had been working. Messner then turned to Weixel and asked what he wanted. Weixel asked when he was going to get his raise. Messner replied that the necessary forms had been sent to Respondent's headquarters, and showed Weixel his personnel file which contained copies of the forms. Weixel stated that he knew the forms had been sent because he had telephoned the headquarters the preceding day about it, but wanted to know when he would actually get his raise. Messner thereupon retorted that Weixel could get 2 days off for "going over his [Messner's] head" about the raise; whereupon Lopuch stated, "If Norbie gets 2 days off, we all get 2 days off." Weixel then said that Messner had told other employees that he [Weixel] was not worth the raise but refused to tell Messner the source of his information. Messner denied to the group that he had made such a statement and told Weixel to

get back to work. However, upon Lopuch's insistence, he remained with the group. Messner then turned to Proctor, who also made reference to the amount of overtime worked by Weixel and Staigvil, pointing out that from her prior experience with Respondent she knew business would increase during this time of the year, and repeated their request to have Carol Lopes as a full-time billing clerk. She also objected to Messner's afternoon telephone calls to their homes. Messner then turned to Staigvil, who stated that she had not been properly trained on the manifest part of her job and would like to be given time to work with Weixel on it so that she could learn her job completely. Messner also "agreed" to that request. Staigvil also stated that Messner had told her on the telephone that Lopuch was to be discharged and that she [Staigvil] would replace her. Messner then shouted at Staigvil, "You're a liar"; whereupon Staigvil responded in kind and the two argued in this vein for a while. After this argument, the employees returned to work.<sup>6</sup>

Messner was quite "angry" during this meeting. He was shouting, and his face was flushed.

2. Monday, October 2

On the next workday, Monday, October 2, Carol Lopes, the part-time clerk, was given full-time work as the complainants had previously requested and as Messner had promised. However, when Staigvil reported to work at 8 p.m., Grandey, pursuant to prior instructions from Messner, assigned her to perform a job known as freight payments or accounts receivable instead of her normal billing job. The freight payments job was normally performed on the day shift by employee Christine Golder, also called Tina, who had not reported to work that day because of illness. Messner had decided to have Staigvil do Tina's work on the night shift because Staigvil had substituted for Tina on that work for 1 week when Staigvil had previously worked on the day shift as a "tracing" clerk. Staigvil performed the freight payments job that evening without complaint and, after completing it about 2 a.m., began helping Weixel with his manifest duties in accordance with her regular duties. As a result of Staigvil's added duties in connection with the freight payments job, all four complainants were required to work from 1 to 2 hours overtime that evening in order to complete the billing work.

During that same evening the four complainants again discussed the situations when it became apparent that they were going to have overtime again because, although Carol Lopes was assigned as a

<sup>5</sup> Staigvil had come to the office an hour before her scheduled starting time in order to attend the meeting.

<sup>6</sup> The findings in this paragraph are based on a composite of the credited and mutually consistent testimony of the four complainants and the testimony of Messner to the extent consistent therewith. Indeed, Messner's

testimony as to what occurred in this meeting differs only in one significant respect. He testified that he had agreed to put Carol Lopes on as full time only if he "felt" that she was "needed." I do not credit Messner's contrary testimony.

full-time biller, Staigvil's new assignment removed her as a biller. They felt that they were ending up again with only three billers instead of the four they had requested and Messner had promised, and that in fact they were "further behind" because Lopes was not as fast a typist or as efficient as Staigvil. They concluded that since they had not gotten anywhere as a result of their Friday night meeting with Messner, they would try to arrange another meeting with management. Proctor volunteered to arrange such a meeting.

Having been informed that Tina received a higher rate for the freight payments work, Staigvil asked Grandey if she would receive the higher rate that night. Grandey replied that he did not know but would inquire from Messner. At the conclusion of her work that evening, Staigvil left Messner a note in which she asked why Messner had not followed his past procedure in assigning a day-shift employee to the freight payments job and whether she was going to receive the higher rate for that job. It was a common practice for night-shift employees to leave notes about their work for Messner and for him to leave reply notes.

### 3. Tuesday, October 3

About 3 p.m. on Tuesday, October 3, Proctor talked to Terminal Manager Peoples on the telephone and arranged a meeting for 6 p.m. that evening. About 5:30 p.m. Messner informed each of the complainants that Peoples had rescheduled the meeting for 6 p.m. on Thursday, October 5.

Lopuch, Proctor, and Weixel reported to work on Tuesday evening, October 3, and performed their normal jobs. Staigvil reported at her scheduled starting time of 8 p.m. and also began performing her normal billing work. Shortly thereafter, Grandey told Staigvil that Messner had left word that she was to do the freight payments job again that night because Tina was still out. When she asked if she was going to get the higher rate of pay, Grandey replied that she was not. Staigvil then asked what would happen if she refused. Grandey replied that in that event she should "punch out" and go home. The other employees heard the conversation, and Lopuch suggested that Grandey confer with Messner. As Grandey was leaving for the backroom to telephone Messner at his home, Proctor added that he should also ask Messner whether they would have to work overtime. After telephoning Messner, Grandey returned and told Proctor that she would have to work only

8 hours because she was pregnant but that the other employees would have to stay until the work was done. He then told Staigvil that Messner stated that if she did not want to do the freight payments job she should "punch out" and go home. As Staigvil started for her coat, Lopuch said to her, "don't punch out!" Grandey thereupon shouted at Lopuch, "and you shut your mouth!" At that point, Weixel stated, "If Liz [Staigvil] goes, we all go." Grandey then shouted, "Go! Get out! All of you go!" Staigvil and Proctor asked Grandey, "Are you firing us?" Grandey replied that he was not. The four complainants then left the office about 8:15 p.m. without punching out.

Grandey at once telephoned Messner at home and informed him about what had happened. Messner immediately came to the office and began making arrangements for temporary replacements. He was successful in having four of Respondent's day-shift employees respond and do the work that night.

### 4. Wednesday, October 4

About 1:15 p.m. on Wednesday, October 4, Lopuch telephoned Mr. Cowles, Respondent's vice president. She asked, "I suppose you heard what happened last night?" When he replied in the affirmative, she stated that "we'd like to have a meeting." However, Cowles refused to become involved in the matter and told Lopuch to deal with Terminal Manager Peoples.

Lopuch then immediately telephoned Peoples. After identifying herself, she said, "You heard what happened last night." Peoples replied "yes, you people quit your jobs." Lopuch remonstrated, "Oh, no we didn't quit." Peoples answered, "Yes, I'm sorry, you did. You four chose to stick together last night, so stick together on another job." Lopuch then asked, "Well, can we come back to work tonight?" Peoples replied "No, there's no job to come back to." That ended the conversation.<sup>7</sup>

Lopuch immediately informed Proctor of this conversation. Proctor, in turn, reported it to Staigvil and Weixel that same day. As a result of the report of the foregoing conversation between Lopuch and Peoples, none of the other employees made any effort to return to work.

### 5. Thursday, October 5, and thereafter

All four complainants filed the instant charges on Thursday, October 5. Messner admitted that no

<sup>7</sup> The findings in this paragraph are based on the credited testimony of Lopuch. Peoples denied making the statement that since the four of them had stuck together last night they could stick together on another job. He further testified that at no time during the conversation did Lopuch ask if she or any of the other employees could have their jobs back. He also testified that Lopuch had stated they were fired. Peoples did not testify in a frank and forthright manner. He admitted on cross-examination that he had told Lopuch that "my understanding was that you walked off the job

When you left you quit." He further admitted on cross-examination that at an unemployment compensation hearing held on November 8, 1967, he testified under oath that in this telephone conversation (1) he told Mrs. Lopuch that "you people seen fit to quit the Company and when you walk out, you don't have a job," (2) Mrs. Lopuch asked him "about coming back to work" and (3) he replied that "you seen fit to quit B & P." Upon consideration of the foregoing and the demeanor of the witnesses, I do not credit Peoples' denials and contrary version.

new employees were hired to replace the complainants before October 5. He testified that the first two were hired on October 5 and that two more were hired about October 10 or 16. All four were still working on the night shift at the time of the instant hearing.

### C. Contentions and Concluding Findings

#### 1. As to whether the complainants quit their employment

Contrary to the contention of Respondent's counsel in his brief, I find that the four complainants did not quit their employment on Tuesday evening, October 3. The employees did nothing at that time to indicate that they were no longer interested in their jobs and did not expect to return when their grievances were adjusted. Thus, at Lopuch's direction, they did not punch out on the timecard although Grandey had directed Staigvil to do so. All four were hourly rated employees; Proctor, Lopuch, and Weixel had already worked 1 or 2 hours prior to the walkout and Staigvil had already commenced working. Moreover, both Proctor and Staigvil asked if Grandey was "firing" the employees. When Grandey assured them that he was not, the walkout continued. If the employees were actually quitting their employment, there would have been no point in asking whether they were being "fired." Finally, in her conversation with Terminal Manager Peoples the very next afternoon, Lopuch insisted that the four had not "quit" and sought to arrange a meeting to discuss the grievances which had prompted the walkout on the preceding night. I find that the four complainants engaged in a concerted walkout or strike in protest over certain working conditions.

#### 2. As to whether the activity is protected

I also find no merit in Respondent's further contention that such concerted walkout or strike is not a protected activity under the Act. On September 29, the four complainants had "banded together" to present their grievances as a group to Messner. Thus, Staigvil testified that "we had discussed the fact that we would all stick together because we felt that in the beginning if one of us would have gone with our complaints, we would not have gotten anywhere. We would have gotten further by having us all go in a group." One of the grievances presented to Messner at that time related to the

need for additional help to eliminate overtime, and Messner had agreed to have four full-time billers by assigning Carol Lopes, the part-time biller, as full-time. However, the assignment of the freight payments job to Staigvil on October 2 resulted in having all four employees work overtime. Although Messner had in fact assigned Lopes to work as a full-time biller, her assistance was effectively nullified by his removal of Staigvil from billing duties. As Proctor aptly pointed out, ". . . we were still down to three—actually two and a half billers because . . . Carol [Lopes] wasn't as efficient as Liz [Staigvil] was in her billing—I mean we were further behind actually." Thus, the employees viewed the events of October 2 and 3 as a breach of Messner's agreement to have four full-time billers.

Staigvil testified that the reason she refused to perform the freight payments assignment on October 3 was "partly because I wanted the higher pay" which the day-shift girl received for that work<sup>8</sup> and because "it would take me away from billing" and "would have resulted in all of us getting overtime, which we wanted to eliminate." It is thus clear, as I find, that the walkout or strike, which was precipitated by Staigvil, was to protest the overtime work and to support Staigvil in her request for the higher rate of pay. Whether the employees were thereby engaging in a protected concerted activity cannot be determined by the "wisdom or unwisdom," the "justification or lack of it," for their action. *N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 344.

Overtime work is obviously a condition of employment. The walkout or strike in the instant case was *total* as distinguished from a *partial* one merely for the period of time during which overtime was to be worked. Employees do not lose the protection of the Act when they engage in a *complete* and *full-time* walkout or strike in protest over overtime work.<sup>9</sup> The employees were also protected in walking out in protest over Respondent's treatment of Staigvil in not paying her the higher rate which the day-shift employee received for the same work.<sup>10</sup> I therefore find that on October 3, 1967, the complainants engaged in a protected concerted activity or walkout for their mutual aid and protection within the meaning of Section 7 of the Act.

#### 3. As to whether the complainants were discharged

As previously found, in the telephone conversation on Wednesday afternoon, October 4, Terminal Manager Peoples told Lopuch that "you people

<sup>8</sup> Messner admitted that the day-shift employee received an additional 10 cents per hour for the same work because of her greater seniority.

<sup>9</sup> The cases relied on by Respondent's counsel in his brief are therefore inapposite because in those cases, unlike here, the employees engaged in a partial strike by working their regular hours and refusing only to perform the regularly scheduled overtime work. Such concerted activity has been held to be unprotected because by such conduct the employees attempted to impose on the employer their own chosen conditions of employment.

<sup>10</sup> See, e.g., *Electromec Design and Development Company, Inc.*, 168 NLRB 763, and *Carter Carburetor Corporation v. N.L.R.B.*, 140 F.2d 714, 718 (C.A. 8), where the court stated that the "mutual aid" and "concerted activities" as used in Section 7 of the Act include "the right to join other workers in quitting work in protest over treatment of a coemployee, or supporting him in any other grievance connected with his work or his employer's conduct."

quit your jobs," that they should "stick together on another job" and that "there's no job to come back to." Peoples himself admitted that he told Lopuch, "my understanding was that you walked off the job. When you left, you quit." He further admitted on cross-examination that he had testified in an unemployment compensation hearing that he had told Lopuch that "you people seen fit to quit the Company and when you walk out you don't have a job." It is further admitted that at that time no new employees had been hired to replace the complainants. I find that Respondent discharged the four complainants on October 4, 1967.<sup>11</sup>

4. As to whether there was a valid unconditional request for reinstatement

As previously found, in the same telephone conversation with Terminal Manager Peoples, Lopuch asked, "Well, can we report to work tonight," and Peoples replied, "No, there's no job to come back to." He also told Lopuch that since "you four chose to stick together last night, so stick together on another job," also as previously found. Lopuch immediately reported this conversation to Proctor who, in turn, that same day relayed the information to the other two complainants. As a result of this information, the other complainants made no further effort to report for work or to seek reinstatement.

I find, contrary to Respondent's contention, that Lopuch made a valid unconditional request for reinstatement on behalf of all four complainants and that Terminal Manager Peoples so understood it. Moreover, in view of Peoples' decisive statements to Lopuch, hereinabove set forth, which statements were immediately relayed to the other striking complainants, "it was not necessary—indeed, it would have been futile"—for the other complainants to have requested reinstatement "and the law does not require the doing of a futile act." *Valley Die Cast Corp.*, 130 NLRB 508, 517, enfd. 303 F.2d 64 (C.A. 6); *Cumberland Farms Dairy Products, Inc.*, 139 NLRB 1445, 1455, enfd. 322 F.2d 1021 (C.A. 2).

5. As to whether Respondent's conduct violated the Act

I have found that on October 3, 1967, the four complainants engaged in a walkout or economic concerted activity within the meaning of Section 7 of the Act. I have also found that on October 4, Terminal Manager Peoples refused Lopuch's valid unconditional request for reinstatement on behalf of all complainants at a time when no new employees had been hired as replacements and that,

instead, Peoples discharged the four complainants. I further find, as previously set forth, that Peoples' actions in refusing their offer of reinstatement and in discharging them were because of their concerted walkout the preceding night.

It is too well established to require citation of authority that the discharge of economic strikers or the failure to reinstate unreplaced economic strikers upon their unconditional request for reinstatement, under the circumstances hereinabove described, interferes with, restrains, and coerces the employees in the exercise of their Section 7 right to engage in protected concerted activity for their mutual aid and protection. Therefore, whether Peoples' actions on October 4, 1967, be viewed as a discharge or as a refusal to reinstate, I find that Respondent thereby violated Section 8(a)(1) of the Act.<sup>12</sup>

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section II, above, occurring in connection with the Respondent's operations described in section I, above, have a close, intimate, and substantial relationship 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.

CONCLUSIONS OF LAW

1. By discharging and refusing to reinstate Joyce Proctor, Judith Lopuch, Elizabeth Staigvil, and Norbert Weixel on October 4, 1967, because they had engaged in protected concerted activities for their mutual aid and protection, as detailed in section II, C, *supra*, Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

2. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action which will effectuate the policies of the Act.

Having found that Respondent discharged and refused to reinstate the above-named four employees in violation of Section 8(a)(1) of the Act, I will recommend that Respondent offer them immediate and full reinstatement to their former or

<sup>11</sup> See, e.g., *Delsea Iron Works*, 136 NLRB 453, enfd. 316 F.2d 231 (C.A. 1)

<sup>12</sup> I find it unnecessary to decide whether Respondent's conduct also vio-

lated Section 8(a)(3) of the Act, as alleged in the complaint, inasmuch as the remedy necessary to effectuate the policies of the Act would be identical in either case. *American Art Clay, Inc.*, 142 NLRB 624, fn. 1

substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings each may have suffered as a result thereof, by payment of a sum of money equal to that which each normally would have earned as wages from the date of discharge to the date of Respondent's offer of reinstatement, less net earnings during such period, with backpay and interest thereon to be computed in the manner prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

Upon the foregoing findings and conclusions and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

### RECOMMENDED ORDER

Respondent, B & P Motor Express Incorporated, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of their rights to engage in concerted activities guaranteed in Section 7 of the Act, by discharge, refusal to reinstate, or by any other disciplinary action.

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

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

(a) Offer to Joyce Proctor, Judith Lopuch, Elizabeth Staigvil, and Norbert Weixel immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered by reason of their discharge, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) 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.

(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 other records necessary to analyze the amount of backpay due under the terms of this Recommended Order.

(d) Post at its place of business in Irwin and Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."<sup>13</sup> Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's

representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Decision, what steps have been taken to comply herewith.<sup>14</sup>

<sup>13</sup> 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 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."

<sup>14</sup> In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 6, 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:

WE WILL NOT discharge, refuse to reinstate, or in any other manner penalize our employees for engaging in protected concerted activities for their mutual aid and protection.

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

WE WILL offer to Joyce Proctor, Judith Lopuch, Elizabeth Staigvil, and Norbert Weixel immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings suffered as a result of their discharge.

B & P MOTOR EXPRESS  
INCORPORATED  
(Employer)

Dated

By

(Representative) (Title)

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.

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, 1536 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, Telephone 644-2969.