

Air Transport Equipment, Inc. and International Industrial Production Employees Union. Case 29-CA-1944¹

May 18, 1971

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS BROWN AND JENKINS

On December 9, 1970, Trial Examiner Benjamin B. Lipton issued his Decision in the above-entitled proceedings, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the Act, 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, a motion for a new hearing, and a brief in support of both the exceptions and the motion. The General Counsel filed a brief in opposition to the motion for a new hearing.

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 motion for a new hearing,² briefs, and the entire record in this case, and

hereby adopts the findings, conclusions, and recommendations³ 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, Air Transport Equipment, Inc., Amityville, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's recommended Order.

at the hearing

³ In Chairman Miller's view, the Board is not justified in inferring illegality with respect to the March 3 layoffs from the fact that the earlier layoffs were shown to have been unlawful. Though Respondent's presentation of its defense, because of lack of counsel, left something to be desired, Respondent did demonstrate its severe financial difficulties. Respondent made out a *prima facie* case of economic justification. The occurrence of overtime after the March 3 layoff does not rebut this, since Respondent's claim is not so much that it did not have business as that it was crucially short of cash. Thus some overtime payments to a handful of employees may well have been a lesser drain on Respondent's cash than the full-time employment of 10 employees. The layoffs in question took place after the election when, as the Trial Examiner observed, the Union appeared likely to be the winner. While the January layoff appears to have been motivated by Respondent's animus, in an effort to affect the election results, the unlawful purpose of this post-election layoff, which included in its sweep some employees who had signed cards and some who had not, has not, in the Chairman's view, been proven upon this record.

While agreeing with his colleagues and the Trial Examiner that, even without finding the March layoff illegal, there is justification for an order to bargain in this case, Chairman Miller would premise such an order upon the rationale set forth in his separate opinion in *United Packing Company of Iowa, Inc.*, 187 NLRB No. 132.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

BENJAMIN B. LIPTON, Trial Examiner: In Case 29-CA-1944, a complaint by the General Counsel¹ alleges Respondent violated Section 8(a)(1), (3), and (5) of the Act. In Case 29-RC-1393, pursuant to a petition for certification filed on January 21 and an agreement for consent election entered into on February 17, a Board election was conducted on February 27 in a production and maintenance unit of Respondent's employees. Of 16 eligible employees, 7 votes cast for the Union, 8 against the Union, and there were 2 challenged ballots, determinative of the results. Timely objections were filed by the Union. On June 30, the Regional Director, following investigation, issued his report, in which he found that the Union's objections raised substantial and material issues which were also embraced in the unfair labor practice complaint, and ordered consolidation of both cases for the purpose of hearing.²

On September 21, a hearing in the consolidated proceeding was held before me in Brooklyn, New York. All parties appeared and were afforded full opportunity to present relevant evidence and to argue orally on the record. After the close,

¹ The charge by the Union was filed on March 4 and served on March 5, and the complaint thereon was issued on June 30, 1970. All dates are in 1970, unless otherwise noted.

² The challenged ballots are those of Augustine Goode and John Robinson, who are in issue as alleged discriminatees. The Regional Director reserved resolution of the challenges pending determination of their status in the complaint case.

¹ The Regional Director ordered consolidation of Case 29-RC-1393 with Case 29-CA-1944 for the purpose of hearing Case 29-RC-1393, which involves an Agreement for Consent Election, has been severed and remanded to the Regional Director for disposition.

² Respondent has filed a motion requesting that the Board order a new hearing at which this case will be heard *de novo* before a different Trial Examiner. Respondent contends its president, who appeared at the hearing without legal counsel, did not properly understand that the hearing was to be an adversary proceeding, and further that the Trial Examiner did not properly explore all the issues raised in this case. We deny the motion. Respondent was informed by letter, as is the Board's procedure, of the rules and regulations governing the proceedings before the Trial Examiner. Respondent President Pedu requested, and received, a 2-week postponement of the hearing in order to allow him an opportunity to retain counsel. He chose, however, not to be represented by legal counsel and undertook to present Respondent's defense himself. At the opening of the hearing the Trial Examiner cautioned Pedu that there would be difficult legal issues involved in the case. Pedu said he was aware and chose to continue with the hearing. The Trial Examiner during the course of the hearing several times explained to Pedu certain points of law and procedure. We therefore conclude that Respondent was afforded ample opportunity to retain counsel and knowingly chose not to do so. The nature of the hearing was amply explained to Respondent's president. Further, the Trial Examiner did not act in a prejudicial manner towards the Respondent. It is not appropriate, contrary to Respondent's suggestion in its brief, that the Trial Examiner act as the advocate of those who appear before him without counsel. He does have the right to attempt to develop those areas of the testimony which he does not fully understand or which he deems critical to the case, but he cannot and should not be required to develop extensive lines of testimony which have not been touched upon by the parties at the proceeding. To require the Trial Examiner to do otherwise would seriously erode his neutral position.

a brief was filed by General Counsel, which has been duly considered.

On the entire record in the cases,³ and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I THE BUSINESS OF RESPONDENT

Air Transport Equipment, Inc., herein called the Respondent, at its place of business in Amityville, Suffolk County, New York, is engaged in the manufacture, sale, and distribution of precision machine parts and related products for various contractors. During the year preceding issuance of the complaint, Respondent had a direct outflow in interstate commerce valued in excess of \$50,000. I find, as Respondent admits, that it is engaged in commerce within the meaning of the Act.

II THE LABOR ORGANIZATION INVOLVED

International Industrial Production Employees Union, herein called the Union, is a labor organization within the meaning of the Act

III THE UNFAIR LABOR PRACTICES

A. *The Essential Issues*

Alexander Pedu, president of the Respondent, appeared without counsel and participated to some extent in the trial of the case. He entered into stipulations and made admissions on the record, but undertook virtually no cross-examination and offered no witnesses except himself for the limited purpose of introducing certain exhibits relating to his sole defense of financial difficulties as the broad reason for Respondent's conduct in question. Consequently, the General Counsel's evidence stands unrefuted and undisputed but for the effect of Respondent's unexplicated general position of economic justification. Otherwise, it may be said that Respondent's attitude toward General Counsel's evidence closely approaches that of *nolo contendere*.

The 8(a)(1) allegations and testimony involve numerous independent acts of interference, restraint, and coercion, as will be detailed *infra*. Under Section 8(a)(3), there were 6 employees laid off on January 22, the day following the Union's demand for recognition; and 10 additional employees were laid off on March 3. The Section 8(a)(5) is predicated upon alternate theories—(1) that Respondent refused to recognize the Union upon demand when it had actual knowledge of the Union's majority status based on authorization cards,⁴ and (2) that Respondent committed extensive unfair labor practices which precludes the holding of a fair election and justified issuance of a present bargaining order under the *Gissel* doctrine.⁵

B. *The Pertinent Facts*

On January 17, employee John Robinson approached Lawrence Litman, secretary-treasurer of the Union, with a request to organize Respondent's plant. Robinson signed an authorization card and obtained blank cards which thereafter he proceeded to distribute in the shop. On the next workday, Monday, January 19, Litman went to the plant and assisted in handing out cards to employees. About noon, Litman had collected in the interim 12 signed authorization cards. A

meeting was then arranged to be held the following day at a certain diner. On January 20 at 12:30 p.m., the meeting took place, attended by some 12 employees, Leonard Lasenby, a stipulated supervisor, Litman, and another agent of the Union. After discussing union benefits and other considerations, Litman indicated he would present the demand for recognition to Respondent the next day. Milford L. Van Riper, an employee, upon returning home from the meeting, had a telephone call from Respondent's president, Pedu. Asked how the meeting went, Van Riper feigned lack of knowledge. Pedu then said he had seen who was there.⁶

On January 21, Litman came to see Pedu at the plant, accompanied by employees Robinson, Goode, Loucks, and Vacca. Pedu, for unexplained reasons, did not want to have Robinson and Goode present, and these two then returned to work. Litman claimed majority representation and requested recognition. He handed Pedu a photostatic copy of 15 signed authorization cards of employees (in the bargaining unit). Pedu looked over the names and kept the photostatic copy. Litman suggested a payroll check to verify the signatures, but Pedu did not question the authenticity of the cards.⁷ Pedu remarked that the employees made a "terrible mistake," that his mother will object to a union in the shop, that he was going to speak to the employees and tell them of their mistake, and that Litman should return in a few days and he will let him know Respondent's answer.⁸ Litman indicated he would file with the Board an election petition, which in fact he did on that day.

On January 22, there were open discussions in the shop among the congregated employees, Pedu, and other management personnel. Pedu told the employees, among other things, that he would fight the Union to his last penny, and that he "will put the key in the door." Van Riper was laid off earlier that day.⁹ Following these shop meetings, Goode, Robinson, Tirado, Torres, and Lopez were notified they were laid off.

On January 26, Litman and another union agent came to see Pedu. Pedu denied firing Robinson and Goode, but stated they were temporarily laid off and there was no question that they would be eligible to vote in the election. Recognition of the Union was again requested, and Pedu replied he would have to talk to the employees and get in touch with the Board.¹⁰

From about January 26 to February 10, Pedu talked to assembled employees in the plant. In addition, he engaged in a campaign tour of talking to individual employees in the period before the scheduled election. As pertinent, Pedu emphasized the following points, expressed or clearly implied, some of which were reiterated in the successive speeches:

1. His mother was supplying the necessary funds to keep the business going and would withdraw such support and help close the plant, if it became unionized.

2. He was putting the plant up for sale and had two potential purchasers, one of whom provided better benefits than the Union. If there were "labor troubles," it would adversely affect the prospects of a sale. At another time, Pedu said that two men who visited the plant were about to throw him a

⁶ James L. Lynch testified that, on January 22, Pedu told him at the plant that he had passed by the diner at the time of the meeting and saw some of the employees in there.

⁷ It is not entirely clear whether the actual cards were shown to Pedu. Without objection, the cards were introduced in evidence.

⁸ On January 22 at the plant, Pedu also told Lynch that he was surprised at some of the names he saw on the authorization cards.

⁹ He testified that, shortly before, he had been given the "cue" by Supervisor Lasenby that he was "going."

¹⁰ Two weeks later, another recognition demand was made by Litman upon Pedu.

³ The transcript is hereby corrected, at p. 48, l. 2, to read "if the Union ever comes in here, I put the key in the door." At p. 163-A, the contents should include Alexander Pedu as a witness at p. 187.

⁴ Citing *Pacific Abrasive Supply Co.*, 182 NLRB No. 48.

⁵ *NLRB v. Gissel Packing Company*, 395 U.S. 575.

million dollar contract, and the only thing that stands in the way is "your silly union." He could not afford to have a union and keep the employees at the same time, so they had to keep the "damn" Union out.

3. The Union was crooked and disreputable, and the employees should have selected a better one, e.g., the Machinists. Even if the Union succeeded, the employees might lose their jobs because the Union would bring in its own men.

4. At one of the earlier speeches, Pedu stated he was going to have a petition drawn up for signature by the employees to the effect that they would refrain from union activities until business conditions became prosperous, and that they wished to bargain among themselves without outside assistance. The next day, such a petition was prepared in handwriting by Supervisor James McEleney, in English and Spanish, and circulated. McEleney's attempts to obtain signatures were entirely without success, and he then destroyed the petition. At the next meeting, Pedu was disappointed in the employees that they had not signed the petition, and stressed his dislike for unions and his desire to keep the Union out of the shop. He asked the employees to give him some sign as to how they felt about the Union. Then he left the area for the employees to discuss the matter among themselves, and upon his return was informed that no one wanted to withdraw from the Union.

5. In one of the speeches, Pedu promised to build a cafeteria for the employees, if the Union did not get in, and to bring back a bonus system which had been discontinued. He told Gerald A. Loucks that he would like to put him and Vacca in charge of the drill press department when things get a little better, if the Union is kept out. Pedu also asked Loucks how he felt about the Union, and Loucks said he favored it. During the same time period, Supervisor McEleney told Loucks that, if the Union did not get it, "it is going to be all over."¹¹

6. Pedu telephoned employees at their homes in the pre-election period. He sought to persuade Lynch to have the employees sign a statement for the Board that they did not want the votes of Goode and Robinson, who were laid off, to be counted in the election.¹² A few days before the election, Pedu offered Van Riper tools and "all kinds of favors."

On March 3, the following employees were laid off, assertedly for lack of work: Oellrich, Cortez, Hagenlocker, Manthey, Hamlin, Loucks, Manple, Santos, Vacca, and Lynch. Vacca, Oellrich, and Lynch testified that there was available work for them at the time. It was stipulated that, at all times material, all hourly employees in the shop, except one female worker, worked overtime at time and a half pay for 1 hour a day, 4 days every week, before January 22 and continuing to the present. Solicitation of business and the amount of available work to be done in the shop was entirely in the control of Pedu personally.¹³

C. Concluding Findings on Section 8(a)(1) and (3)

Particularly as the foregoing evidence is uncontradicted, I find that Respondent, in opposing union organization, threatened in various forms closing down or sale of the plant, layoffs, loss of employee jobs, and loss of prospective business; made promises of benefit to employees of promotions, building a cafeteria, and restoring a bonus system; prepared and circulated an antiunion petition in which it sought to influence the employees to abandon the Union and to form a shop union; sought to influence the employees to interfere with or prevent other employees from voting in the election; engaged in surveillance of a union meeting; endeavored to create among employees the impression that their union activities were under surveillance; and engaged in coercive interrogations (Pedu of Van Riper, Loucks, and employees generally). By such conduct, Respondent flagrantly violated Section 8(a)(1).

As to the alleged discriminatory layoffs, Respondent rests its defense solely upon the position that it suffered financial losses in the calendar and fiscal year 1969, and that it had monthly cash deficits from September 1969 through March 1970.¹⁴ While it is possible that Respondent might normally have deemed it necessary to curtail operations for financial reasons in the early months of 1970, I do not accept its generalized economic defense, especially regarding the layoff of the six employees on January 22. Respondent displayed an intransigent intolerance and animus toward the Union, with repeated threats of cessation of operations to avoid or defeat the Union. Indeed, on the date of the hearing, Pedu told Litman he would "rather close up the business before a union gets in." No explanation was offered by Respondent for the timing of these layoffs following the Union's recognition demand the previous day. All six employees selected for this layoff had signed authorization cards, within the Respondent's knowledge. Among the six,¹⁵ Robinson was the principal promoter of the organizing effort; he and Goode were singled out by Pedu for exclusion from discussions with an employee committee. Further, as argued by General Counsel, a particular motive of Respondent most probably was to dissipate the Union's majority representation and discourage the employees' union adherence before the anticipated Board election.

The additional 10 layoffs on March 3 present a more difficult issue. Of these, 7 had signed union cards, and 3 (Manthey, Manple, and McCullum) had not. The parties stipulated that there were 15 named employees in the bargaining unit as of January 20. At this time, it appears there were 10 additional individuals in the shop complement, including Lasenby, McEleney, and Milentijevic, who are agreed supervisors. The remaining 7 individuals are in dispute. Gilberto

¹¹ This statement was taken by the reporter correctly, but may have been expressed with a surplus negative. Whether the remark was meant that if the Union got in, or if it did not get in, I find a similar coercive content.

¹² Their votes were challenged at the election by the Board agent based on a letter delivered by Respondent on February 27 stating that, in the payroll week ending January 18, 6 employees were laid off, including Goode and Robinson. In the consent election agreement, the week ending January 18 is the payroll period established for voting eligibility. It is apparent that the purpose of Respondent's letter was to imply that these employees were permanently laid off and not eligible to vote. At the hearing it was stipulated that the letter should have read that the listed employees last worked during the payroll week ending January 25. Shortly after the January 22 layoff, Pedu told the employees at the plant meeting that the laid-off employees would be recalled and were eligible to vote. Goode was similarly informed at the time of his layoff.

¹³ Supervisor McEleney told Oellrich that Pedu was not quoting on jobs and was sending jobs back.

¹⁴ In evidence is an exhibit furnished by General Counsel consisting of comparative statements of operations for the years 1966 through 1969 prepared by Respondent's accounting firm. A net loss of \$89,571 is reflected for 1969, while the 3 preceding years were profitable. Retained earnings at the end of 1969 were \$197,988, and an expected recovery of income taxes for the loss in 1969 amounts to \$31,500. Two other exhibits (Resp Exhs 1A and 1B) relating to Respondent's financial position, over General Counsel's objection, were admitted on the qualified basis that no ruling was made as to their authenticity and they would be carefully studied in conjunction with the report of the accounting firm. These latter exhibits were prepared by Pedu's mother the day before the hearing purportedly from the books and records of Respondent, as to which Pedu himself, as the witness, testified he had no knowledge. Annotations on the exhibits were made by Pedu to show the monthly "cash deficits." I find that these exhibits, while remaining in the file, are defective for the lack of authenticity and that, in any case, they do not significantly enlarge upon the accountant's report for the effectiveness of Respondent's position.

¹⁵ A question as to Van Riper's employee status is treated below.

Torres, as admitted in Respondent's answer, was laid off on January 22, and I have so found.¹⁶ As to 6 men, Pedu asserted at the hearing that they were foremen, while General Counsel contends they are in the unit. Among these are Van Riper, laid off on January 22, and Lynch and Manthey, laid off on March 3. Van Riper testified that he was a departmental setup man, and Lynch that he was an operator and setup man on the lathes. Both signed cards. Manthey did not testify. Respondent admitted in its answer to the complaint that it had laid off 16 "employees" on January 22 and March 3; it did not at any time defend their terminations on the ground they were supervisors, and presented no evidence which would support such a contention. I find that the General Counsel's *prima facie* case, not overcome by Respondent, established that Van Riper, Lynch, and Manthey are employees. It is unnecessary to resolve the question as to McCullum, Rivera, and Segerberg. Thus it is found that, as of January 20, there were 19 employees in the unit, plus 3 agreed supervisors, and 3 individuals whose unit status is in dispute. There is no indication or allegation that any new employees were hired since January 20. In July, an indeterminate number, if not all, of the laid-off employees received registered letters from Respondent offering reemployment.¹⁷ Questioned by the Trial Examiner, Pedu testified with some uncertainty, after perusing his records, that he had carried a total payroll of 8 persons since May.

Although it is not a rare occurrence in the annals of the Board that a company, in order to avoid union organization, will sharply reduce its employee complement or even decide to go out of business,¹⁸ it cannot lightly be inferred that a company will so deliberately hurt itself economically. Here, the record shows that Respondent, in its various threats to employees, had effectively predicted the course of events which ensued were it compelled to accept and bargain with the Union. It resolutely entered upon the contest to defeat the Union in the Board election by resorting to coercive and discriminatory practices, already described. The further layoff of 10 employees took place on March 3, which was the second workday following the election on February 27. Respondent could then clearly see the proverbial "handwriting on the wall." It could then fairly anticipate that the two challenges, conclusive of the election result, would be overruled and the votes of Goode and Robinson counted in favor of the Union.

Respondent chose to present virtually no evidence in its defense herein other than the broad plea of economic difficulty. Its entire case rests upon the sparse financial evidence which it furnished, which can only be considered as obscure and lacking in full probity in relation to the strong showing by General Counsel of an unlawful motivation. Conceivably, the line of defense adopted by Respondent in this proceeding is not without careful design. On a reduced scale, Respondent continues to operate the plant in question,¹⁹ and regularly

engages the incumbent employees in overtime work. Respondent set itself upon a determined course in opposition to the desires of its employees for union representation. In the circumstances, it is obligated clearly to explain away and separate the inferrably unlawful consequences of its actions. This it has declined and failed to do. In significant part at least, the layoffs on March 3 appear to be related to the earlier reduction in force and colored with the same discriminatory purpose. On the record as it stands, I am constrained to find that General Counsel has sustained the burden of the complaint that Respondent terminated the 10 named employees on March 3 in violation of Section 8(a)(3).

D. The Objections to the Election

In view of the various acts of restraint and coercion committed by Respondent in the period preceding the election, I find that it materially interfered with the election conducted on February 27.

E. Concluding Findings on Section 8(a)(5)

The appropriate unit consists of all production and maintenance employees and truckdrivers. On January 21, in conjunction with its bargaining demand, the Union presented Pedu with evidence that 15 employees had signed authorization cards. He expressed no doubt as to the Union's majority, and indicated specifically he did not question the authenticity of the cards. These 15 cards, bearing dates from January 17 to 20, were admitted into evidence without objection. As fully shown *infra*, the parties had stipulated that, as of January 20, there were 15 specified employees in the appropriate unit, with 7 additional names subject to disagreement. Undisputedly within the unit are 13 of the card signers.²⁰ Thus it is clear that, however the disputed names are resolved, the Union had a substantial card majority on January 20.

As detailed above, upon the Union's demand for recognition, Respondent engaged in extensive violations of Section 8(a)(1) and (3) which, I find, were calculated to undermine the Union's representation status. These practices were of such a pervasive and aggravated character as to preclude a fair representation test by resort to the Board's election processes. In such circumstances, the authorization cards are properly considered a reliable measure of the employees' representation desires. It is therefore held that, on and since January 20, the Union has been, and is now, the statutory bargaining representative of the employees.²¹

Accordingly, I conclude that, by refusing the Union's bargaining request and engaging in the aforesaid unfair labor practices, Respondent violated Section 8(a)(5), and that a bargaining order is necessary and appropriate to remedy the violations committed.²²

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its 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.

Respondent not party to this proceeding.

²⁰ Van Riper and Lynch, whom I have found to be unit employees, were the other 2 card signers.

²¹ It is unnecessary to pass upon General Counsel's alternative contention resting upon the *Pacific Abrasive* case, *supra*.

²² *N.L.R.B. v. Gissel Packing Company*, 395 U.S. 575.

¹⁶ Pedu contended at the hearing that Torres was no longer employed as of January 20.

¹⁷ Goode accepted and was reinstated. Pedu later told him that he had legal advice and that making this offer "took him off the hook." Goode was again severed on September 18, when he refused to agree to deferred payment for his work. Robinson testified that when he reported to the plant, Pedu explained that he really sent the letter in case "nobody had a job, that there would be a little something coming in" to work in the shop. Robinson was not rehired. At some later point after his layoff on January 22, Van Riper was offered reemployment, but he told Pedu he had another job. The disposition as to the other laid-off employees was not litigated.

¹⁸ See, e.g., *N.L.R.B. v. Darlington Mfg. Co.*, 380 U.S. 263, *Monroe Feed Store*, 110 NLRB 630, 637, enf'd 237 F.2d 116 (C.A.9).

¹⁹ While the matter was not fully explored, there is an indication in the record that there may be subsidiary or affiliated companies in the control of

V THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. A broad cease-and-desist order appears warranted, particularly in view of Respondent's discriminatory conduct and other violations.²³

It has been found that Respondent unlawfully terminated 6 named employees on January 22 and 10 named employees on March 3. It will therefore be recommended that Respondent offer these employees immediate and full reinstatement to their former jobs, and make them whole for any loss of earnings suffered by reason of the discrimination against them, by payment to them of a sum of money equal to that which they would normally have earned, absent the discrimination, less net earnings during such period, with backpay computed on a quarterly basis in the manner established in *F. W. Woolworth Company*, 90 NLRB 289. Backpay shall carry interest at the rate of 6 percent per annum, as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716. It will be further recommended that Respondent preserve and make available to the Board, upon request, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary and useful to determine the amounts of backpay due and the rights of reinstatement under the terms of these recommendations.

Upon the foregoing findings of fact, and upon the entire record in the cases, I make the following:

CONCLUSIONS OF LAW

1. Respondent is 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 laying off on January 22 and March 3, 1970, the 16 employees named below, thereby discouraging membership in the Union, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

John Robinson	Gerald Loucks
Augustine Goode	Angelo Vacca
Jose Tirado	Evangelista Cortez
Gilberto Torres	Christian Hagenlocher
Francisco Lopez	Raymond Hamlin
Milford Van Riper	Charles Manple
James Lynch	William Manthey
William Oellrich, Jr.	Juan Colon

4. All production and maintenance employees and truck-drivers of Respondent at its Amityville, New York, plant, excluding office clerical, watchmen, guards, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. Since January 20, 1970, the Union has been, and is now, the exclusive bargaining representative of all employees in the appropriate unit within the meaning of Section 9(a) of the Act.

6. By failing and refusing, at all times on or after January 21, 1970, to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the foregoing, and by other acts and conduct interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

Upon the above findings of fact, conclusions of law, and the entire record in the cases, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER²⁴

Respondent, Air Transport Equipment, Inc., Amityville, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- (a) Coercively interrogating employees concerning their union activities and sentiments; threatening employees with closing or sale of the plant, layoff, discharge, loss of jobs, loss of prospective business or other reprisal for engaging in union activities; coercively promising benefits to employees; preparing or circulating antiunion petitions; seeking to influence employees to abandon the union of their choice, or to form an inside shop union, or to interfere with or prevent other employees from voting in a Board election; engaging in surveillance of union activities, or creating among employees the impression that their union activities are under surveillance.

- (b) Discouraging membership in International Industrial Production Employees Union, or in any other labor organization, by terminating or laying off employees, or in any other manner discriminating in regard to hire or tenure of employment or any term or condition of employment.

- (c) Failing or refusing to bargain collectively with the above-named labor organization, as the exclusive bargaining representative of all employees in the appropriate unit described above.

- (d) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement in conformity with Section 8(a)(3) of the Act.

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

- (a) Upon request, bargain collectively with the above-named labor organization, as the exclusive representative of its employees in the appropriate unit, and embody in a signed agreement any understanding reached.

- (b) Offer the employees named below immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings, in the manner set forth in "The Remedy" section of the Trial Examiner's Decision.

John Robinson	Gerald Loucks
Augustine Goode	Angelo Vacca
Jose Tirado	Evangelista Cortez
Gilberto Torres	Christian Hagenlocher
Francisco Lopez	Raymond Hamlin
Milford Van Riper	Charles Manple

²⁴ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

²³ *N.L.R.B. v. Express Publishing Company*, 312 U.S. 426, *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532 (C.A. 4)

James Lynch

William Oellrich, Jr.

William Manthey

Juan Colon

(c) Notify the above-named employees if presently serving in the Armed Forces of the United States of their right to 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.

(d) Preserve and make available to the Board or its agents all payroll and other records, as set forth in "The Remedy" section of the Trial Examiner's Decision.

(e) Post at its Amityville, New York, plant, copies of the attached notice marked "Appendix."²⁵ Copies of said notice, on forms provided by the Regional Director for Region 29,

shall, after being duly signed by Respondent, be posted immediately upon receipt thereof, in conspicuous places, and be maintained for 60 consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Trial Examiner's Decision, what steps Respondent has taken to comply herewith.²⁶

Further, it is ordered that Case 29-RC-1393 be severed from this proceeding and remanded to the Regional Director for his disposition.

"Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

²⁶ In the event that this recommended Order is adopted by the Board after exceptions have been filed, notify said Regional Director, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith

²⁵ In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read