

American Buslines, Inc., A Division of Continental Trailways¹ and Mary Margaret Withrow. Case 14-CA-7666

June 24, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND JENKINS

On February 27, 1974, Administrative Law Judge Max Rosenberg issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and has decided to affirm the rulings, findings,² and conclusions of the Administrative Law Judge and to adopt his recommended Order.

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 Administrative Law Judge and hereby orders that Respondent, American Buslines, Inc., A Division of Continental Trailways, St. Louis, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ The name of Respondent appears as amended at the hearing.

² The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enf. 188 F.2d 362 (C.A. 3). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

MAX ROSENBERG, Administrative Law Judge: With all parties represented, this case was tried before me in St. Louis, Missouri, on January 31, 1974, on a complaint filed by the General Counsel of the National Labor Relations Board and an answer interposed thereto by American Buslines, Inc., A Division of Continental Trailways, herein called the Respondent.¹ At issue is whether Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, by discharging Mary Margaret

Withrow, and whether Respondent otherwise violated Section 8(a)(1) of the Act by certain conduct to be chronicled hereinafter. Briefs have been received from the General Counsel and the Respondent which have been duly considered.²

Upon the entire record made in this proceeding, including my observation of the demeanor of the witnesses who testified, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. THE BUSINESS OF THE EMPLOYER

Respondent, a Delaware corporation, maintains an office and place of business in the City of St. Louis, State of Missouri, where it is engaged in the business of interstate transportation. During the annual period material to this proceeding, Respondent derived gross revenues in excess of \$50,000 from furnishing interstate passenger and freight transportation services. The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 1133, Amalgamated Transit Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that Respondent violated Section 8(a)(1) of the Act when, on November 5, 1973,³ Division Superintendent D. J. Frieden and Assistant Superintendent T. L. Creech informed the Charging Party, Mary Margaret Withrow, that she would not be retained in Respondent's employ due to their belief that her husband was an active union advocate. The complaint further alleges that, on November 5, Respondent discharged Withrow because she sought membership in the Union and/or because it harbored the belief that her husband was an active advocate of unionism, in violation of Section 8(a)(3) and (1). For its part, Respondent denies the commission of any labor practices proscribed by the statute.

As indicated heretofore, Respondent furnishes passenger transportation services to the public and employs hostesses who ride its buses and attend to the comfort of the passengers. In 1967, Withrow obtained a job as a hostess with Respondent which lasted for a period of 4 months, when she got married. During that tenure of employment, she joined the Union, which represents Respondent's hostesses. In May or June, Withrow sought reemployment with Respondent and was interviewed by T. L. Creech, Respondent's assistant superintendent in St. Louis. During this session, Creech broached the subject of Withrow's prior employment with the Company and noted that she had established a good work record. The discussion then turned to Withrow's marital status and family life, and she

in its brief, is hereby granted.

³ Unless otherwise indicated, all dates herein fall in 1973.

¹ The complaint, which issued on December 19, 1973, is based upon a charge filed and served on November 12, 1973.

² Respondent's motion to correct transcript of record, which is contained

assured Creech that her husband had no objection to her employment with Respondent and that her children would not be discomfited by her prolonged absences from home. After several subsequent contacts with Creech, Withrow was employed by Respondent as a hostess on September 8.

It is undenied and I find that, when she received her first paycheck, Withrow believed that she had not obtained the proper amount of compensation. Withrow discussed the matter with Creech who explained the bases for the mathematical computations. Sometime thereafter, Withrow made a run in a bus operated by driver Leo Forrester, who held the office of union business agent in the St. Louis area. During the trip, Withrow questioned Forrester as to whether she could apply for membership in the Union despite the fact that she had not completed her probationary period.⁴ The subject turned to Withrow's husband, and Withrow mentioned that he had been a shop steward in an aerospace union when he was employed in the aerospace industry in California about 8 years earlier.

Events abided and, on some undisclosed date thereafter, I find that Withrow and her husband engaged in a discussion at home regarding Respondent's pay scales and the possibility of her joining the Union as a probationary employee. Convinced by her spouse that it was the normal practice for labor organizations to admit such employees to membership, Withrow decided to confirm this intelligence and she telephoned Forrester at his residence. With her husband listening in on an extension phone, Withrow commenced the conversation by questioning Forrester about the pay scales and the discussion turned to Withrow's desire to join the Union prior to the expiration of her probationary period. When Forrester noted that Withrow's application would require extensive paperwork for the Union in the event the latter decided to leave Respondent's employ prior to the completion of the probationary period, therefore not perfecting her union membership, Withrow's husband joined the colloquy. After a heated discussion between Forrester and the husband concerning Withrow's application for membership, Forrester angrily terminated the dialogue.

Sometime following this telephonic conversation, Withrow's spouse contacted the Union's president who resided in Pittsburgh, and obtained the requisite application forms which were ultimately transmitted to Withrow by Forrester. Approximately 2 weeks before her discharge on November 5, Withrow met Forrester at Respondent's garage and apologized to him for causing any friction, stating that "I was just wanting to join the Union and I told him that if I had intentions of quitting I would never have gone down there in the first place and I was just wanting to get into the Union." It is undisputed and I find that the details of the dispute between Withrow's husband and Forrester, as well as to the former union shop steward status of the spouse, were brought to the attention of Respondent's Division Superintendent Frieden and Assistant Superintendent Creech shortly after the dispute arose.

It is also undisputed and I find that, on November 5,

⁴ Pursuant to a collective-bargaining agreement between Respondent and the Union, new employees must undergo a probationary period of 75 days after which they become permanent employees and are required to join the Union.

⁵ According to Frieden's testimony, he elected to terminate her

Withrow telephoned Creech regarding her timecard and the hiring of a new girl as a hostess. When Creech suggested that the new girl might be a replacement for Withrow, the latter immediately contacted Frieden to inquire into her employment status. Frieden informed Withrow that she had been discharged on that day. Withrow asked for the reason for her termination and was told by Frieden that it was "Because of you husband, because of his past Union experience and we don't want any outsiders in our Union." Thereupon, Withrow again telephoned Creech and, in the ensuing conversation, Creech stated that Withrow had been fired because "they were afraid of my husband."⁵ Withrow's discharge was finalized on November 5 and, since that date, she has never been recalled by Respondent.

As heretofore found, Respondent learned sometime after Withrow's employment on September 8 that her husband, who had been a shop steward for an aerospace labor organization, had angered Business Agent Forrester by seeking to have his wife join the Union prior to the end of her probationary period and by going over the head of Forrester and directly contacting the president of the Union in order to obtain a membership application for her. Upon receiving this intelligence, I find that Respondent, through Division Superintendent Frieden, discharged Withrow in order to forestall her admission into the ranks of the Union in the belief that her husband was a troublemaker who would create dissension between Respondent and the Union. Accordingly, I conclude that, by severing Withrow from its employment rolls on November 5, Respondent violated Section 8(a)(3) and (1) of the Act.⁶ I further conclude that, by the statements of Frieden and Creech made to Withrow on November 5, to the effect that she would not be retained on Respondent's payroll because of their belief that her husband was an active union advocate, Respondent thereby independently violated Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that Respondent has engaged in and is engaging 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.

I have found that Respondent discharged Mary Marga-

employment "because we were afraid that after the qualification [probationary] period we would have deep problems with her husband."

⁶ See *Washington Forge, Inc.*, 188 NLRB 90, 93; *Rome Specialty Co., Inc.*, 84 NLRB 55, 57.

ret Withrow on November 5, 1973, for reasons which offended the provisions of Section 8(a)(3) and (1) of the Act. I shall therefore recommend that Respondent make her whole for any loss of pay which she may have suffered as a result of the discrimination practiced against her. The backpay provided for herein shall be computed in accordance with the Board's formula set forth in *F. W. Woolworth Company*, 90 NLRB 289, with interest thereon at the rate of 6 percent per annum computed in the manner prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

Upon the basis of the foregoing findings of fact and conclusions, and upon the entire record in this case, I hereby make the following:

CONCLUSIONS OF LAW

1. Respondent 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 interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. By discharging Mary Margaret Withrow, thereby discriminating in regard to her hire and tenure of employment, in order to discourage membership in the Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact and conclusions of law and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby issue the following recommended:

ORDER ⁷

Respondent, American Buslines, Inc., A Division of Continental Trailways, St. Louis, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Warning employees that they will be subject to discharge because of the protected union activities of their spouses.

(b) Discharging employees, thereby discriminating in regard to their hire and tenure of employment, in order to discourage membership in Local 1133, Amalgamated Transit Union, AFL-CIO, or any other labor organization.

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

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

(a) Offer to Mary Margaret Withrow immediate and full reinstatement to her former job or, if it no longer exists, to substantially equivalent employment, and make her whole for any loss of pay which she may have suffered as a result of the discrimination practiced against her, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the

Board or its agents, for examination and copying, all payroll records, social security records and reports, and all other records necessary to analyze the amount of backpay due herein.

(c) Post at its facility in St. Louis, Missouri, copies of the attached notice marked "Appendix."⁸ Copies of said notice, on forms to be provided by the Regional Director for Region 14, after being duly signed by Respondent's authorized representative, shall be posted by it 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 to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 14, in writing, within 20 days from the date of receipt of this Decision, what steps have been taken to comply herewith.

⁷ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 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.

⁸ 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 "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT discharge our employees, thereby discriminating in regard to their hire and tenure of employment, in order to discourage their membership in Local 1133, Amalgamated Transit Union, AFL-CIO, or any other labor organization.

WE WILL NOT warn our employees that they will be discharged because of the protected union activities of their wives or husbands.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, as amended.

WE WILL make Mary Margaret Withrow whole for any loss of pay she may have suffered as a result of our discrimination practiced against her, and WE WILL reinstate her.

All our employees are free to become, remain, or refrain from becoming or remaining members of the above-named or any other labor organization.

AMERICAN BUSLINES, INC.,
A DIVISION OF
CONTINENTAL TRAILWAYS
(Employer)

Dated _____ By _____ (Representative) _____ (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 210 North 12th Boulevard, Room 448, St. Louis, Missouri 63101, Telephone 314-622-4167.