

Laidlaw Transit, Inc. and George M. Kiefer. Case
6-CA-25486

October 31, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On February 22, 1994, Administrative Law Judge Marvin Roth issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Laidlaw Transit, Inc., Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. Additionally, the Respondent asserts that the judge's findings are a result of bias. After a careful examination of the entire record, we are satisfied that this allegation is without merit.

Suzanne F. Donsky, Esq. and *Leone P. Paradise, Esq.*, for the General Counsel.

Julius Steiner, Esq., of Philadelphia, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge. This case was heard at Pittsburgh, Pennsylvania, on November 18, 1993. The charge was filed on April 28, 1993, by George M. Kiefer, an individual.¹ The complaint, which issued on July 1, 1993, alleges that Laidlaw Transit, Inc. (Company or Respondent) violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act (Act), as amended. The gravamen of the complaint is that the Company allegedly: (1) rendered assistance and support to Amalgamated Transit Union, Local 1493, AFL-CIO (Union), by deducting money from employees' wages and remitting it to the Union, notwithstanding the absence of employee authorizations for the deduction of re-

¹ All dates here are for the period from October 1, 1992, through September 30, 1993, unless otherwise indicated.

mittances; and (2) discharged its employee Kiefer because of his union and concerted activities. The Company's answer denies the commission of the alleged unfair labor practices. All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally, and to file briefs. The General Counsel and Respondent each filed a brief.

On the entire record in this case and from my observation of the demeanor of the witnesses, and having considered the arguments and briefs of the parties, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Company, a Delaware corporation with an office and place of business in Pittsburgh, Pennsylvania, is engaged in the business of providing transportation services to educational institutions and other entities. In the operation of its business, the Company annually derives gross revenues in excess of \$1 million and annually purchases and receives at its Pittsburgh, Pennsylvania facility goods and materials valued in excess of \$50,000 directly from points outside of Pennsylvania. I find, as the Company admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION AND BARGAINING UNIT INVOLVED

The Union was a labor organization within the meaning of Section 2(5) of the Act. At all times material, the Union was the exclusive collective-bargaining representative of the following unit of employees:

All full-time and regular part-time drivers and matrons employed by the Company at its South Side, Pittsburgh, Pennsylvania, facility; excluding all office clerical employees, mechanics and guards, professional employees and supervisors as defined in the Act.

Since August 1, 1983 the unit has been represented by Local 85 of Amalgamated Transit Union, successor to Local 1493.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The current collective-bargaining contract between the Company and the Union, covering the unit employees, was and is effective by its terms from April 16, 1992, through June 30, 1995. The contract includes a 30-day union-security clause and checkoff procedure for union dues and initiation fees.

George Kiefer was employed by the Company on October 21 and terminated on January 15. It is undisputed that during the course of his employment, the Company deducted moneys from Kiefer's pay for union initiation fees and dues, without Kiefer's authorization. It is also undisputed that by check dated June 21 and presented to Kiefer on July 28, the Company reimbursed Kiefer for the unauthorized deductions. Company Operations Supervisor Fred Giles, the Company's only witness, testified that the deductions were made because of an error in the payroll department.

The Company provides schoolbus service pursuant to its contract with the Pittsburgh public schools, and employs

about 300 drivers for this purpose. Company Operations Supervisor Fred Giles has overall charge of the Company's operations. Janis Opferman is terminal manager at the Company's South Side Terminal. Giles' office is located away from the terminal, however, he has occasion to be at the terminal, and when there, conducts business in Opferman's office.

George Kiefer began working for the Company on October 22, as a schoolbus driver, operating out of the South Side Terminal. Opferman hired Kiefer, and was his supervisor.

On November 13 Kiefer broke up a fight between children on his bus. The following Monday (November 16), Operations Supervisor Giles told Kiefer that a parent complained about his handling of the altercation. On November 20, Giles told Kiefer that the parent filed charges, and the Pittsburgh Board of Public Transportation and the Company would not permit Kiefer to drive until the charges were resolved. Giles informed Kiefer that he was suspended, pending outcome of the hearing. Terminal Manager Opferman was present during this conversation, which took place in her office.

The parent filed assault charges against Kiefer. On June 18 the matter was heard before a judge, who dismissed the charges. However on January 8, Opferman informed Kiefer that he could return to work. Kiefer did return on January 11. Opferman was not called as a witness in this proceeding. Operations Supervisor Giles, in his testimony, offered no explanation as to why Kiefer was recalled to work in January, long before the charges against him were resolved.

The collective-bargaining contract provides that new employees shall be on probation for 90 calendar days. Throughout his employment, Kiefer was still a probationary employee. The contract further provides, with respect to probationary employees, that "discipline and discharge shall be at the discretion of the employer and not subject to the Grievance Procedure." Nevertheless, Kiefer testified that on January 12, the day after he returned to work, he filed a grievance over the manner in which the Company handled the November 13 incident and his suspension.

Kiefer testified in sum as follows: He presented his grievance to Union Steward Jean DiDolce. He wrote out his grievance on a plain piece of paper. DiDolce then had him sign a blank grievance form. She said she would enter the grievance on the form, and return the original statement to him. However, DiDolce never gave Kiefer either the original statement or a copy of any grievance form. On January 14, DiDolce told Kiefer that she had spoken to the Company, but that the Company would not accept Kiefer's grievance because he was on probation. However, in his investigatory affidavit to the Board's Regional Office, Kiefer stated that Union Representative Jan Veresse gave him this information.

Union Steward DiDolce is employed by the Company as a schoolbus driver, operating out of the South Side Terminal. DiDolce, who was presented as a The General Counsel witness, testified in sum as follows: She was the only union representative responsible for processing grievances at the South Side Terminal. In mid-January, Kiefer gave her a grievance statement. Another employee (Jean Janik) was present. Kiefer complained that the Company did not do a proper investigation on his suspension. DiDolce thought that Kiefer, although a probationary employee, might be able to file a grievance because the Company was deducting union dues from his paycheck. She told Kiefer she would talk to Opferman and check with the Union. The next morning,

DiDolce presented the grievance to Opferman. Operations Supervisor Giles was present. Opferman read the grievance, and returned it to DiDolce. Opferman said the contract did not cover Kiefer, because he was a probationary employee. DiDolce checked with Union President Carter, who told her they could do nothing because Kiefer was still in his probationary period. The General Counsel did not proffer the alleged written grievance in evidence, and offered no explanation for the failure to do so.

Kiefer continued to work until Friday, January 15. He testified in sum as follows: He was late for work on January 15. His alarm failed to go off, and he had been drinking the previous evening (but not on January 15). A company dispatcher called him at home. Kiefer missed his first (6 a.m.) run, but reported to work about 7:15 a.m. and took the next run at 8 a.m. About 9:30 a.m. he was summoned to the terminal office. Opferman and Giles were present. Giles told Kiefer he was "highly pissed off" that Kiefer filed a grievance. Kiefer said this was his right. Giles replied that Kiefer was not in the Union. Kiefer responded that it was not fair that he should "lose \$150.00 a week versus \$93.00 a week unemployment." Giles and Opferman left the office for a few minutes. When they returned, Giles told Kiefer that they didn't need him anymore.

Kiefer further testified in sum as follows: He was not given any separation form or asked to sign one. There was no discussion of his work performance, although Kiefer could not recall whether they discussed the circumstances under which he was late that morning. During Kiefer's tenure with the Company, he was never criticized or given any warning concerning his driving or other bus operation, and did not receive any traffic citation by reason of his bus operation. No one from the Company ever told him he was observed driving in an improper manner.

As an adverse witness for the the General Counsel, Operations Supervisor Giles testified that he discharged Kiefer, based on complaints from Theodore Vasser, transportation coordinator for Pittsburgh public schools, and "some other sources," and Giles' personal observations. Specifically, the alleged complaints and observations concerned Kiefer's alleged driving at excessive speed, overly rapid braking, and improper use of signal lights. As a company witness, Giles testified that he discharged Kiefer because of "his job performance and some of the different safety violations that I observed and complaints from my customers." In his investigatory affidavit, Giles stated that he decided to terminate Kiefer "because of complaints by the Pittsburgh School District and my own direct observation." At no point in his testimony did Giles identify any source of alleged complaints about Kiefer, other than Transportation Coordinator Vasser.

Giles testified in sum as follows: During Kiefer's first period of employment (October 22 to November 20), Giles on "numerous" occasions observed Kiefer speeding, making quick stops at stop signs, and making improper use of the vehicle eight-way lighting system. Giles spoke to Kiefer two or three times about these matters. He told Kiefer he had "to be safe," to slow down, and to use his lighting systems. He also reminded Kiefer that he was a probationary employee. However, Giles did not record either his observations or conversations with Kiefer, because there were no "very serious violations."

Giles further testified in sum as follows: During the period of Kiefer's employment following his return from suspension (January 11 to 15), Transportation Coordinator Vasser discussed his complaints with Giles. Vasser furnished Giles with Kiefer's vehicle number. On January 14, Giles made observations of Kiefer's driving. Giles parked his car on Carson Street, where cars are parked on both sides of the street. From this location he observed Kiefer's driving for a distance of at least three blocks. Kiefer, with a bus full of children, was speeding and driving erratically, and his lights were not properly activated. Giles did not try to stop Kiefer. Instead, he told Terminal Manager Opferman that they should speak to Kiefer the next morning about his problems.

Giles went on to testify in sum as follows: On the morning of January 15, Opferman informed Giles that Kiefer reported late to work. When Kiefer finished his run, Giles and Opferman summoned him to the terminal office. Giles expressed his concerns to Kiefer, including the fact that he reported late that morning, and that Kiefer "smells like alcohol." Kiefer became "pretty upset and verbal," whereupon Giles told him he would be terminated. Giles asked Kiefer to sign his separation sheet. Instead, Kiefer stormed out the door and left the terminal. Giles did not consult with Opferman before terminating Kiefer. Giles was not aware that Kiefer attempted to file a grievance over his suspension. Giles further testified that he was not present at any conversation when DiDolce attempted to present Kiefer's grievance to Opferman, and Kiefer's filing of the grievance had nothing to do with Giles' discharge of Kiefer. With regard to Giles' alleged remark to Kiefer about the grievance, Giles testified that "I would never talk like that."

The General Counsel presented in evidence, two documents which were obtained by subpoena from Kiefer's personnel file. The first (G.C. Exh. 3) purported to be Kiefer's separation sheet. This document was signed by Terminal Manager Opferman and dated January 25, 10 days after Kiefer's discharge. The separation sheet contained a list of 11 possible reasons for discharge, including "not qualified," "under influence of intoxicant," "violation of company rules," "misconduct," "refusal to follow instructions," "tardiness," and "insubordination." Only the last reason, "other," was checked. Under "explanation," the sheet stated: "George was on probation. He did not come up to Company standards." The sheet contained a space for employee signature, but no indication that Kiefer refused to sign.

The second document (G.C. Exh. 4) was a photocopy of an original, with the bottom portion cut off. This document, handwritten on a sheet of notebook paper and dated January 15, purported to be a partial description of Kiefer's termination meeting on that date. The narrative stated in part: "Badmouthed company—going to start trouble once he is off probation pertaining to back pay he feels company owes him (Nit-pick any issue). . . . Fred Giles & myself questioned him and again he stated that the Company did him wrong[.]" The Company contends that this document is inadmissible hearsay evidence.

Pittsburgh Public Schools Transportation Coordinator Theodore Vasser, who was presented as a General Counsel witness, testified in sum as follows: He is not responsible for hiring, firing, or disciplining company drivers. His office has a procedure for handling complaints from the public about schoolbuses or their drivers. When complaints are received

(normally by phone), his office records such complaints on a standard form, including identification of bus and driver. His office then informs the Company about the complaint. If the complaint involves a serious matter, his office will conduct an independent investigation. However, not all complaints are recorded. Vasser is in regular contact with Operations Supervisor Giles, and speaks with him on an average of 12 or 13 times per week.

Vasser further testified in sum as follows: He never personally observed Kiefer's driving. His office has no record of any complaints concerning Kiefer's driving. He never told Giles that he received such complaints. He does not recall any complaints concerning Kiefer's driving, or that Giles expressed concern about Kiefer's driving. However, it is possible that Vasser and Giles might have discussed Kiefer's bus by its number.

B. Analysis and Concluding Findings

The General Counsel contends that the Company discharged Kiefer because he filed a grievance against the Company. For the reasons discussed here, I agree with the General Counsel, and I further find, as alleged in the complaint, that the Company thereby violated Section 8(a)(1) and (3) of the Act.

In resolving the credibility questions posed by this case, a significant fact is the Company's conspicuous failure to present Terminal Manager Opferman as a witness. The testimony of the witnesses, including Giles, indicates that Opferman was present and involved at all critical stages of Kiefer's employment and during the time of the events culminating in his discharge. She was Kiefer's immediate supervisor, and consequently in the best position to evaluate his performance. She recalled Kiefer from layoff, and was the person who allegedly received his grievance. She was present at Kiefer's termination, prepared and signed his separation sheet, and (as will be further discussed), evidently wrote a memorandum concerning the termination interview. The Company offered no explanation for its failure to call Opferman as a witness.

"An adverse inference is properly drawn regarding any matter about which a witness is likely to have knowledge if a party fails to call that witness to support its position and the witness may reasonably be assumed to be favorably disposed to the party." *Property Resources Corp.*, 285 NLRB 1105 fn. 2 (1987), *enfd.* 863 F.2d 964 (D.C. Cir. 1988); see also *Martin Luther King Sr. Nursing Center*, 231 NLRB 15 fn. 1 (1977). Such adverse inference is warranted in the present case, by reason of the Company's failure to present Opferman as a witness. Even without such inference, the absence of testimony by Opferman leaves critical elements of the General Counsel's case either uncontradicted or unexplained, and critical elements of Giles' testimony lack corroboration, thereby detracting from the weight and credibility of that testimony. In contrast, critical elements of Kiefer's testimony were corroborated by Union Steward DiDolce, and critical elements of Giles' testimony were contradicted by Transportation Coordinator Vasser, and by the Company's own records.

Union Steward DiDolce generally impressed me as a credible witness. She is presently employed by the Company, and had no evident reason to knowingly testify falsely against her employer. I credit her testimony, including her assertion that

she attempted to present Kiefer's grievance to Opferman, in Giles' presence. Indeed, in the absence of any testimony by Opferman, DiDolce's testimony that she presented the grievance to Opferman, stands unrefuted. Giles, in his testimony, simply denied that he was present or knew about the grievance. He could not, and did not, deny that Opferman received the grievance.

In crediting DiDolce, I have also taken into consideration the handwritten memo, dated January 15, contained in Kiefer's personnel file. The fact that this document was contained in the personnel file, and purported to describe Kiefer's termination interview, warrants an inference that this was a company-generated document. The memo indicated "Fred Giles [and] myself questioned [Kiefer]." No one other than Giles, Opferman, and Kiefer were present at the termination meeting. Therefore, the inference is warranted that the memo was written by Opferman. As Opferman was not called to testify, the inference stands un rebutted. I find that the memo was written by Opferman, and may be considered as an admission by the Company. See Fed.R.Evid. 801(d)(2)(D).²

In light of the admissions contained in Opferman's memo, I find that Kiefer's grievance was discussed at his termination meeting, and that Giles was well aware that Kiefer tried to file his grievance. The memo also indicates that Kiefer made clear he intended to pursue his grievance after completing his probationary period. The memo indicates Company animus toward Kiefer by reason of his grievance, i.e., the references to "[B]ad-mouthed Company" and "[N]it-pick any issue." I credit the testimony of Kiefer, in sum, that Giles expressed anger over the fact that Kiefer filed a grievance, that this was the principal topic of discussion at the termination meeting, and that Giles did not indicate any other reason for terminating Kiefer.

In crediting Kiefer, I have also taken into consideration the patently false and shifting reasons advanced by Giles for terminating Kiefer. As indicated, Giles testified that he observed alleged deficiencies in Kiefer's driving during the period from October 22 to November 20, but did not bother to record his alleged observations or comments to Kiefer, because there were no "very serious violations." If these matters were not sufficiently significant to warrant any notation, then it is unlikely, in the absence of a discriminatory motive, that Giles would consider the matters as a basis, even in part, for discharging Kiefer.

I find particularly significant the fact that the Company recalled Kiefer to work in January, notwithstanding the pending unresolved assault charge against him. It is evident that the Company needed and wanted his services. No evidence was presented that Kiefer's recall was accompanied by any advice or warning that he had to improve his performance. As indicated, Kiefer testified that the Company never criticized or warned him about his driving. I credit his testimony in this regard.

I do not credit Giles' testimony that Transportation Coordinator Vasser or anyone else complained to him about Kiefer's driving. As indicated, Vasser testified that he never

observed Kiefer's driving, and that complaints from the public were normally reduced to writing and referred to the Company. He further testified that he had no record of any complaints concerning Kiefer's driving, never referred any such complaint to Giles, and had no recollection of receiving such complaints or discussing Kiefer's driving with Giles. Vasser did testify that he did not record all complaints from the public. However, if Vasser did receive complaints from the public concerning Kiefer's driving, and considered them of sufficient gravity to refer to Giles, then it is probable that Vasser or his office would have made some record of at least one such complaint. Vasser was aware that such complaints could result in suspension or discharge of the accused driver, and consequently, that there should be some record. According to Giles, Vasser identified Kiefer by his vehicle number. If so, this would indicate that Vasser had a record of alleged complaints. In fact, as testified by Vasser, there were no such records. I find that Giles received no complaints about Kiefer's driving.

As Giles received no complaints about Kiefer's driving, it follows that he had no reason, absent a discriminatory motive, to intentionally observe Kiefer's driving on January 14. As indicated, the Company employs some 300 drivers. Moreover, Giles' testimony concerning his alleged observations, presents a patently improbable story. It is unlikely that Giles, sitting in a parked car, could have observed for a distance of three blocks, the alleged defects in Kiefer's operation of the bus. If he did, then it is probable he would have stopped the bus, and either admonished Kiefer or obtained a substitute driver. Moreover, the timing of Giles' alleged observation, i.e., the day after Union Steward DiDolce presented Kiefer's grievance to the Company, tends to indicate that if Giles made this observation, he did so in order to get something on Kiefer because Kiefer filed the grievance.

As indicated, Giles testified that he discharged Kiefer because of alleged complaints and his own observations concerning Kiefer's operation of his bus. However in his narrative of the events leading to Kiefer's discharge, Giles came up with yet another and different reason for terminating Kiefer. Giles, in his testimony, indicated that as of January 14, he simply wished to talk to Kiefer about his problems. According to Giles, he decided on his own, and did, terminate Kiefer only after Kiefer became "pretty upset and verbal." In sum, Giles suggested that he discharged Kiefer because of his attitude on January 15. "[A] respondent's 'inability to adhere with consistency to any explanation for its action' in terminating an employee warrants an unfavorable inference against that respondent." *P*I*E Nationwide*, 282 NLRB 1060, 1065 (1987), *enfd.* 894 F.2d 887 (7th Cir. 1990), and cases cited there.

The "separation sheet" contained in Kiefer's personnel file further tends to undermine both Giles' credibility and his professed and assorted reasons for terminating Kiefer. As the separation sheet was ostensibly prepared and signed on January 25, it is evident that contrary to Giles' testimony, Giles did not present the sheet to Kiefer for his signature. As indicated, it is also significant that Opferman did not check off reasons which ostensibly, under Giles' testimony, might have constituted reasons for Kiefer's discharge.

I find that the Company discharged Kiefer because he attempted to file a grievance over his suspension and indicated to the Company that he intended to pursue that grievance.

²The Company's reliance on criminal law decisions in support of its argument for exclusion of the memo (Br. 22-23), is misplaced. In the present case, unlike those cases, an adverse inference could be drawn from the failure of Respondent to present certain testimony.

On the basis of Kiefer's efforts to file and pursue his grievance, the Company's knowledge of those efforts, the Company's declared hostility against Kiefer by reason of those efforts, the timing of Kiefer's discharge (2 days after DiDolce presented his grievance), and the Company's failure to give Kiefer any other reason for his discharge, the General Counsel presented a prima facie case that the Company terminated Kiefer because he sought to file and pursue his grievance. As Giles' professed reasons for terminating Kiefer were demonstrably false or pretextual, it follows that the Company failed to meet its burden of establishing that it would have terminated Kiefer in the absence of his grievance activity.

It is settled law that the filing of a grievance pursuant to a collective-bargaining contract between a union and an employer constitutes union and protected concerted activity. Therefore an employer violates Section 8(a)(1) and (3) of the act by discharging an employee for filing a grievance. *NLRB v. City Disposal Systems*, 465 U.S. 822 (1984); *Pennsylvania Electric Co.*, 289 NLRB 1200, 1211 (1988), and cases cited there. It is immaterial whether the grievance is meritorious or whether the employee has a contractual right to use the grievance procedure. "[A]n employee's 'honest and reasonable invocation' of a collective-bargaining contract is concerted activity 'regardless of whether the employee turns out to have been correct in his belief that his right was violated.'" *Regency Electronics*, 276 NLRB 4 fn. 3 (1985), citing *City Disposal*, supra.

In the present case, Kiefer had an honest and reasonable basis for believing that he had standing to file a contractual grievance because the Company was deducting union dues from his pay, and Union Steward DiDolce told him that for that reason, he might be able to file a grievance. Even after DiDolce informed him otherwise, Kiefer could and did reasonably believe, in good faith, that he could pursue his grievance after completing his probationary period. He so asserted to Giles and Opferman. Therefore, Kiefer was engaged in protected union and concerted activity, and the Company violated Section 8(a)(1) and (3) of the Act by discharging him for engaging in such activity.

I further find that during the course of Kiefer's employment, the Company violated Section 8(a)(1) and (2) of the Act by deducting moneys from Kiefer's pay for union initiation fees and dues, and remitting such moneys to the Union, without Kiefer's authorization. It is settled law that an employer violates Section 8(a)(1) and (2) of the Act if it deducts union dues from an employee's wages, absent written authorization by the employee of such deduction. *Grason Electric Co.*, 296 NLRB 872, 887 (1989). The case authorities do not indicate that in such cases, the finding of a violation turns on employer motivation. Rather, a guiding principle may be found in *Ladies Garment Workers v. NLRB*, 366 U.S. 731, 739 (1961). In that case the Supreme Court, in agreement with the Board, held that employer recognition of a minority union as exclusive bargaining representative "cannot be excused by a showing of good faith." (The employer recognized the union there in the mistaken but good-faith belief that the union represented a majority of employees in the appropriate unit.) That principle is applicable to the present case. Here, as in *Ladies Garment Workers*, supra, the employer engaged in conduct which tended to unlawfully coerce union membership or support, although such result was not intended by the employer.

I further find that the present violation cannot be viewed as isolated or insignificant. The Company deducted money from Kiefer's pay for union dues and initiation fees throughout his employment. The Company did not reimburse Kiefer until long after he was discharged and filed the present charge. Moreover, the evidence indicates that by making these deductions, the Company engaged in conduct which misled Kiefer into believing that he had standing to file and pursue his grievance. Consequently, the Company's unlawful conduct was a factor in the chain of events which culminated in Kiefer's unlawful termination. Therefore, a cease-and-desist order is warranted.

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union was, at all times material, a labor organization within the meaning of Section 2(5) of the Act. Local 85 is the successor to the Union, and a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging George Kiefer because he engaged in union and concerted activities, and to discourage employees from engaging in such activities, the Company has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

4. By unlawfully deducting money from Kiefer's wages and remitting it to the Union, without proper authorization by Kiefer, the Company has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

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

REMEDY

Having found that the Company has committed violations of Section 8(a)(1), (2), and (3) of the Act, I shall recommend that it be required to cease and desist therefrom and from like or related conduct, and to take certain affirmative action designed to effectuate the policies of the Act.

It is undisputed that by letter dated November 10, 1993, company counsel sent Kiefer a letter advising him of an unconditional offer of reinstatement. At the close of hearing, company counsel informed Kiefer, on the record, that counsel was reaffirming the offer, and if Kiefer desired reinstatement, he should contact Operations Supervisor Giles within 7 days. Neither General Counsel nor the Company discussed these matters in their respective briefs. The General Counsel simply requests a conventional order including reinstatement with backpay. I am granting the General Counsel's request, subject to the condition that at the compliance stage of this proceeding, the Company may present evidence that it made a proper offer of reinstatement. As the Company reimbursed Kiefer for its improper deduction of moneys from his pay, no reimbursement remedy is necessary in this regard.

Having found that the Company discriminatorily terminated George Kiefer, it will be recommended that the Company be ordered to offer him immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings and benefits that he may have suf-

ferred from the time of his discharge to the date of the Company's offer of reinstatement. I shall further recommend that the Company be ordered to expunge from its records any reference to his unlawful termination, to give him written notice of such expunction, and to inform him that its unlawful conduct will not be used as a basis for future personnel actions against him. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).³ It will also be recommended that the Company be required to preserve and make available to the Board, or its agents, on request, payroll and other records to facilitate the computation of backpay and reimbursement due.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, Laidlaw Transit, Inc., Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees or in any other manner discriminating against them with regard to their hire or tenure of employment or any term or condition of employment, because they claim rights under a collective-bargaining contract, or because they engage in any other union or concerted activities for the purpose of collective-bargaining or other mutual aid or protection.

(b) Assisting Amalgamated Transit Union, Local 85, AFL-CIO (successor to Local 1493), by deducting moneys from the wages of any employee and remitting such moneys to Local 85 for initiation fees or dues, when such deductions are not authorized in writing by the employee.

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

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

(a) Offer George Kiefer immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for losses he suffered by reason of the discrimination against him as set forth in the remedy section of this decision.

(b) Expunge from its files any reference to the termination of George Kiefer, and notify him in writing that this has been done and that evidence of his unlawful termination will not be used as a basis for future personnel actions against him.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel

³ Under *New Horizons*, interest on and after January 1, 1987 is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

records and reports, and all other records necessary to analyze the amount of backpay due.

(d) Post at its Pittsburgh, Pennsylvania facilities, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

⁵ If this 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 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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge employees or in any other manner discriminate against them with regard to their hire or tenure of employment or any term or condition of employment, because they claim rights under a collective-bargaining contract, or because they engage in any other union or concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL NOT assist Amalgamated Transit Union, Local AFL-CIO (successor to Local 1493), by deducting moneys from the wages of any employee and remitting such moneys to Local 85 for initiation fees or dues, when such deductions are not authorized in writing by the employee.

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

WE WILL offer George Kiefer immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for losses he suffered by reason of the discrimination against him.

WE WILL expunge from our files any reference to the termination of George Kiefer, and notify him in writing that this has been done and that evidence of his unlawful discharge will not be used as a basis for future personnel actions against him.

LIDLAW TRANSIT, INC.