

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
ATLANTA BRANCH OFFICE

5

SCHWERMANN TRUCKING, INC.

10

and

CASE 25–CA–28930

GARY L. GREGORY

15

*Steve Robles, Esq.*, Counsel  
for General Counsel.

20

*Alan M. Levy, Esq.*, Counsel  
for Respondent.

*Peggy A. Hillman, Esq.*, Counsel  
for Charging Party.

25

**DECISION**

A hearing was held in Indianapolis, Indiana on May 3, 2004. I have considered the entire record and briefs filed by Respondent and General Counsel in reaching this decision.

30

**Jurisdiction**

At material times Respondent has been a corporation with numerous facilities located in various midwestern states including a place of business in Greencastle, Indiana, where it has been engaged in the transportation of bulk commodities. During the past 12 month period Respondent, in conducting those business operations, purchased and received at its Greencastle facility goods valued in excess of \$50,000 directly from points located outside Indiana and it derived gross revenues in excess of \$50,000 for the transportation of freight from Indiana directly to points outside Indiana. Respondent has been an employer engaged in commerce within the meaning of the National Labor Relations Act, at all material times.

35

40

**Labor Organization**

At material times Chauffeurs, Teamsters, Warehousemen, and Helpers, Local Union No. 135, a/w International Brotherhood of Teamsters, has been a labor organization within the meaning of the Act.

45

**The Alleged Unfair Labor Practice:**

5 General Counsel alleged that Respondent discharged Gary Gregory because of Gregory's union and other protected activities. Gregory was allegedly involved in activities both on behalf of and in opposition to Local 135 while employed by another employer. When an agent of Local 135 discovered that Gregory was working for Respondent, that agent suggested that he had nothing but trouble with Gregory. Respondent then discharged Gregory during Gregory's probationary period. As shown below, the record included evidence, which both supported and 10 disputed the complaint allegations.

**Record Evidence:**

15 Terminal Manager Randle Waggoner testified that Respondent discharged Gregory before the end of his 30-day probationary period. Waggoner admitted that he did not watch Gregory's work. On May 22, 2003 Waggoner discharged Gregory as well as one other probationary employee. Waggoner admitted that when he told Gregory he was discharged Gregory suggested that he was discharged because the Teamsters wanted Respondent to get rid of him.

20 Gary Gregory testified that he worked for Respondent from April 18 until he was discharged on May 22, 2003.<sup>1</sup> Before that Gregory was a road driver for Consolidated Freightways.<sup>2</sup> While with Consolidated Freightways Gregory was a union steward.<sup>3</sup> Gregory was also a member of a dissident union group called Teamsters for Democratic Union. He was also on a slate running for election that opposed a slate that included the current Union business 25 agent, – Jim Wilkinson. In 2001 Gregory asked Local president Danny Barton to remove Jim Wilkinson as their business agent at Consolidated Freightways. Wilkinson was not removed.

30 On April 23 Gregory saw an automobile at Respondent's facility, which he thought belonged to Union business agent Jim Wilkinson.<sup>4</sup> When he was discharged Gregory told Waggoner that he felt the Local Union was behind his discharge.

35 Respondent currently employs Tobias Vandagriff. Vandagriff has worked for Respondent since July 2003. He like Gregory and Calvin Douglas formerly worked for Consolidated Freightways. Vandagriff testified that Gregory was known as a tough and hand-core union man. He knew that Gregory had conflicts with the Local Union.

---

1 Despite the fact that more than one month lapsed from Gregory's first day of work until his discharge, there was no contention that he had worked past his probationary period.

2 Calvin Douglas testified that he also worked for Consolidated Freightways along with Gregory. Douglas testified that Gregory was a strong advocate as union steward and that he was an outstanding and knowledgeable employee. Douglas was aware there was some friction between Gregory and the Local Union.

3 Gregory told Randle Waggoner that he had been a union steward while working at Consolidated Freightways.

4 Supervisor Bob Boone testified that he discussed this matter with Gregory and that Jim Wilkinson was with Randle Waggoner in the terminal on that occasion.

On July 21, 2003 Vandagriff ran out of hours at Shelbyville. He phoned the terminal in accord with established procedure and was picked up and driven back to the Greencastle terminal by Randle Waggoner. During their drive back to the terminal Waggoner asked Vandagriff where he had worked. Vandagriff had worked at Consolidated Freightways and he said that he had worked both union and non-union. Randle Waggoner said that was good because he did not think the Union would get another contract and it was good that Vandagriff knew how to deal with non-union companies.

Waggoner asked Vandagriff did he know Gary Gregory. Vandagriff said that he knew Gary Gregory had worked for Respondent but he did not know what had happened. Waggoner said that Gregory was a hard-core union man and that Jim Wilkinson, the Union business agent, told him that he had nothing but troubles from Gregory. Waggoner said that he met the problem and fired Gregory.

Dan Swafford testified that he too worked for Respondent. On April 18, 2003 he was in the drivers room along with Randle Waggoner. Waggoner asked Swafford how come he didn't tell him that Gregory was a hard-core steward at Consolidated Freightways. Swafford replied that he did not think it mattered. Waggoner said that stewards were good workers and that he was going to hire Gregory.

Respondent started its defense by calling supervisor Brenda Haywood. Haywood is a dispatcher. She has never heard Randle Waggoner say that Schwerman would close down because the union cost too much. She never heard him discuss how the collective bargaining contract was being negotiated. She did not recall other employees commenting whether they could get along with Gary Gregory. Haywood testified that Gregory seemed to get along with others. She thought Gregory was a member of the team.

Gregory asked to talk with Haywood after his discharge. He asked her why Randle had fired him. Haywood told Gregory that she did not know why Randle had fired him.

Robert Boone is also a dispatcher and he is an admitted supervisor. He talked with Randle Waggoner about Gary Gregory. Boone told Waggoner that Gregory was a union steward at Consolidated Freightways and he thought Gregory worked well. Gary Gregory asked Boone if he knew anything about why Gregory had been discharged. Boone replied that he did not. Gregory said that Randle was "mis-justly accusing him that he couldn't do the job," and that he "would get even with Randy."

On one occasion there was a black car driven by the Union business agent and Gary Gregory told Boone that he guess "everyone will know I am working here now." Boone identified the business agent as Jim Wilkinson.

Union business agent Jim Wilkinson testified that he knew Gary Gregory was a union steward at Consolidated Freightways. Wilkinson became business agent around 1997 or 1998. He testified that he and Gregory were not the best of friends but they were not enemies.<sup>5</sup>

---

<sup>5</sup> On cross examination Wilkinson admitted that he had run in opposition to Gary Gregory in an election for steward while they worked at Consolidated Freightways and that he lost that election.

Wilkinson admitted that Gregory was involved in internal Union politics. He admitted that Gregory had been on a slate that ran against the slate for steward at Consolidated Freightways that included Wilkinson.

5           Wilkinson admitted that he discussed Gary Gregory with Randle Waggoner around the 22<sup>nd</sup> or 23<sup>rd</sup> of May 2003. Waggoner told him about the discharge of Gregory and that was the first Wilkinson knew that Gregory was leaving Schwerman. He denied that he suggested to Waggoner that Schwerman would be better off without Gregory.

10           Randle Waggoner testified that he first talked with Jim Wilkinson about Gregory after Gregory was discharged. Waggoner admitted that after he told Gregory he was discharged, Gregory said that he was being fired because Waggoner had talked to the Local.

15           Waggoner admitted that he picked up Tobias Vandagriff after Vandagriff ran out of hours. He admitted talking to Vandagriff during that trip about Schwerman’s open door policy and that they talked about the collective bargaining contract. Waggoner denied that he discussed Gary Gregory with Vandagriff. He admitted that he did tell Vandagriff that he did not want troublemakers. Waggoner denied that he discussed Gregory’s discharge with Dan Swafford. He testified that Swafford came to him and said that he understood Waggoner had let Gregory go.  
20           Waggoner testified that he did not reply to that comment by Swafford.

**Findings:**

**Credibility:**

25           In considering credibility it is important to note that three of the witnesses are supervisors. Randle Waggoner is the Greencastle terminal manager. Robert Boone and Brenda Haywood are dispatchers.

30           Several of the witnesses are former employees of Consolidated Freightways. Consolidated Freightways went out of business and Respondent employed several former Consolidated Freightways supervisors and employees.

35           There is no dispute but that Gary Gregory was involved in union activities as well as activities opposed to the Local Union while he worked at Consolidated Freightways. Moreover, there is no dispute but that he opposed Tim Wilkinson’s slate in an election for union stewards at Consolidated Freightways. Moreover, there is no dispute but that Randle Waggoner knew from before the discharge of Gregory that Gregory had been active in the Union.

40           Respondent, in its brief, argued that Waggoner should be credited over witnesses for General Counsel. In that regard I note that Waggoner appeared to agree with Dan Swafford. Swafford testified that Waggoner asked him why he had sent him Gary Gregory, a “hard-core (union) steward”. Waggoner testified to the effect that he did have a conversation with Swafford about Gregory having been a union steward. Waggoner did not deny that the conversation was along the lines recalled by Swafford. Waggoner also testified that he talked with Bob Boone  
45           about Gregory having been a union steward at Consolidated Freightways before Gregory was hired.

Moreover, Waggoner’s account of his discharge conversation with Gary Gregory did not differ materially from Gregory’s testimony about that incident.

5 In fact the only material evidentiary dispute was did Waggoner tell employee Tobias Vandagriff that he had discharged Gregory because Union business agent Wilkinson told Waggoner that Gregory was trouble.

10 As to that question, Respondent argued that it is unlikely Waggoner would confide in a relatively new employee, – (Tobias Vandagriff) – that he had engaged in unlawful activity by discharging Gary Gregory because of Gregory’s protected antiunion activities. However, that argument does not fully square with Waggoner’s testimony. Waggoner admitted that he did have a conversation with Tobias Vandagriff on the occasion recalled by Vandagriff. On the question of why did he talk with Vandagriff, Waggoner testified, “there is a golden opportunity here, you have a new employee, you feel like you have a brand new employee here with you that looks like he may be able to make it with you.” Waggoner went on to testify that he wanted to give Vandagriff,

20 *“the idea that I do have an open door policy, that it is fine. If he feels like he has been shorted in dispatch or something like that or he has a grievance, to bring it in and talk to me first and we can work it out there.”*

25 Waggoner also testified that he and Vandagriff talked about the collective bargaining contract and the fact that the health and welfare provisions are different that what Vandagriff had formerly worked under.

30 As part of its argument, Respondent argued that Waggoner would not disclose to a new employee that he engaged in unlawful activity by discharging Gregory. However, there is no evidence showing that Waggoner was aware at that time that he may have engaged in an unfair labor practice by discharging Gregory. The initial charge in this matter was not filed until November 18, which was some 4 months after the July 21 conversation between Waggoner and Vandagriff. Moreover, there was no other evidence showing that Waggoner was aware that it might have been unlawful to discharge an employee because of something said by a union business agent.

35 Tobias Vandagriff on the other hand was not in position of benefiting from his own testimony. In fact, he works for Respondent and stood to lose by testifying against his employer.

40 As to this credibility question I have also considered the inconsistency demonstrated in how Waggoner handled other probationary employees as opposed to Gary Gregory. On other occasions, including for example the case of Tobias Vandagriff, Waggoner permitted costly mistakes by probationary employees without terminating that employee. However, in the case of Gregory, Waggoner admitted that he did not observe Gregory’s work and the only complaint he testified to was that Gregory was too cautious. On the other hand, Respondent argued that Waggoner hired drivers like Gregory that lacked mechanical experience but remained conscious that the labor agreement had a 30–day probationary period and company policy stressed termination if there was any doubt the employee would acquire the necessary skills for the job.

That argument is in direct conflict with other evidence. Actually, there was no evidence that Waggoner learned about Gregory’s alleged lack of mechanical skills either before or after Gregory was hired. In fact, the evidence shows to the contrary. Supervisor Bob Boone informed Waggoner that Gregory had been a good driver with Consolidated Freightways and there was no showing that Waggoner learned through either personal observation or from other supervisors or employees that Gregory lacked any necessary skills. Moreover, Respondent routinely hired former Consolidated Freightways employees and there was no showing that Respondent ever found those employees lacking in necessary skills.

Respondent also argued that Gregory lacked the ability to “interface” with other employees. That argument was rebutted through one of Respondent’s own witnesses. Supervisor and dispatcher Brenda Haywood testified that she did not recall other employees commenting whether they could get along with Gary Gregory. She testified that Gregory seemed to get along with others and she thought Gregory was a member of the Schwerman team.

I was impressed with the demeanor and testimony of Tobias Vandagriff. He readily admitted on cross examination that he was tired at the end of his driving time and before starting his journey back to Greencastle with Randle Waggoner. He also admitted that he knew very little about the collective bargaining agreement other than what he was told by Randle Waggoner during their ride to Greencastle. Additionally, I was influenced to an extent by testimony of Dan Swafford to the effect that Tobias Vandagriff told him about his conversation with Waggoner regarding Gregory. I fully credit Vandagriff and discredit Randle Waggoner’s denial of the substance of his conversation with Vandagriff.

**Conclusions:**

*The alleged unlawful comments:*

At paragraph 5 the complaint includes allegations that Respondent told employees that it had discharged others; created the impression of employees’ union activities; threatened employees with discharge; solicited employee grievances; interrogated employees; told employees it was futile to support the Union; and told employees it would not hire or consider for hire Union supporters; because it employees had formed, joined or assisted the Union.

As shown above those allegations all stem from a conversation between Randle Waggoner and Tobias Vandagriff and I credited Vandagriff’s testimony about that conversation. After Vandagriff ran out of hours on July 21, 2003, Randle Waggoner drove him back to the Greencastle terminal. During that drive Waggoner asked Vandagriff where he had worked. Vandagriff had worked at Consolidated Freightways and he said that he had worked both union and non–union. Randle Waggoner said that was good because he did not think the Union would get another contract and it was good that Vandagriff knew how to deal with non–union companies. Waggoner asked Vandagriff did he know Gary Gregory. Vandagriff said that he knew Gary Gregory had worked for Respondent but he did not know what had happened. Waggoner said that Gregory was a hard–core union man and that Jim Wilkinson, the Union business agent, told him that he had nothing but troubles from Gregory. Waggoner said that he met the problem and fired Gregory.

I agree with General Counsel to the extent it is alleged that Waggoner threatened Vandagriff that Respondent had discharged another employee because the union business agent had requested that employee's discharge in view of the business agent's past troubles with the employee regarding union or other protected activities.

5

The alleged unlawful discharge:

I shall examine the record to determine if Gregory engaged in protected activity, whether that activity was known to Respondent and whether Respondent was motivated in discharging Gregory by its animus against his protected activity.

10

As to his protected activities, there is no dispute but that Gregory engaged in extensive protected activity while at Consolidated Freightways. Gregory testified that he was shop steward at Consolidated Freightways. He was elected to that position on several occasions and was serving as steward when Consolidated Freightways went out of business in September 2002. He was on an election slate opposed by a slate that included current union business agent Jim Wilkinson. Gregory was a member of a dissident union group while at Consolidated Freightways called Teamsters for Democratic Union.

15

In the winter of 2001 Gregory met with the Local Union president and asked him to remove Jim Wilkinson as business agent. Gregory told the president that "as long as (Wilkinson) worked at (Consolidated Freightways) and he has been a business agent, he don't even know our work rules and he doesn't even know the contract which is called the National Master Freight Agreement." Gregory also complained that the grievances were building up under Wilkinson. The president did not remove Wilkinson.

20

25

As shown above, Respondent was aware of Gregory's union activities at Consolidated Freightways. Randle Waggoner asked Dan Swafford why didn't he tell Waggoner that Gregory was a hard-nosed union steward. Also, Gregory talked to supervisor and dispatcher Bob Boone on an occasion when union business agent Wilkinson was in the office with Randle Waggoner. Gregory asked if Wilkinson knew he worked for Respondent and Boone replied, "Yes, I bet (Wilkinson) does know you work here."

30

The credited record showed that Gary Gregory was involved in Union and Union dissident activity while he worked with Consolidated Freightways; that Randle Waggoner knew of Gregory's activity; that Waggoner talked with Union business agent Wilkinson about Gregory; and that Waggoner claimed that he discharged Gregory because Union agent Wilkinson told him that Gregory would be nothing but trouble. I find that General Counsel proved that Respondent was motivated to discharge Gregory at the request of Union business agent Wilkinson because of Wilkinson's difficulties with Gregory in internal Union affairs.

35

40

Finally, I shall question whether Respondent proved it would have discharged Gregory in the absence of his protected activities. Respondent offered no evidence in that regard. Its entire defense was based on evidence that it did not discharge Gregory because of Wilkinson's complaint to Waggoner. That evidence is discredited and Respondent's defense lacks merit.

45

**Conclusions of Law**

1. By its comments to an employee that it had discharged another employee at the request of the Union agent because of problems that agent had with the employee regarding protected activities the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By its discharge of its employee Gary Gregory because of his union and other protected concerted activities the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

**Remedy**

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged employee Gary Gregory, it must offer Gregory immediate reinstatement and make him whole for all loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>6</sup>

**ORDER**

The Respondent, Schwerman Trucking, Inc., at Greencastle, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling its employee that it had discharged another employee at the request of the Union agent because of problems that agent had with the employee regarding protected activities.

(b) Discharging its employees because of their union or other protected concerted activity.

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

---

<sup>6</sup> 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.



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

(a) Offer full and immediate reinstatement to Gary Gregory to his former job or if that job no longer exist to a substantially equivalent job without prejudice to his seniority or other rights and privileges; make Gregory whole for all loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earning; within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Gary Gregory, and within 3 days thereafter notify Gregory in writing that this has been done and that his discharge will not be used against them in any way.

(b) Within 14 days after service by the Region, post at its Greencastle, Indiana terminal copies of the attached notice marked "Appendix."<sup>7</sup> Copies of the notice, on forms provided by the Regional Director for Region 25, 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 22, 2003.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

---

**Pargen Robertson**  
**Administrative Law Judge**

---

<sup>7</sup> If this Order is enforced by a Judgment of the 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

5

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

10

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection

15 Choose not to engage in any of these protected activities

**WE WILL NOT** discharge or otherwise discriminate against any of our employees for protected activities regarding Chauffeurs, Teamsters, Warehousemen, and Helpers, Local Union No. 135, a/w International Brotherhood of Teamsters, any other union or for any other protected concerted activity.

20

**WE WILL NOT** threaten employees that we have discharged another employee because he either supported or opposed the Local Union.

**WE WILL** immediately offer full reinstatement to Gary Gregory to his former job or if that job no longer exists to a substantially equivalent job.

25

**WE WILL** immediately make Gary Gregory whole for all lost wages and other benefits caused by his unlawful discharge.

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

**WE WILL**, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Gary Gregory, and **WE WILL**, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

35

**SCHWERMANN TRUCKING, INC.**

**Dated:** \_\_\_\_\_ **By:** \_\_\_\_\_  
40 (Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

575 N. Pennsylvania Street, Room 238, Indianapolis, IN 46204-1577  
(317) 226-7382, Hours: 8:30 a.m. to 5:00 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

50 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 ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (317) 226-5530.

