

**Armored Transport of California, Inc. and Currency and Security Handlers Association, Case 31-CA-15451**

22 January 1987

**DECISION AND ORDER**

BY CHAIRMAN DOTSON AND MEMBERS  
JOHANSEN AND STEPHENS

On 9 June 1986 Administrative Law Judge Gerald A. Wacknov issued the attached decision. The General Counsel filed exceptions and a supporting brief.<sup>1</sup>

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 brief and has decided to affirm the judge's rulings, findings, and conclusions<sup>2</sup> and to adopt the recommended Order as modified.<sup>3</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Re-

<sup>1</sup> The General Counsel subsequently filed a motion asking the Board to grant the Charging Party's request to withdraw the 8(a)(5) portion of the charge, to withdraw the 8(a)(5) allegations of the amended complaint, and to permit the General Counsel to withdraw her exceptions to the judge's rulings on the 8(a)(5) portion of the complaint. We grant the General Counsel's motion.

<sup>2</sup> In agreeing with the judge's conclusion that the Respondent did not discontinue its San Bernardino armored guard and messenger business in violation of Sec. 8(a)(3), we rely on an application of the causation test set forth in *Wright Line*, 251 NLRB 1083 (1980). Although we find that the General Counsel has established that the lawful strike by the San Bernardino employees was a "motivating factor" in the Respondent's decision to close that facility, we further find that the Respondent has met its burden to show that even in the absence of unlawful motivation, it would have discontinued the San Bernardino operations. As found by the judge, the record established that the San Bernardino facility was closed from 28 November to 20 December 1985 for valid economic reasons resulting from the inability of the Respondent to service its customers during a strike by the San Bernardino drivers. At the outset of the strike, the Respondent lost a number of substantial accounts serviced from this facility, and the Respondent soon concluded that it could not service its customers with the remaining clericals and supervisors. The record further indicates that the Respondent was unable to hire replacement drivers immediately in view of its practice of screening applicants prior to their employment. As a result, the remaining San Bernardino operations were consolidated with the Respondent's operations located in Pomona, 30 miles away, and were serviced from that location. We agree with the judge's assessment that the Respondent's actions were an attempt to salvage what business it could, given the sudden absence of drivers at the San Bernardino facility. Accordingly, we conclude that the Respondent has demonstrated that it would have closed the San Bernardino facility on 28 November 1985 regardless of whether or not the absence of drivers necessary to operate that facility was due to their exercise of protected concerted activity.

In the absence of exceptions to the judge's finding of an 8(a)(1) threat to close the San Bernardino facility, Chairman Dotson affirms this finding pro forma and agrees on this basis that the General Counsel established a prima facie case for the Respondent's unlawful decision to close.

<sup>3</sup> We have modified the judge's recommended Order to include the narrow remedial order he inadvertently omitted.

spondent, Armored Transport of California, Inc., San Bernardino, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Insert the following as paragraph 1.

"1. Cease and desist from

"(a) Threatening employees with the shutdown of its San Bernardino operation in order to cause them to discontinue their strike at this facility.

"(b) 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."

*Eugene L. Kusion, Esq.*, for the General Counsel.  
*Richard R. Irvin, Esq. (McLean & Irvin)*, of Woodland Hills, California, for the Respondent.  
*Wilson Clark, Esq. (Albert J. Tonigal and Wilson Clark)*, of Marina Del Rey, California, for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing with respect to this matter was held before me in San Bernardino, California, on 26 and 27 March 1985. The initial charge was filed on 2 December 1985 by Currency and Security Handlers Association (the Union). Amended and second amended charges were filed by the Union on 5 and 23 December 1985, respectively. Thereafter, on 31 January 1986, the Acting Regional Director for Region 31 of the National Labor Relations Board issued a complaint and notice of hearing alleging a violation by Armored Transport of California, Inc. (Respondent) of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act).

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, a brief has been received from the General Counsel. Counsel for Respondent argued the matter orally at the hearing.

On the entire record, and based on my observation of the witnesses and consideration of the brief submitted, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent is a California corporation with a facility located in San Bernardino, California, where it is engaged in the armored guard and messenger business. In the course and conduct of its business operations, Respondent annually sells goods or services valued in excess of \$50,000 to customers or business enterprises within the State of California, which customers or business enterprises themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standard.

It is admitted and I find that the Respondent is now, and has been at all times material, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

It is admitted that the Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### A. *The Issues*

The principal issues raised by the pleadings are whether the Respondent threatened its employees with the shutdown of the San Bernardino facility in violation of Section 8(a)(1) of the Act, and unlawfully discontinued the San Bernardino operations in violation of Section 8(a)(3) of the Act.

### B. *The Facts*

The Respondent is a multistate operation engaged in the armored car and messenger business, and maintains various branches in California, including a facility in San Bernardino, California. Several of Respondent's California facilities, including those in Los Angeles and Ventura, are unionized. Neither the San Bernardino facility nor another facility located at Pomona, California, some 30 miles from San Bernardino, was unionized at all times material.

By letter dated 11 October 1985, Respondent notified all of its California employees, including those at San Bernardino, that effective 1 November 1985 the Company would be reducing employees' regular pay and providing overtime pay only after only 50 hours of work in any week, rather than after 40 hours. Thereafter, on 1 November 1985, the Respondent implemented its new wage system.

On 10 November 1985 several San Bernardino employees approached Leonard Gainey, president of Currency and Security Handlers Association. They expressed their concerns regarding the Respondent's reduction of wages and sought union representation. Thereafter, on 16 November, a majority of Respondent's San Bernardino driver/messenger guards signed union authorization cards designating the Union as their bargaining representative. On 19 November the Union filed a representation petition with the Board in Case 31-RC-5975 seeking certification of a unit of San Bernardino employees.

On 25 November 1985 the Union called a strike at five of Respondent's facilities, including the San Bernardino facility, in order to protest the changes in wages implemented by Respondent on 1 November 1985. The strike lasted until 20 December 1985, at which time the Union and Respondent executed a strike settlement accord. Thereafter, all employees returned to work at each of the locations. All of the approximately 25 San Bernardino employees participated in the strike, and all San

Bernardino business operations were discontinued as a result of the strike.

On 27 November 1985 Respondent's district manager, Clement J. Stadler, spoke with employee Larry Loera, who was apparently a spokesman for the San Bernardino employees on the picket line. Stadler asked Loera what it would take to get the men back to work and, according to Loera, told him that "due to the loss of customers, that we don't go back to work they would shut down the office." Loera replied that the men wanted what they had lost, and that Stadler would have to speak to Union President Gainey. Approximately 10 minutes later Stadler posted a notice on the main door of the facility and handed copies of the notice to those employees who requested them. The notice is as follows:

NOVEMBER 27, 1985

NOTICE TO ALL ARMORED TRANSPORT OF CALIFORNIA EMPLOYEES IN SAN BERNARDINO OFFICE.

EFFECTIVE NOVEMBER 28, 1985, THIS OFFICE IS PERMANENTLY CLOSED.

ANYONE INTERESTED IN CONTINUING EMPLOYMENT WITH ARMORED TRANSPORT OF CALIFORNIA, PLEASE APPLY AT THE POMONA OFFICE, 409 S. WHITE STREET, POMONA, CA 91767. TELEPHONE (715) 629-3081

LOOMIS HAS A NEW OFFICE IN ONTARIO AND WILL ALSO BE HIRING SOON.<sup>1</sup>

ROBERT G. IRVIN  
PRESIDENT

Stadler testified that his choice of the notice language advising that the office would be "permanently closed" was perhaps a bad choice of words, and that the Respondent had no intention of permanently closing the office. Stadler stated that Respondent's actual intent at the time was to close the facility for an "indefinite period" until such time as operations could be re-established.

On Friday, 29 November, the striking San Bernardino employees were asked to turn in their uniforms and equipment. At this time District Manager Stadler invited Jimmy Sons and Larry Loera, spokesmen for the striking employees, into his office and asked them what he needed to do to get the employees back to work. Loera replied that the employees wanted the Respondent to rescind the wage reductions. Stadler apparently suggested that the employees should return to work as a show of good faith under the same wages prevailing at the commencement of the strike and that possibly the Respondent's president, Robert Irvin, would be willing to come to San Bernardino to negotiate. The employees said no, and stated that they wanted a guarantee, in writing, that if they returned to work they would receive the prior terms and conditions of employment. Stadler said he had no authority to do this and would have to phone Richard Irvin, Respondent's attorney, to attempt to obtain such authority.

<sup>1</sup> Loomis is a large armored car service and is a competitor of Respondent

While Stadler was making the phone call, the employees voted overwhelmingly not to return to work under the conditions suggested by Stadler. Stadler returned and asked what the men had decided. Stadler in turn was asked what Irvin had said and, according to the testimony of Sons, Stadler replied that Richard Irvin told him that "what [the employees] were doing by striking was totally illegal because we were not certified by the NLRB, and that they would shut our office down to make an example out of us." Sons asked if the employees could return under the old wage system, and Stadler said no, that he was sorry. Sons replied that the men could not come back to work under the Respondent's conditions, and the meeting concluded. The testimony of Loera corroborates Son's testimony.

Stadler testified that shortly after the strike commenced, it became clear that the Respondent could not service its customers with the few supervisors and clericals at the San Bernardino facility. Therefore, Stadler recommended to Robert Irvin, president of the Company, that the San Bernardino operations be transferred to the Pomona facility some 30 miles distant, in order to attempt to retain and service as many San Bernardino customers as possible. Irvin agreed and Stadler prepared the aforementioned notice, posted it on the door, and handed copies to several employees.

Stadler denied that later, on 29 November, he told employees that the strike was illegal or that the Respondent was going to shut down the office in order to make an example out of the employees. Rather, according to Stadler, he was simply attempting to do some negotiating in order to get the employees back to work. In his telephone discussion with Richard Irvin, he attempted to ascertain if the Respondent would be willing to restore the former wage system as the employees had demanded. After the conversation with Irvin, Stadler simply told the employees there was no way to prevent closing the office, as he could not give them what they wanted. While Stadler admitted that his own impression was the strike was illegal, he does not recall whether he discussed this consideration with Irvin during the phone conversation.

Stadler testified that the Company lost a number of substantial San Bernardino accounts at the outset of the strike, and attempted to service the remaining customers out of the Pomona facility, utilizing the Pomona personnel together with several San Bernardino employees who began working at Pomona. According to Stadler, the economic loss would have been irreparable had the operations not been moved, particularly as a competitor, Loomis, had recently opened a branch in the area and was soliciting Respondent's customers. During the strike, the San Bernardino facility was completely shut down and all equipment, machines, trucks, and cars were moved to the Pomona facility. Further, the San Bernardino manager, assistant managers, and office personnel were put to work at Pomona in order to salvage the remaining San Bernardino business. Guy Clifford Moore, branch manager at San Bernardino, corroborated Stadler's testimony regarding the economic effects of the strike and the Respondent's reasons for moving the oper-

ation to Pomona rather than attempting to continue servicing customers out of San Bernardino.

### C. Analysis and Conclusions

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act as a result of Stadler's alleged threat to Loera and the announcement of the closure of the office on 27 November. On the occasions in question, Stadler asked Loera, a spokesman for the striking employees, what it would take to get the employees back to work, and added that the loss of customers caused by the strike would result in the office being shut down. The employees elected not to return to work and Stadler immediately posted a notice on the door announcing that the office was "permanently" closed, and advising employees that they could seek employment with a competitor. Stadler's remarks, together with his conduct immediately thereafter in announcing the permanent closure of the facility suggesting that employees seek work elsewhere, constitutes, in effect, as the General Counsel contends in his brief, a threat to close the facility and thereby discharge the employees for continuing to engage in concerted protected activity. Thus the Respondent admittedly had no intention of permanently closing the facility and has proffered no reasonable explanation for so advising the employees. The only plausible explanation is that the Respondent was attempting, by threat of discharge, to cause the employees to abandon their lawful activity. The fact that the notice advised employees that they could "apply" for positions at the Pomona office does not alter the fact that they were threatened with discharge from the San Bernardino facility. Therefore, I find that, as alleged, the Respondent has violated Section 8(a)(1) of the Act. See *Ste-Mel Signs, Inc.*, 246 NLRB 1110 (1979); *Precision Graphics*, 256 NLRB 381, 381-382 (1981).

It is also alleged that the employees were in fact discharged, rather than merely threatened with discharge. Thus, the complaint alleges that the Respondent closed its San Bernardino facility in retaliation for the employees' concerted protected activity. Central to this contention is the testimony of employees Loera and Sons who testified that on 29 November, as the employees were returning their uniforms and equipment, Stadler told them, after attempts to negotiate a resolution of the matter had failed, that the strike was illegal and that the office was being shut down to make an example of the employees.<sup>2</sup> Although Stadler denies that he made any statement of this nature, I nevertheless credit the testimony of Loera and Sons in this regard. Both employees appeared to be credible individuals with a clear recollection of the event. On the contrary, Stadler's recollection appeared selective and uncertain and, in addition, Stadler admitted that he believed the strike was, in fact, illegal. Moreover, this statement appears consistent with Respondent's earlier unlawful conduct in intentionally misrepresenting to the employees that the office was being permanently closed.

<sup>2</sup> This remark is not alleged as a violation of the Act.

However, despite the fact that Stadler made the aforementioned statement, the record evidence abundantly supports the Respondent's contention that the San Bernardino facility was closed from 28 November to 20 December 1985 for valid economic reasons resulting from the inability of Respondent to service its San Bernardino customers. Respondent's immediate attempts to continue the San Bernardino operation were unsuccessful and resulted in the unlawful threats of discharge in order to cause the employees to return. When this attempt also failed, Stadler attempted to negotiate a compromise with the employees in order to preclude the total cessation of the San Bernardino operations. Thus, Respondent's conduct does not appear to be consistent with the General Counsel's theory that Respondent shut down its operations in order to retaliate against the striking employees.

Moreover, during this period of time the Respondent's customers, virtually dependent on the delivery and collection of money, were simply going elsewhere for armored car services, and Respondent was unable to find qualified employees to staff its San Bernardino operations, particularly as the strike was affecting the operations of many of its facilities. Therefore, it consolidated this office with its Pomona operations in order to salvage what business it could for the remainder of the strike. The General Counsel's arguments regarding what Respondent could have done or should have done under such circumstances appears to be mere speculation and is not supported by record evidence. Therefore, I conclude that the evidence does not support the complaint allegation that the Respondent closed its San Bernardino operation in order to discourage employees' union or protected concerted activities.

Under the foregoing circumstances, I find that the unfair labor practices found to be violative of Section 8(a)(1) of the Act, are not so serious and substantial as to warrant a remedial bargaining order as alleged in the complaint and argued by the General Counsel.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(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. The Respondent has violated Section 8(a)(1) of the Act as alleged by threatening employees with the shutdown of its facility.
4. The Respondent has not violated Section 8(a)(3) or (5) of the Act as alleged.

#### THE REMEDY

Having found that the Respondent violated and is violating Section 8(a)(1) of the Act, I recommend that it be required to cease and desist therefrom and from in any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Moreover, Respondent shall be required to post an appropriate notice attached as appendix.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

#### ORDER

The Respondent, Armored Transport of California, Inc., San Bernardino, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from threatening employees with the shutdown of its San Bernardino operation in order to cause them to discontinue their strike at the facility.

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

(a) Post at Respondent's San Bernardino facility copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, 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.

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

IT IS FURTHER RECOMMENDED that the allegations of unlawful conduct not specifically found to be violative herein be dismissed.

<sup>3</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.

<sup>4</sup> 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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to shut down the San Bernardino facility in order to cause you to discontinue your strike activity.

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.

ARMORED TRANSPORT OF CALIFORNIA,  
INC.