Active Transportation *and* General Drivers, Warehousemen and Helpers Local Union 89, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO. Cases 9-CA-25308(1-4) and 9-RC-15322

August 31, 1989

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND HIGGINS

On December 27, 1988, Administrative Law Judge David L. Evans issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondent filed an answering brief in support of the judge's decision.

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, and conclusions only to the extent consistent with this Decision and Order.

The judge found that the questioning of Barry Stevens at his job interview about his views on unionization did not violate Section 8(a)(1) of the Act. The judge also found that the Respondent's discharge of Barry Stevens, his father Roy Stevens, Lava Todd, and Roy Griffin, on March 31 and April 1, 1988,[1] did not violate Section 8(a)(3) and (1) of the Act. We disagree with the judge's reasoning and therefore reverse.

The essential facts are not in dispute. The Respondent transports trucks manufactured by Ford from the Respondent's terminal in Louisville, Kentucky, to various locations throughout the country. It began operations in early 1988 and started hiring drivers that February. The Respondent knew from their job applications and interviews that Roy and Barry Stevens and Lava Todd had previous experience at unionized companies. In fact, at his job interview, Roy Stevens was threatened that his 15 years' experience at unionized companies would preclude the Respondent from hiring him, despite what the Respondent called a perfect driving record.[2] Barry Stevens and Lava Todd were interrogated at their job interviews concerning their views toward the Union.[3]

The Union's organizing campaign at the Respondent's facility began in March. The Respondent was well aware of it because the Union's business agent had been at the Respondent's facility to talk to the drivers and the Respondent and the Union had held discussions about other contracts the Union had with similar employers. Both Griffin and Todd distributed union authorization cards to other employees during the week before their discharges. Griffin distributed cards in front of an employee who twice informed the Respondent of various alleged derogatory statements Griffin made about the Respondent. This same employee also witnessed Roy and Barry Stevens accepting cards from Griffin and indicating they were going to sign them. In addition, Lava Todd told one of the Respondent's supervisors that unionization would improve the poor working conditions at the Respondent's loading facility. Finally, during the last week in March, just before Roy Stevens' discharge, the Respondent's president asked Stevens if he thought the Union's campaign would succeed.

The four employees were discharged by phone on March 31 and April 1. No reasons were given for the discharges, even when the employees asked for explanations. Each employee subsequently received the identical letter explaining that he was discharged because he was "not compatible with the ideas and goals" of the Respondent. The Respondent's vice president testified that the decision to discharge the four was made after a review of their personnel files. Yet the files contained no evidence of any wrongdoing or discipline and no negative criticisms of their work. In fact, prior to their discharges, they were given no warnings of any kind.

On these facts, the judge found that the General Counsel had not made a prima facie case under

[1] All dates are 1988 unless otherwise indicated.

[2] The judge found that the Respondent had threatened Stevens in violation of Sec. 8(a)(1) of the Act The Respondent did not except to this finding

[3] The General Counsel alleged that these interrogations violated Sec 8(a)(1) of the Act, but the judge found that any coercive impact was diluted by assurances the Respondent subsequently gave to both employees We disagree as to Barry Stevens First we note the interrogation occurred during Barry Stevens' job interview. The Board has long recognized that, under the totality of the circumstances test, an applicant may understandably fear that any answer he might give to questions about union sentiments posed in a job interview may well affect his job prospects. See *Lassen Community Hospital*, 278 NLRB 370, 374 (1986). Stevens was interrogated by the Respondent's hiring agent and then met the Respondent's president, who expressed further concern about unionization, which could only suggest to Stevens that the Respondent considered the question of his union background very important. Finally, the assurances to which the judge refers ring hollow in light of Stevens' unlawful discharge 1 month later. We therefore find that the Respondent's interrogation of Barry Stevens violated Sec. 8(a)(1) of the Act. We find it unnecessary to pass on the legality of the interrogation of Lava Todd inasmuch as the finding of an additional violation would be cumulative and would not affect the remedy. We do, however, rely on the interrogations of Lava Todd as well as Barry Stevens as evidence of employer knowledge of union activity and concern about its consequences. Cf. *Holo-Krome Co.*, 293 NLRB 594, 596 fn. 6 (1989), and cases cited therein (statements not independently violative of the Act may serve as a basis for finding animus).

Wright Line[4] because the record failed to show that the Respondent had knowledge of the alleged discriminatees' union activities or that union animus motivated the discharges. We disagree.

We find employer knowledge of the alleged discriminatees' union activity based on the following evidence. The Respondent knew of the union backgrounds of Roy and Barry Stevens and Lava Todd. The interrogations of these employees during their job interviews show that the Respondent was concerned about their union backgrounds and about unionization in general.[5] The Respondent also knew of the organizing going on at its facility at the time. That Roy Stevens was specifically questioned about the possible success of the Union demonstrates that the Respondent thought he was in a position to know what was going on. Finally, three of the four alleged discriminatees engaged in union activities in front of an employee who the Respondent admitted was an informer for it,[6] and the fourth, Todd, made a remark to one of the Respondent's supervisors in support of the organizing effort. Based on these facts, we find that the Respondent had knowledge of the union activities of the alleged discriminatees.

The threat to Roy Stevens, the interrogations of Barry Stevens and Lava Todd, the timing of the discharges immediately after the employees engaged in union activities, and most significantly the pretextual reasons advanced for the discharges[7] are indicative of illegal motivation in the discharges.[8]

The General Counsel therefore has presented a prima facie case that the four employees were discharged for engaging in union activities. Under *Wright Line*, the Respondent must show that it would have discharged these employees anyway, absent their union activities. Since the judge found the proffered reasons for the discharges incredible, we conclude that the Respondent has not met its *Wright Line* burden. Therefore, we find that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Roy and Barry Stevens, Lava Todd, and Roy Griffin because of their union activities.

AMENDED CONCLUSIONS OF LAW

1. Substitute the following for the judge's Conclusions of Law 3 and 4.

"3. The Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act by interrogating Barry Stevens about his views toward unions, by threatening Roy Stevens that he may not be hired because of his past associations with a union, and by discharging Roy and Barry Stevens, Lava Todd, and Roy Griffin because of their union activities.

"4. The unfair labor practices found above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act."

2. Delete Conclusion of Law 5.

AMENDED REMEDY

In addition to the remedy in the judge's decision, we shall order that the Respondent offer Roy Stevens, Barry Stevens, Lava Todd, and Roy Griffin immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges. We shall also order that the Respondent make Roy Stevens, Barry Stevens, Lava Todd, and Roy Griffin whole for any loss of earnings and other benefits they may have suffered as a result of their unlawful discharges, with backpay to be computed in

[4] 251 NLRB 1083 (1980), enfd 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*, 462 U.S. 393 (1983).

[5] Unlike the judge, we do not find that Barry Stevens and Lava Todd "disavowed" union sympathies. We find instead that they merely attempted to avoid disclosing their opinions about unions.

[6] In his decision, the judge relied on *Raysel-Ide, Inc.*, 284 NLRB 879 (1987), in refusing to infer that the same employee who twice informed the Respondent of Roy Griffin's alleged derogatory remarks also informed the Respondent of Griffin's distribution of union authorization cards and Roy and Barry Stevens' intention to sign them. Contrary to the judge, we find *Raysel-Ide* distinguishable. In *Raysel-Ide*, the Board refused to infer knowledge by the employer of two employees' union activities based solely on the fact that the employer's daughter sat at a lunch table near another table where the employees exchanged a union authorization card and a union booklet. Though there was evidence that the employer's daughter observed the two employees exchange something, there was no evidence that the daughter knew that the exchange was in any way related to union business. Both employees were laid off later that day. The Board held that those facts alone were insufficient to support a finding that the employer was aware of the employees' union activities. Here, the Respondent's vice president testified that another employee had twice informed on Griffin. This same employee witnessed Griffin and both Roy and Barry Stevens engage in union activities. Given that this employee in fact had acted as an informer, we believe in this case that the inference is more than mere speculation that the Respondent learned of Griffin's and both the Stevens' union activities through information provided the Respondent by this same employee.

We also infer knowledge of Griffin's union activity from the timing of the discharges. The decisions to discharge the four employees appear to have been made at the same time, only days after they had signed union authorization cards. Each employee received the same discharge letter. Further, as discussed infra, the Respondent proffered no credible reason for the discharges. Based on the undisputed evidence of knowledge of the other three employees' union association, we infer from the fact that Griffin was discharged at the same time and without credible reason that the Respondent knew of his union activity as well.

[7] The judge dismissed as "incredible" the Respondent's reasons for the discharges. As noted above, the employees' personnel files contained no evidence of any wrongdoing or discipline and no negative criticisms of their work. In fact, about all the personnel files did contain were their job applications, which for Roy and Barry Stevens and Lava Todd clearly indicated that they had previously worked at unionized companies.

[8] If the proffered reason for a discharge is false, one may infer that there is another reason (an unlawful reason) for the discharge that the employer wishes to hide, where the surrounding facts tend to reinforce that inference. *Wright Line*, supra at 1088 fn. 12, *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466 (9th Cir. 1966).

the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and with interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order that the Respondent remove from its records any references to the unlawful discharges, provide the discriminatees with written notice of the removal, and inform them that the unlawful discharges will not be used as a basis for future personnel actions concerning them. See *Sterling Sugars*, 261 NLRB 472 (1982).

Finally, we shall order that Case 9–RC–15322 be remanded to the Regional Director to open and count the ballots of employees Roy Stevens, Barry Stevens, Lava Todd, and Roy Griffin, and to issue a revised tally of ballots and an appropriate certification.

ORDER

The National Labor Relations Board orders that the Respondent, Active Transportation, Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they engage in union activity.

(b) Threatening employees that they may not be hired because of their prior association with General Drivers, Warehousemen and Helpers Local Union 89, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO or any other union.

(c) Interrogating employees about their views toward unions.

(d) 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 Roy Stevens, Barry Stevens, Lava Todd, and Roy Griffin immediate and full reinstatement to those former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(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 records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Louisville, Kentucky facility copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 9, 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 the Respondent has taken to comply.

IT IS FURTHER ORDERED that Case 9–RC–15322 be remanded to the Regional Director for Region 9 to open and count the ballots of Roy Stevens, Barry Stevens, Lava Todd, and Roy Griffin, and to issue a revised tally of ballots and an appropriate certification.

[9] 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 discharge or otherwise discriminate against any of you for engaging in union activity.

WE WILL NOT threaten employees that they may not be hired because of their prior association with General Drivers, Warehousemen and Helpers Local Union 89, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO or any other union.

WE WILL NOT interrogate any of you about your views toward unions.

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 Roy Stevens, Barry Stevens, Lava Todd, and Roy Griffin immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharges, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any reference to their discharges and that their discharges will not be used against them in any way.

ACTIVE TRANSPORTATION

James R. Schwartz, Esq., for the General Counsel.
C. John Holmquist Jr. and *Linda G. Burwell, Esqs.*, of Bloomfield Hills, Michigan, for the Respondent.
Ralph H. Logan and *Alton Priddy, Esqs.*, of Louisville, Kentucky, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge. This matter under the National Labor Relations Act (the Act) was tried before me on October 6 and 7, 1988,[1] in Louisville, Kentucky. Pursuant to a petition filed in Case 9–RC–15322 by General Drivers, Warehousemen and Helpers, Local Union 89, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (the Petitioner, the Charging Party, or the Union), and pursuant to a stipulated election agreement approved by the Regional Director, an election by secret ballot was conducted on July 23 in an appropriate unit[2] of employees employed by Active Transportation[3] (the Employer or Respondent).

The tally of ballots issued on conduct of the election was as follows:

Approximate number of eligible voters—27
Void ballots—0
Votes cast for the Petitioner—11
Votes cast against the Petitioner—11
Valid votes counted—22
Challenged ballots—5
Valid votes counted plus challenged ballots—27

Neither party filed objections to the conduct of the election nor to conduct affecting the results of the election. Because the challenged ballots were sufficient in number to affect the results of the election, an investigation of the issues raised by the challenged ballots was conducted under the direction and supervision of the Regional Director for Region 9, pursuant to the provisions of Section 102.69 of the Board's Rules and Regulations and Statements of Procedure, as amended. The Regional Director, on August 19, issued his Report on Challenged Ballots and Recommendation to the Board. In the report the Regional Director recommended that one challenge be sustained but that the ballots of employees Barry Stephens, Roy F. Stephens, Lava T. Todd, and Roy Griffin be made the subject of a consolidated hearing before an administrative law judge, as the Petitioner had filed charges on April 6 on behalf of the employees in Cases 9–CA–25308(1–4), and a complaint had issued on May 20 alleging that the Employer had, in violation of Section 8(a)(3) and (1) of the Act, discharged those four employees.

No objections to the Regional Director's report were filed, and, on September 9, by order of that date, the Board adopted the Regional Director's recommendations and ordered a consolidated hearing on the issues raised.

Respondent duly filed an answer to the complaint admitting jurisdiction and the status of certain supervisors but denying the commission of any unfair labor practices. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, from its facilities in Louisville, Kentucky, transports trucks manufactured by Ford Motor Company. In doing so it annually derives gross revenues in excess of $50,000 for the transportation of freight from Kentucky directly to points outside Kentucky. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor

[1] All dates are in 1988 unless otherwise specified

[2] The appropriate unit set forth in the agreement is:
All drivers employed by the Employer at its Louisville, Kentucky facilities, excluding all office clerical employees, all professional employees, guards and supervisors as defined in the Act.

[3] As indicated by letterhead stationery included in the exhibits received at trial, the full name of Respondent is "Active Transportation Company." However, no motion to amend the complaint was made by the General Counsel in this regard

organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Respondent was formed in late 1987 to deliver trucks manufactured at Ford's Louisville plant to Ford dealerships. Beginning in March, Respondent began transporting trucks to dealerships in the Midwest, Far West, and western Canadian areas.

C. A. Houston[4] is Respondent's president, Charlie Johnson is vice president, and Charles McNair is the load dispatcher. Respondent admits that these three individuals are supervisors within the meaning of Section 2(11) of the Act. Respondent further stipulated that Commodor Hall was its agent within the meaning of Section 2(13) of the Act. Hall interviewed applicants and checked references for Respondent, gave instructions or training, and served as a "safety man" for Respondent at the time of the events in question.

Respondent maintains an office in central Louisville and a terminal about 8 miles away. New trucks are transported by Ford to a vacant lot near the Ford plant. At this lot Respondent's employees load them (as many as five at a time, in "piggyback fashion") onto Respondent's trucks; then they drive them to the dealerships. By accounts of all who testified on the subject, the lot used for loading was, at all times material, muddy and therefore slippery; the weather was cold; and there were no restroom or other facilities available to the employees.

Respondent began hiring a complement of 23 truckdrivers in late February and early March. Three of the four alleged discriminatees testified that the subject of a union came up in the interview process.

Roy Stevens testified that during his interview with Hall:

> [Hall] said, "Well, you've worked at all these Union companies and you got about 15 years Union here."
>
> . . . I don't know why you'd want to work for an un-Union outfit . . . since you need more time in the Union before you can get your retirement.
>
> And [Hall] said, "You've got a perfect record but . . . I don't think I can hire you." He said, "I'll tell you what I will do. We've got another company which is Dallas-Mavis. I will get you an application and try to get you a job at Dallas-Mavis."

Hall explained to Stevens that Dallas-Mavis was a company that recognized the Teamsters Union.

Despite the fact that Hall told Roy Stevens that Respondent could not hire him for Active Transportation, Hall called Stevens the next day. According to Stevens, Hall called him early in the morning and said:

> Come to work at Active Transportation this morning, start your schoolings. . . . I'm going to take a chance on you.

The General Counsel introduced a memorandum contained in Stevens' personnel file. Dated February 12, it is from Hall who checked off a box for "Application Approved. Forward completed hiring kit." In a space after that Hall added: "2 months Union 7/85–9/85 Holland Motor Freight."

When Stevens reported, Hall showed him some sort of film and sent him out to the lot and he began loading trucks for Active Transportation. Dave Bucky gave Stevens his on-the-job training at the lot.

Roy Stevens told Bucky that Stevens' son Barry would be a good worker. Barry Stevens testified that he was thereafter called by Hall and invited to come for an interview. Hall interviewed Barry Stevens three times. According to Stevens, at one of these interviews, Hall was going over Stevens' application that reflected that Stevens had worked for one company that recognized the Teamsters. According to Barry Stevens:

> He just asked—said that I had a little union time there and asked me what I thought about the Union. . . . I just told him, "I was a Union employee by the fact that I worked there." I really didn't give him my opinion of the Union.

Barry Stevens further testified that:

> Commodor told me that I had to see Mr. Houston, he made the final decision on hiring. We went upstairs and Mr. Houston explained the pay, the policies and so on and so forth. And while he was talking, Mr. Commodor Hall said that, "Barry does have some Union time."
>
> [Mr. Houston] said they didn't have a problem with the Union but they weren't going to let the Teamsters dictate what they could and could not do.
>
> I told [Houston], "I just [want] a job. I was in the Union, but I was not a Union organizer."

After "paper work training" by Hall and training in loading procedures by Bucky and Earl Taylor, Barry Stevens began working as a truckdriver for Respondent.

Todd testified that in the interview process he, at one point, met with Hall, Houston, and Johnson. Two companies who recognied the Teamsters were listed on Todd's application as prior employers. Todd testified that this topic came up in his interview with Hall, Houston, and Johnson. Todd was asked and testified:

> Q. And what did they say about that and who was doing the talking?
>
> A. . . . Mr. Johnson, well, he was telling me about they was, you know, a non-union outfit and that . . . they was just getting start[ed], but he knowed that later on that they was going to have to go union in order to get back haul loads. They said right now . . . I wouldn't be able to get back haul loads and I wouldn't be able to deliver loads to certain places and get back haul loads on account of not being union, you know. And it ended up there we talked for a while. He wanted to see, I recon, to find out what—how I feel about the Union and—

[4] C A. Houston is the only "Houston" who is referred to infra.

> Q. Did anybody ask you that?
>
> A. Yes, They did. And I told them, I said I had worked for a non-union outfit before as well as union outfits, which I did—had, and I had that on my application.
>
> A. Okay.
>
> JUDGE EVANS: Who asked you that question?
>
> THE WITNESS: Mr. Houston. I mean Mr. Johnson and then, Mr. Commodor Hall asked me that question.
>
> JUDGE EVANS: Same question?
>
> THE WITNESS: Yes, sir.

Only Johnson testified for Respondent, and none of the above testimony is denied.

Agents of the Union began distributing authorization cards among Respondent's employees in March. Only one of the alleged discriminatees testified that he expressed his union sympathies to one of Respondent's supervisors. Todd testified that at some time in mid-March, he commented to dispatcher McNair that if Respondent were a union company the employees could go on Ford property to load trucks, and the employees would not have to work in the unfavorable conditions at the lot. Todd testified that McNair did not disagree with that point.

Todd and Griffin signed union authorization cards on March 26; Barry and Roy Stevens signed cards on March 30. Todd and Griffin testified that they distributed cards to other employees; however, the record does not disclose how many other employees signed union authorization cards, if there were any such other employees.

According to this record, no supervisor or agent of Respondent was present during the signing of any card. Discussions about whether certain employees had signed, or would sign, cards were held among the employees at Respondent's terminal, but only in the drivers' room at a time when no supervisors or alleged agents of Respondent were present.

Respondent did know that the Union sought to represent its employees at the time of the discharges herein. Johnson testified that Houston had seen Union Business Agent Charles Spond on the lot talking to some of the truckdrivers. Johnson testified that he and Houston invited Spond to talk to them about it. The three men met in mid-March. Johnson testified that Spond told him and Houston that he would be talking to the employees. Johnson testified that he and Houston told Spond that he could continue to do so. The three discussed the content of the contracts to which the Union was a party. It is not necessary to detail this discussion about potential contract terms. It sufficies to say that it is clear from that discussion that the contracts to which Spond referred were much more expensive to employers than anything that Respondent had in mind for then or later.

Further evidence of general knowledge that the Union was actively seeking to gain recognition at the time of the discharges is contained in the testimony of Roy Stevens. Stevens testified that during the last week in March, he was approached by Hall on the lot. According to Stevens:

> [Hall] walked up to me and he said, "I hear some of these guys are talking and wanting to go Union." He said, "What do you think—I don't think it'll go, do you?" I said, "Hey, I don't know."

There is no other evidence that any supervisor or agent of Respondent said anything else about the Union to any employee.

On March 31 and April 1, the four alleged discriminatees were discharged in telephone calls from Johnson and Houston. No reasons were given to the employees, even when they asked for one. On April 1, by letters of that date, Houston further informed the employees:

> After review, it is our determination that you are not compatible with the ideas and goals of Active Transportation. Based on this, we are terminating your employment effective on the above date.

Each of the four employees testified that they received no reprimands or negative criticisms during their employment, which in each case had lasted about 1 month. There was no contradiction of this testimony.

Johnson testified that when he and Houston began hiring employees about March 1, they agreed to review all files in 1 month to decide which employees would be retained; that they did so; and that they discharged the employees because: Johnson (2 weeks before) had overheard Roy Stevens make a racial slur about Respondent's management to Barry Stevens who did nothing to repudiate his father's conduct; Todd was too slow in loading trucks and that he had had a minor traffic accident (2 weeks before his discharge); and another employee had reported to Johnson that Griffin had "bad mouthed" the Company by complaining that it did not care about the employees, and that the owners were greedy, and that the employees had to work under adverse working conditions on the lot.

B. *Analysis and Conclusions*

As well as alleging that the four discharges violated Section 8(a)(3) and (1) of the Act, the complaint alleges two violations of Section 8(a)(1).

The complaint alleges that about March 1 Hall threatened "that an employee would not be hired because of his past membership in a union." The General Counsel relies on the testimony of Roy Stevens for this allegation. Stevens testified that during his hiring processes, Hall told him that although Stevens had a "perfect" driving record, Hall did not believe that he could hire Stevens. Hall did not say, in those very words, that the question in Hall's mind lay in Stevens' prior, long history of working for Teamsters-organized employers. However, while other things were probably discussed during the interview, this is the only topic that was cast in the negative by Hall, at least according to this record. Therefore, I conclude that Hall referred to Stevens' prior union membership when he stated that there was a reason that Stevens may not be hired despite Stevens' perfect driving record. I further find that any employee, such as Stevens, would logically draw the same conclusion.

Respondent argues that Hall's statement was, at most, ambiguous because Hall did not say that he would not hire Stevens. Although the shades of differences could be argued among linguistic scholars, the issue is not one of detached academic inquiry. The issue is the probable impact on an employee to whom the remark in question is made.

Stevens was told that he might not be hired, even with a perfect record, because of his prior union experience. Any employee who is told that is logically going to conclude that the tenure of his future employment, if any, is conditioned on a nonrepetition of such experience. What else would a reasonable employee conclude? The fact that Stevens was nevertheless hired does not detract from this conclusion. He was hired by Hall with the express, serious reservation contained in Hall's statement to Stevens that "I'm going to take a chance on you." Again, because Stevens had a perfect driving record, no "chance," other than that Stevens would bring in a union, was there to be taken.

In such posture, Hall's remarks constitute an admonition to employees that their employment tenure is dependent on their not enaging in activities that would result in Respondent's becoming, like Stevens' prior employers, an employer that is organized by the Union. Accordingly, I find and conclude that Hall's remarks constituted a threat to employees in violation of Section 8(a)(1) of the Act.

The complaint further alleges that in violation of Section 8(a)(1) of the Act, Hall "coercively interrogated employees regarding their union membership, activities and sympathies." The General Counsel relies on the testimony of Barry Stevens and Todd, both of whom testified that they were asked by Hall, Johnson, and/or Houston how they felt about the Union. However, at the time of both interrogations, both employees were told, in essence, that their answers were a matter of indifference to Respondent. Immediately after Hall asked Stevens the question, they went to Houston's office. There, after Hall commented on Stevens' prior union employment, Houston, Respondent's chief executive, stated that Respondent "didn't have a problem with the Union." Similarly, in the conversation in which Johnson and Hall asked Todd how he felt about the Union, Johnson stated that Respondent was going to have to "go union." Any "coercive" impact that otherwise might have attached to the questions was thus diluted by the assurances of Johnson and Houston that the Union did not matter, or that it was inevitable anyway. Therefore, I find and conclude that the General Counsel has failed to prove this allegation of the complaint.

Finally, the complaint alleges that Respondent discharged Roy Stevens, Barry Stevens, Lava Todd, and Roy Griffin in violation of Section 8(a)(3) and (1) of the Act. In deciding this issue, the first question to be answered is whether the General Counsel has presented a prima facie case.[5]

The first element to be proved is that Respondent knew of the union membership, activities, or desires of the alleged discriminatees. The only knowledge proven is that Roy and Barry Stevens had worked for organized employers previously, that Todd had previously worked for an organized employer, and that Todd had told Supervisor McNair that he thought that Respondent's being organized would be a good thing because Respondent's employees could then go on Ford's property to load trucks. There is no other evidence of known union activity, membership, or desires on the part of the alleged discriminatees in the record.

The General Counsel argues that knowledge of the dischargees' signing union authorization cards should be inferred and cites two cases in support: however, neither of these cases apply. In *Ballou Brick Co.*, 277 NLRB 41 (1985), the employer involved was proven to have known of specific union activities and conducted a systematic survey of supervisors in an attempt to identify those employees involved; shortly thereafter, 13 of those named as probable suspects were laid off. Here, there is no evidence of knowledge, or even suspicion, that the dischargees (or any other employees) had signed union authorization cards. In *BMD Sportswear Corp.*, 283 NLRB 30 (1987), the employer discharged seven employees immediately after they had signed union authorization cards. In that case the General Counsel proved direct knowledge that five of the seven dischargees had signed the cards; the administrative law judge found violations only in the cases of those five. The Board reversed regarding the two dismissals noting that the two for whom the General Counsel had not proved direct knowledge were known close associates of those who were known to have distributed the cards. Here, there is no evidence of direct knowledge that any of the four alleged discriminatees had signed union authorization cards. Indeed, there is no evidence that Respondent knew that any employees had signed or were distributing union authorization cards. Therefore, I shall not infer that Respondent knew, or suspected, that the four alleged discriminatees signed union authorization cards.

The second element of a prima facie case under Section 8(a)(3) and (1) of the Act is proof of animus, or proof that Respondent was motivated to discharge the alleged discriminatees because of their known, or suspected, union activities or sympathies.

There is no evidence that Respondent had any knowledge of Griffin's union sympathies (as well as no evidence that Respondent knew that Griffin had signed a union authorization card). Respondent knew of the prior union employment of Roy Stevens, and clearly Respondent suspected union sympathies on his part because of such employment. However, Barry Stevens and Todd disavowed union sympathies, and there is no reason to believe that from their prior union employment alone, Respondent still suspected them of such sympathies. Moreover, all three were, nevertheless, hired after they disclosed their prior union associations. Also, there is no evidence that Todd's discharge was, in any way, linked to his statement to McNair that the Union would be a good thing because the loading could then be done on

[5] See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 395 (1983).

Ford's property instead of the lot. Finally, while the threat by Hall to Roy Stevens bespeaks of a certain degree of animus, the fact that Stevens was, in fact, hired precludes a finding that the degree of animus harbored by Respondent is "strong enough to support a conclusion that Respondent was willing to violate the law by discriminating against employees, in order to keep the Union out."[6]

Finally, the General Counsel argues that the timing of the discharges, coming as they did immediately after the four dischargees had signed cards, demonstrates unlawful animus or motivation in the discharges. Timing can supply the necessary ingredient of animus, but only if it is related to known union activity. Here, as noted, there is no evidence that Respondent knew of the union activity involved in the execution of the authorization cards. The General Counsel invites speculation that another employee informed Respondent about the fact that the four alleged discriminatees had signed authorization cards; however, the Board will not indulge in this type of speculation.[7]

Accordingly, I find and conclude that the General Counsel has failed to present a prima facie case in regard to the discharges of Roy Stevens, Barry Stevens, Lava T. Todd, and Roy Griffin, and I shall recommend that the complaint be dismissed regarding their discharges.[8]

[6] *Raysel-Ide, Inc.*, 284 NLRB 879 (1987), citing *Fabracan Corp*, 259 NLRB 161, 171–172 (1981) This factor further distinguishes *Ballou Brick Co*, and *BMD Sportswear Corp*, supra, cited by the General Counsel; both of those cases involved extensive unfair labor practices committed in ongoing efforts to defeat organizational attempts, as opposed to the single threat proven herein

[7] *Raysel-Ide, Inc*, supra.

[8] Because no prima facie case about the discharges has been presented, I do not address the reasons assigned for the discharges However, I here state, for possible purposes of review, that I found incredible Johnson's testimony about the various reasons he assigned for the discharges. I found particularly incredible his account of a racial slur made by Roy Griffin.

CONCLUSIONS OF LAW

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

2. The Union, General Drivers, Warehousemen and Helpers Local Union 89, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by threatening employees that they may not be hired because of their prior associations with the Union.

4. The unfair labor practice found above is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. The General Counsel has failed to prove any other of the violations alleged in the complaint.

THE REMEDY

Having found that Repsondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

[Recommended Order omitted from publication.]