

Alan Motor Lines, Inc. and Local 469, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.
Case 22-CA-15278

March 30, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On February 3, 1989, Administrative Law Judge D. Barry Morris issued the attached decision. The General Counsel filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order.

The judge concluded, *inter alia*, that the Respondent did not unlawfully refuse to rehire employee Thomas Furman about October 5, 1987.² The judge found that the General Counsel had established a *prima facie* case that Furman's union activity was a motivating factor in the Respondent's decision not to rehire him. Nevertheless, the judge found that the Respondent had satisfied its burden of demonstrating that the same action would have been taken in the absence of the protected conduct. The General Counsel has excepted to the judge's finding, contending, *inter alia*, that the judge erred in finding that the Respondent had rebutted the *prima facie* case. We find merit in this exception.³

Nicholas Gaudio, the Respondent's president, testified that he did not rehire Furman because Furman had quit and because of vulgarities Furman used during a September 30 meeting.⁴ Gaudio, however, later admitted in his testimony that Furman's vulgarities were not serious enough to cause Gaudio to refuse to rehire him. Gaudio also testified that Furman's vulgarities were not themselves a sufficient reason to terminate Furman

and that other employees frequently used vulgar language at work. Thus, Gaudio's testimony does not clearly establish that Furman's vulgar language played a significant role in Gaudio's decision not to rehire Furman.

We further agree with the General Counsel that Gaudio's remaining asserted reason for refusing to rehire Furman—that he had quit on September 30—is insufficient to rebut the *prima facie* case of discrimination. Gaudio repeatedly demonstrated his antiunion animus by his various statements and threats to employees. The credited evidence also reveals the following: that by October 5, Gaudio knew Furman was the "leader" behind the move to organize the Respondent's employees; that, after learning of Furman's role in organizing the employees, Gaudio referred to Furman as "trouble" and a "troublemaker"; and that once the Respondent's employees returned to work, Gaudio threatened employees that if they voted for the Union they would "end up just like Tommy Furman, with no job at all." We also note that the record contains no evidence that the Respondent had a policy or practice of refusing to rehire employees who resigned and the Respondent stipulated that Furman's work performance was not in issue. Finally, we note that although the credited evidence establishes that Gaudio had decided to take some kind of disciplinary action against Furman for a motor vehicle incident that Furman failed to report, Gaudio did not indicate what type of disciplinary action he intended to impose and did not rely on that incident in refusing to rehire Furman.

Contrary to our dissenting colleague's contention, we are not discounting the judge's credibility resolutions. In our view, the judge simply failed to assess properly the significance of all the evidence as credited by him in determining whether the Respondent had overcome what the judge himself had found was a *prima facie* case of discriminatory treatment established by the General Counsel. In this regard the judge's credibility resolutions establish that Furman was characterized as a "troublemaker" because of his union activities and that Respondent's president Gaudio had threatened other employees with job loss if they voted for the Union, *i.e.*, that they would "end up just like Tommy Furman."

We decline to join our colleague in treating, as a credibility resolution, the judge's acceptance of Gaudio's bare claim that he refused to rehire Furman because the latter had earlier quit and because of Furman's use of vulgar language. Gaudio's testimony in this regard is little more than an *ipse dixit* that the Respondent's motive for refusing to rehire Furman was lawful. This testimony is at

¹ In sec II,B,2 of his decision, the judge incorrectly stated that employee Furman met with Union President Potter on September 4, rather than on October 4. We correct this error.

² All dates are in 1987 unless otherwise indicated.

³ The General Counsel also has excepted to the judge's failure to find an additional threat allegedly made by Gaudio to Furman and overheard by employee DiGangi during the September 30 meeting. We find it unnecessary to pass on the General Counsel's exception because the finding of such an additional violation would be cumulative and would not affect the remedy.

⁴ The judge found, and we agree, that Furman quit his employment during this meeting.

odds with his admission that he would not have discharged Furman for those same vulgarities and it is not supported by anything Gaudio claimed to have said during the quitting episode. The persuasiveness of this bare claim is to be judged under the standards set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 445 U.S. 989 (1982), not *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We find that the Respondent has failed to meet its burden in this regard.

Thus, the Respondent has failed to establish by a preponderance of the evidence that its refusal to rehire Furman was based on a legitimate nondiscriminatory reason. The Respondent has therefore failed to meet its burden under *Wright Line* and, accordingly, we conclude that the Respondent violated Section 8(a)(3) and (1) by refusing to rehire Furman about October 5, 1987.

AMENDED REMEDY

Having found that the Respondent unlawfully refused to rehire Thomas Furman about October 5, 1987, we will order the Respondent to offer Furman immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay or other benefits he may have suffered by reason of the discrimination against him in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We will also order the Respondent to remove from its files any reference to its unlawful refusal to rehire Furman and to notify him in writing that this has been done and that the refusal to rehire will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Alan Motor Lines, Inc., Rahway, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to rehire or otherwise discriminating against any employee for engaging in union activity.

(b) Coercively interrogating any employee about union support or union activities, threatening any employee with discharge or plant closure because of union activities, requiring any employee to disclaim a desire to be represented by a union of his or her choice, and stating to any employee that it would never allow a union.

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

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

(a) Offer Thomas Furman immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the amended remedy section of this decision.

(b) Remove from its files any reference to the unlawful refusal to rehire Thomas Furman and notify him in writing that this has been done and that the refusal to rehire will not be used against him 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 Rahway, New Jersey facility copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 22, 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.

MEMBER DEVANEY, dissenting in part.

I do not agree with my colleagues' willingness to discount the judge's credibility resolutions and their consequent finding that the Respondent unlawfully refused to rehire Thomas Furman because of his union activities. I recognize that this is a close case on the merits. However, the Board did not observe the witnesses' testimony and, in my

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"

mind, the record evidence is not sufficient to justify reversing the judge.

The Respondent's president, Nicholas Gaudio, has been with the Company for over 40 years. Gaudio testified that, prior to September 30, 1987, he had received complaints about a driving incident involving Furman from both the New Jersey Motor Truck Association and a motorist who contacted him directly. Gaudio met with his insurance company and testified, without contradiction, that a decision was made to take some type of disciplinary action against Furman.

The judge credited Gaudio's version of the September 30 meeting with Furman at which Furman hurled obscenities at Gaudio and at which Furman voluntarily terminated his employment. The majority does not quarrel with these findings. Thereafter, Gaudio testified that he refused to rehire Furman because Furman had quit and because "I was never called down like I was called down by Mr. [Furman], by any man in forty some odd years that I been [sic] doing what I've been doing." Although Gaudio testified that Furman's vulgarities were not in themselves a reason to refuse to rehire Furman, Gaudio asserted that Furman's use of language, including calling him a "son of a bitch" and a "mother fucker," affected him terribly because he had just lost his mother, and that he was "relieved" Furman had quit.

It is axiomatic that the Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). This established policy recognizes that many of the cases we are called on to decide present conflicting testimony and the responsibility for resolving such credibility disputes belongs to the judge in the first instance. See, e.g., *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962), and the cases cited therein. In this case, the judge observed the witnesses first hand, expressly relied on their demeanor or while testifying, and specifically credited Gaudio's nondiscriminatory explanation for why he refused to rehire Furman. The clear preponderance of the evidence in this case does not convince me that the judge was incorrect.

In this regard, although Gaudio did not clearly articulate his reasons for refusing to rehire Furman until he testified at the hearing, this fact alone does not justify reversing the judge. The judge credited Gaudio's explanation and, by reversing the judge, the majority reverses his credibility resolutions. Furthermore, Gaudio's explanation is at least partially supported by the testimony of Potter, the

Union's president and business representative. Potter testified that on October 5, when he asked why Gaudio would not take Furman back, Gaudio said that it was because Furman had quit and was a "troublemaker."¹ Thus, Gaudio's testimony is supported by his prior reference to Furman having quit and therefore cannot be said to be either "bare" or "no more than ipse dixit."

Accordingly, contrary to my colleagues, I would adopt the judge's conclusion that the Respondent did not violate the Act by refusing to rehire Furman.

¹ To be sure, Gaudio's references to Furman as a "troublemaker" or "trouble" reasonably imply an unlawful motive for Gaudio's refusal to rehire him. The judge reached this same conclusion when he found that the General Counsel had established a prima facie case. An analysis under *Wright Line*, *supra*, however, does not end there. It is necessary to go on and examine the reasons the Respondent offered for its action. The judge did so, credited the reasons offered by the Respondent, and found the Respondent had rebutted the prima facie case.

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 refuse to rehire or otherwise discriminate against any employee for engaging in union activity.

WE WILL NOT coercively interrogate any employee about union support or union activities, threaten any employee with discharge or plant closure because of union activities, require any employee to disclaim a desire to be represented by a union of his or her choice, and tell any employee that we would never allow a union.

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 Thomas Furman immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from our refusal to rehire him, less any net interim earnings, plus interest.

WE WILL remove from our files any reference to our unlawful refusal to rehire Thomas Furman and notify him in writing that this has been done and that our refusal to rehire him will not be used against him in any way.

ALAN MOTOR LINES, INC.

Bernard S. Mintz, Esq., for the General Counsel.
E. Patrick McDermott, Esq. (Gerald L. Dorf, P.C.), of Rahway, New Jersey, for the Respondent.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in Newark, New Jersey, on June 9 and 10, 1988. Upon a charge filed on October 5, 1987,¹ a complaint was issued on November 19 and amended at the hearing alleging that Alan Motor Lines, Inc. (Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). Respondent filed an answer denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally and file briefs. Briefs were filed by the General Counsel and by the Respondent.

On the entire record of the case,² including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation with an office and place of business in Rahway, New Jersey, is engaged in the interstate and intrastate transportation of freight. Respondent admits, and I so find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. In addition, Respondent admits, and I so find, that Local 469, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO (Local 469 or the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Issues

The issues are:

1. Did Respondent threaten to discharge and unlawfully discharge its employee, Thomas Furman?
2. Did Respondent threaten its employees with discharge if they supported Local 469, interrogate its employees concerning their activities on behalf of Local 469 and condition reinstatement of striking employees on their agreeing to sign a statement disclaiming their desire to be represented by Local 469?

B. The Facts

1. Meeting of September 30

Nicholas Gaudio, president of Respondent, testified that he called Thomas Furman to a meeting on September 30 to discuss a traffic incident. The incident involved Furman allegedly running someone off the road and Gaudio having received both correspondence concerning this from the New Jersey Motor Trucking Association and having been called by someone who said that he was "almost killed" in the incident. Furman became very upset over the allegation and stated that Gaudio should "stand behind him." Gaudio testified that Furman called him a "son of a bitch" and "mother f____" and since he had just lost his mother, the statement "[a]ffected me terribly." Furman believed that Gaudio should not have even questioned him concerning the incident and Gaudio testified that Furman said "I don't need this job. I don't have to be here. I'm going to look for something else." Saying that, Furman "opened the door, ran out, slammed the door and ran down to his automobile." Gaudio denied that he said anything to Furman about his attempts to bring in the union and he denied that he had any knowledge as of that date that Local 469 was trying to organize the employees.

Furman testified that he met with Gaudio on September 30 at which time Gaudio told him that "he didn't want me driving." Furman stated that Gaudio handed him a letter from the Trucking Association concerning an incident which occurred on September 21 and told him that he had been at a meeting where it was mentioned that disciplinary action was being recommended. Furman testified that there was a heated exchange in which vulgarities were used and that he "expected to be supported by Mr. Gaudio." Furman also testified that he said if "I wasn't going to receive what I felt was support and loyalty that I might start looking elsewhere for another job." Furman testified that Gaudio said that there was "no work for me the next day" and as he was going out the door, Gaudio said "if you try to bring a union in here, I'll fire you."

2. Contacting the Union

Furman had once been a member of Local 469 and on September 28 he contacted Fred Potter, president of the Union, and set up a meeting to discuss representation. The meeting was scheduled for October 1 at the Parkside Inn in Linden, New Jersey. Potter attended the

¹ All dates refer to 1987 unless otherwise specified.

² Certain errors in the transcript have been noted and corrected.

meeting on behalf of the Union and the employees who attended the meeting were Furman, DiGangi, Giannotto, Brewer, Hickson, Clark, and Varnado. All the employees present at the meeting signed authorization cards at that time. In addition, Furman was given two additional cards to distribute.

Richard DiGangi credibly testified that on October 2, while he was delivering a load, he received a call from Gaudio at which time Gaudio told him:

[H]e had heard something about the union and I was the leader of it. He asked me if I was the leader and I told him no, we were all together, and he said who is all of us and I said all of the guys. . . . He asked me who the leader was and I said there was no leader at the time. And he didn't say anything about Tommy being the leader, so I just told him there was no leader, we were just together. And then he asked me if I had signed a card saying I was in the union, and I asked why, and he said, well, whoever signed a card was being . . . terminated.

Later that day DiGangi called Furman and asked to meet him. Furman met with DiGangi, Brewer, Clark, and Giannotto that afternoon outside of Respondent's facility and discussed the contents of the Gaudio—DiGangi conversation. Furman told the employees that he would try to contact Potter and let him know what happened. As a consequence, Furman met with Potter on September 4 and both of them agreed that the following morning they would contact Gaudio and request recognition, and, if Gaudio refused to recognize the Union, they would set up a picket line.

3. Picketing

On October 5 the employees assembled outside of the plant and began picketing. Potter approached Gaudio and Gaudio said that all of the employees except for Furman could return to work if they so desired. Concerning Furman, Gaudio said:

[H]e quit his job. He didn't want to work here anymore. I'm not going to have him work in here. I don't want him on the property. He's a troublemaker. I don't need a troublemaker here. And, he's trouble, I just don't want him around here.

The picketing continued until October 8. On that day Potter handed a letter to Gaudio which stated that the employees were offering to return to work unconditionally. Gaudio read the letter, returned it to Potter, and said "I'm not taking this from you. I'm not going to recognize the union in any manner. As far as I'm concerned, there is no union." Gaudio told Potter that, except for Furman, he would be willing to speak to each of the employees individually.

The employees then spoke to Gaudio without Potter being present. Giannotto credibly testified that Gaudio said "You can come back. You have to sign a form saying that the union's not coming in here." Brewer corroborated this testimony and also testified that Gaudio told the employees that Furman could not come back to

work because "he had been trouble, that supposedly he had some kind of motor vehicle paper work stating that" and that was the "reason why he was letting him go." Brewer also testified that Gaudio explained that Furman was a "troublemaker" because "he was organizing this union activity."

Potter testified that on October 9, except for Furman, everyone who wanted to work was permitted to by Respondent. In addition, the employees were not in fact required to sign a statement that they would not join the Union.

4. Events subsequent to October 9

DiGangi credibly testified that on several occasions after October 9 Gaudio asked him to talk to the other drivers to tell them to forget about the Union. In one of these conversations Gaudio told him "there would never be a union in there and he would close the . . . place down before there was a union." During one conversation Gaudio also told DiGangi "tell the guys if they vote for the union they'd end up just like Tommy Furman, with no job at all."

A representation election was held on November 20, which the Union lost. The Union did not file objections to the conduct of the election.

C. Discussion and Conclusion

1. Thomas Furman

On September 24 the executive director of the New Jersey Motor Truck Association wrote to Gaudio advising him that on September 21 the Association received a complaint from a motorist that one of Respondent's drivers cut him off and subsequently attempted to force him from the road. In addition, Gaudio credibly testified that someone called him and was "very excited and told me that he had been run off the road" and that "he was almost killed." Gaudio ascertained that the truck involved was the one being driven by Furman and scheduled a meeting with Furman on September 30.

Gaudio and Furman met on September 30, at which time Furman became upset because he thought that Gaudio should support him instead of accepting the version of the motorist. I credit Gaudio's testimony that Furman began using vulgarity towards Gaudio and called him "a son of a bitch" and "mother f_____." Gaudio testified that the statements affected him "terribly" especially since he had just lost his mother. I further credit Gaudio's testimony that Furman said "I don't need this job," "I'm going to look for something else," and then ran out, slammed the door, and ran down to his automobile. Furman conceded in his testimony that during this conversation he told Gaudio "if I wasn't going to receive support in that issue that I might look elsewhere for work." While Furman testified that as he was leaving, Gaudio said "if you try to bring a union in here, I'll fire you," Gaudio denied making such a statement. I find that General Counsel has not shown by a preponderance of the evidence that a statement concerning the Union was made at this time.

The complaint alleges that on September 30 Gaudio threatened Furman with discharge if he supported Local 469 and laid off Furman because of his activities in support of the Union. I find that it has not been shown that Gaudio had any knowledge of Furman's union activities as of September 30.³ In addition, I credit Gaudio's version of the events on that day and find that Furman left the job because he was upset that Gaudio would not support him in connection with the cutting-off incident on September 21. Accordingly, paragraphs 8(a) and 9 of the complaint are dismissed.

2. October 2 threats

Seven of the employees met with Potter on October 1, at which time they signed authorization cards. I credit DiGangi's testimony that on October 2 he had a conversation with Gaudio during which time Gaudio told him that he had heard something about the Union and asked him if he was the leader of it. Gaudio then asked DiGangi whether he had signed a union authorization card and told him that whoever signed a card would be terminated. Anthony Giannotto similarly testified that on October 2 he had a conversation with Gaudio, at which time Gaudio told him "I hear you signed to get a union in here." After Giannotto answered in the affirmative, Gaudio replied, "No, no, we don't do that here. You're fired." I credit the testimony of DiGangi and Giannotto and find that on October 2 Gaudio threatened employees with discharge if they supported Local 469 and on the same day interrogated employees concerning their activities on behalf of the Union.

3. October 5 termination of Furman

The complaint alleges that on October 5 Respondent terminated Furman. I have already found that Furman quit his employment on September 30 because he thought that Gaudio was not supporting him in connection with the traffic incident. Potter testified that on October 5 Gaudio said that, except for Furman, he would put all the employees back to work. With respect to Furman, however, Gaudio said "he was trouble and he didn't want him [on] the property. He didn't want him working for him." Similarly, I have credited Brewer's testimony that on October 5 Gaudio said that Furman could not return to work because "he had been trouble, that supposedly he had some kind of motor vehicle paper work stating that" and that "was the reason why he was letting him go." Brewer also testified that Gaudio called Furman a "troublemaker" because he was "organizing this union activity." When asked why he would not rehire Furman, Gaudio testified "because he quit his job. He never showed into work on Thursday or Friday and I assumed he was serious about quitting his job. And . . . that's one of the reasons I felt, plus the fact that I

³ Furman testified that on September 28 and 29 he spoke to DiGangi about the Union in the drivers' room. He also testified that John Long, the dispatcher, was sitting in the adjacent room. Furman testified, however, that he did not know whether Long heard the conversation and Long was not called as a witness. Respondent has denied that Long is either a supervisor or agent within the meaning of the Act, and the General Counsel has not shown to the contrary. Moreover, no showing has been made that Long heard the conversation.

was never called down like I was called down by Mr. Furman, by any man in forty some odd years that I [have] been doing what I've been doing."

The question remains whether Respondent refused to rehire Furman because of his activity on behalf of Local 469. Under *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 445 U.S. 989, the Board requires that the General Counsel make a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the employer's decision. Once this is established, the burden shifts to the employer to demonstrate that the "same action would have taken place even the absence of the protected conduct." I believe that the General Counsel has made a prima facie showing that protected conduct was a motivating factor in Respondent's decision not to rehire Furman. By October 2 Gaudio had become aware of some of the employees' union activities. While Gaudio had not yet known that Furman was the main force behind the Union, as indicated by his questioning DiGangi whether he was the leader, by October 5 it is apparent that Gaudio had determined that in fact Furman was the principal person responsible for bringing in the Union. Thus, in testimony which I have credited, Brewer testified that on October 5 Gaudio said he would not rehire Furman because he was a "troublemaker" since he was "organizing this union activity." There is no question concerning Gaudio's attitude towards having a union. DiGangi testified that when he was hired he was told by Gaudio "there was no union . . . he had no use for one." Similarly, Brewer testified that when he was hired Gaudio said "this is not a union shop" and it would "never be a union shop." I thus find that the General Counsel has made a prima facie showing that one of the factors in Respondent's decision not to rehire Furman was Gaudio's discovery sometime between October 2 and 5 that Furman was the one primarily responsible for trying to bring in the Union.

I also find, however, that Respondent has satisfied its burden of demonstrating that the "same action would have taken place even in the absence of the protected conduct." On September 30, when Gaudio met with Furman, Gaudio had already received the letter from the New Jersey Motor Truck Association concerning the September 21 incident and he had also received a telephone call from a motorist complaining that he had been "run off the road" and was "almost killed." In addition, Gaudio had been at a meeting concerning the incident and disciplinary action was being recommended. Furman became upset that Gaudio was not supporting him and began using vulgarities against Gaudio. Gaudio testified that he had just lost his mother and the vulgarities were of such a nature that they affected him "terribly." Gaudio testified that he did not rehire Furman because Furman quit and because of the vulgarities. As Gaudio testified, he was never "called down like I was called down by Mr. Furman" in approximately 40 years of being in business. Accordingly, I find that Respondent has satisfied its burden under *Wright Line* and, therefore, the allegation is dismissed.

4. October 8 reinstatement

The complaint alleges that on October 8 Gaudio conditioned the reinstatement of the striking employees on their agreeing to sign a statement disclaiming a desire to be represented by Local 469. I have credited Giannotto's testimony that on October 8 Gaudio said, "You can come back. You have to sign a form that the union's not coming in here." This testimony was corroborated by Brewer. While, in fact, Gaudio did not require the employees to sign such a form, I find that he made the statement that the employees would be required to sign a form disclaiming a desire to be represented by Local 469.

5. Respondent's statements after October 9

At the hearing, the complaint was amended to allege that at various times between October 9 and November 20 Gaudio threatened his employees with discharge or closure of its facility if they supported Local 469 and stated to his employees that Respondent would never allow its employees to be represented by the Union. I have credited DiGangi's testimony that during this time period Gaudio told him "there would never be a union in there" and that he would "close the . . . place down before there was a union in there." In addition, I have credited DiGangi's testimony that during the same time period Gaudio told him "tell the guys if they vote for the union, they'd end up just like Tommy Furman, with no job at all." This credited testimony supports paragraphs 8(d) and (e) of the complaint.

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. By interrogating employees concerning their activities on behalf of Local 469, by threatening its employees with discharge and plant closure if they supported Local 469, by stating to its employees that it would never allow a union and by conditioning the reinstatement of striking employees on their agreeing to disclaim a desire to be represented by Local 469, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
5. Respondent did not violate the Act in any other manner alleged in the complaint.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. [Recommended Order omitted from publication.]