In the Matter of PROTECTIVE MOTOR SERVICE COMPANY, A CORPORATION *and* TWENTY-FIVE EMPLOYEES

*Case No. C-25.—Decided April 29, 1942*

**Jurisdiction:** armored car transportation industry.

**Unfair Labor Practices**

*Interference, Restraint, and Coercion:* anti-union statements by supervisory employees; surveillance of union meetings; interrogation of employees with regard to union meetings.

*Discrimination:* discharge of twenty employees for union membership or activity.

**Remedial Orders:** reinstatement of nineteen employees with back pay; back pay of deceased employee, from date of discriminatory discharge to date of his death, to be paid to his personal representatives; period from date on which original Decision and Order was set aside to date of issuance of subsequent Proposed Order excluded in computing back pay.

*Mr. Gerhard P. Van Arkel*, *Mr. Stanley Root*, *Mr. Samuel Zack*, and *Mr. Jerome I. Macht*, for the Board.

*Mr. Albert L. Moise*, of Philadelphia, Pa., and *Ballard, Spahr, Andrews & Ingersoll*, by *Mr. Warwick Potter Scott* and *Mr. John V. Lovitt*, of Philadelphia, Pa., for the respondent.

*Felix and Felix*, by *Mr. David H. H. Felix*, of Philadelphia, Pa., for the employees.

*Mr. Louis Newman*, of counsel to the Board.

## DECISION

AND

## ORDER

### STATEMENT OF THE CASE

Upon a charge duly filed by Thomas J. Wohlan, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued its complaint dated December 26, 1935, against Protective Motor Service Company, Philadelphia, Pennsylvania, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

On March 12, 1940,[1] the Board issued a Decision and Order dismissing the complaint on the ground that the facts appearing in the record then before the Board were "not sufficiently developed to afford a basis for determining whether or not the operations of the respondent affect commerce, within the meaning of the Act."[2] Thereafter, on June 2, 1941, upon petition of 16 of the employees named in the complaint herein, the United States Circuit Court of Appeals for the Third Circuit entered a decree setting aside the Board's order of March 12, 1940, and remanding the case "with directions to reinstate the complaint, to allow the petitioners a reasonable opportunity to present the evidence referred to in their petitions, and to determine the issue of interstate commerce, and if it be found that the operations of Protective Motor Service Company do affect commerce within the purview of the act, to determine whether or not that company has engaged in unfair labor practices and to issue an appropriate order in respect thereto."[3] Pursuant to the decree, the Board on June 9, 1941, entered an order reinstating the complaint herein, reopening the record for the purposes noted in the decree, and directing that a further and supplemental hearing be held.

Thereafter, pursuant to notice duly served on the parties, a hearing was held at Philadelphia, Pennsylvania, on June 23, 24, and 25, 1941, before Gustaf B. Erickson, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, Thomas J. Wohlan and 16 other employees named in the complaint were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the remanded issue was afforded all parties. A motion made at the opening of the hearing by counsel for Wohlan and the other employees to limit the hearing to evidence as to whether the respondent's operations constituted commerce was granted by the Trial Examiner over the respondent's objection.[4] A motion by counsel for the Board at the close of the hearing to conform the complaint to the evidence as to dates, names, and places was granted by the Trial Examiner without objection. Rulings on other motions and on the admissibility of evidence were also made by the Trial Examiner during the course of the hearing. The Board

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[1] A Decision was originally issued by the Board herein on April 28, 1936 1 N L R B 639 This Decision was set aside by the Board on July 18, 1938. 8 N. L. R B. 309

[2] *Matter of Protective Motor Service Company, a corporation* and *Twenty-Five Employees,* 21 N L. R B 552. This decision summarized the pleadings and included an extended statement of the protracted proceedings which intervened between the issuance of the complaint and the issuance of the Board's Decision and Order. There is no necessity for repeating that statement of the case

[3] The opinion of the Circuit Court of Appeals, handed down on May 19, 1941, is reported *sub nom Jacobsen* v *N. L. R. B.,* 120 F. (2d) 96 (C C A. 3).

[4] The respondent thereafter made no substantial effort to introduce evidence bearing on any issue other than commerce.

has reviewed all the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Following the hearing, the Board on June 30, 1941, entered an order directing that no Intermediate Report be issued by the Trial Examiner in the further hearing; that, pursuant to Article II, Section 37 (c), of National Labor Relations Board Rules and Regulations—Series 2, as amended, Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order be issued; and that the parties have the right thereafter to request oral argument before the Board and to file exceptions and briefs with the Board. On February 6, 1942, the Board issued its Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, copies of which were duly served on the parties. Pursuant to Article II, Section 37, of said Rules and Regulations, as further amended on September 6, 1941, the parties were given the right to request oral argument within 20 days, and to file exceptions and briefs within 30 days, from the date of issuance of the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order.

On March 16, 1942, pursuant to an extension of time granted by the Board, the respondent filed its exceptions to the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, and a brief in support thereof. Thereafter, pursuant to notice duly served on the parties, a hearing was held before the Board in Washington, D. C., on April 16, 1942, for the purpose of oral argument. The respondent and certain of the employees named in the complaint were represented by counsel and participated in the hearing. On April 18, 1942, subsequent to the hearing, the respondent filed a supplemental brief in support of its exceptions.

The Board has considered the respondent's exceptions and briefs, and hereby finds the exceptions to be without merit insofar as they are inconsistent with the findings of fact, conclusions of law, and order set forth below.

Upon the entire record in the case, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

Protective Motor Service Company is a Pennsylvania corporation having its principal office and place of business in Philadelphia, Pennsylvania. It is engaged in the business of transporting money, securities, and other valuables in armored cars. Approximately 48 trucks, each manned when in use by a driver and at least 1 guard, are owned and operated by the respondent. The valuables transported in these trucks include United States bonds and coinage.

The respondent's business has a capitalization of $25,000. Approximately 150 persons are employed by the respondent, and its annual pay roll, which constitutes 77 per cent of its total expenses, is in excess of $150,000. The respondent carries insurance on its operations in the total amount of $5,000,000.

A substantial part of the record made at the further hearing in June 1941 consists of evidence as to the respondent's business operations during the week of October 21–26, 1935. It is admitted that operations during that week were, on the whole, typical of the respondent's business throughout that calendar year. During that week, the respondent daily used in its business an average of 29 or 30 trucks or armored cars. One of these trucks was permanently stationed in Atlantic City, New Jersey. Of the remaining trucks, one operated out of Glenalden, Pennsylvania, and the others out of Philadelphia, Pennsylvania. The Glenalden truck made a daily run to Wilmington, Delaware, and back. Three of the trucks operating out of Philadelphia also made daily out-of-State runs, one to Atlantic City, New Jersey, another to Trenton, New Jersey, and the third to Camden, Gloucester, and other points in New Jersey. Three or four times a month the Trenton run required the use of an extra truck. We find that the respondent's trucks made not less than 4 daily or 24 weekly out-of-State trips during 1935, or a total of 1,248 such trips during that year.

On Wednesday and Thursday, October 23 and 24, 1935, the respondent made a pay-roll delivery for a dredge company from Philadelphia, Pennsylvania, to Camden, New Jersey. A similar pay-roll delivery for the same company was made regularly by the respondent at least twice weekly during 1935. During the month of October 1935, 12 such pay-roll deliveries for that company were made by the respondent. This means, and we find that the respondent made, a minimum of 104 such out-of-State pay-roll deliveries during 1935. Another pay-roll delivery for a leather company was made by the respondent from Philadelphia to Camden on Friday, October 25, 1935, and a similar pay-roll delivery for the same customer was made by the respondent weekly during 1935. Including these 52 pay-roll deliveries, the respondent had a total of 1,404 regularly scheduled daily or weekly out-of-State trips during the year 1935.

In addition, the respondent made more than 100 deliveries between Philadelphia, Pennsylvania, and New York City, requiring more than 50 separate trips between those 2 cities during 1935. On some of these trips between Philadelphia and New York the respondent used more than one truck or armored car. Other special or non-regularly scheduled deliveries or trips in 1935 between Philadelphia and cities

in States other than Pennsylvania included four trips to and from Washington, D. C.; three trips to and from Trenton, New Jersey; four trips to and from Atlantic City, New Jersey; two trips to and from Baltimore, Maryland; and two trips to and from Wilmington, Delaware.

The respondent contends that, with unimportant exceptions, the trucks used on the regularly scheduled daily and weekly trips to points in New Jersey and Delaware crossed the Pennsylvania State line and returned into Pennsylvania empty, performing the services for which it was paid entirely within the State to which they went. It is clear, however, that there was at least some interstate transporation of money and other valuables by these trucks; for example, two or three regular pay-roll deliveries in New Jersey admittedly involved the carriage of funds across the State line from Philadelphia, and the daily truck to and from Wilmington, Delaware, was met every evening at Darby, Pennsylvania, by a truck from Philadelphia which took from the Wilmington truck whatever funds or other valuables it had for delivery in Philadelphia. It also appears from evidence offered by the respondent that at least part of the collections regularly made by it from certain stores in New Jersey was brought to Philadelphia for deposit. In addition, we credit the testimony given by several of the men who in 1935 were employed as drivers or guards on the respondent's trucks that some of the money and other valuables picked up by them on their regular trips to points outside Pennsylvania was brought to Philadelphia.

The record does not show the quantity or value of the goods carried either intrastate or interstate by the trucks on the respondent's regularly scheduled daily and weekly out-of-State trips in 1935. There is, however, evidence which tends to show, and we find, that the goods carried on these regularly scheduled trips were substantial both in value and in volume. For example, it appears that the respondent during 1935 made 2,610 collections in New Jersey for a petroleum company, that it made 246 collections in New Jersey for another petroleum company from August 10 to December 31, 1935, and that 2 of the respondent's chain store customers had 155 or 165 units in New Jersey which were serviced by the respondent. On the special or non-regularly scheduled trips from Philadelphia, Pennsylvania, to New York City and other points outside the State of Pennsylvania, the respondent admits that its trucks carried securities and other valuables worth at least $80,000,000. The record shows that this figure is at best only an approximation and that, in any event, it includes only the shipments of which the respondent knew the value. Since the value of the goods carried by the respondent was not infrequently unknown to it, the figure $80,000,000 necessarily understates the value of the respondent's special interstate shipments.

The respondent's gross income in 1935 was $253,810.67. Tabulations prepared by the respondent show that it received a gross revenue of at least $8,752.61 from admittedly interstate business during 1935. This figure, too, is far from conclusively established by the evidence, and its error lies clearly on the side of underestimation. The respondent also prepared a tabulation showing $18,152.45 in fees received by it in 1935 for servicing New Jersey stores or units of 52 different customers. As our findings above indicate, at least some of these fees were paid to the respondent for interstate transportation of goods, although it is impossible on the present record to estimate how much was paid for such transportation and how much for services performed in New Jersey by trucks of the respondent operating out of Philadelphia. We find, however, that the respondent in 1935 received substantially more than $8,700 for interstate services performed by it, and that its receipts for such services constituted more than 3½ per cent of its gross income.

It further appears that the respondent's salesmen solicited business in Camden, New Jersey, as well as in Philadelphia; that the respondent paid for an office or desk space or similar facilities in Atlantic City, Camden, and Trenton, New Jersey, as well as in Philadelphia, Bethlehem, and Chester, Pennsylvania; and that plants or units of at least 24 or 25 large business and industrial organizations were serviced by the respondent.

We find that the respondent is engaged in commerce, within the meaning of the Act. Since the respondent's drivers and guards are admittedly shifted about constantly, each of them is actually or potentially employed in the interstate transportation of goods.[5]

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[5] The respondent has made some point of the fact that an application filed by it with the Interstate Commerce Commission in 1936 for a certificate authorizing the continuance of its interstate operations was denied on the ground, in part, that the respondent's interstate services were too "meager" to justify the issuance of the requested certificate. The contention is fully answered by the Court in *Jacobsen* v *N. L. R. B.*, 120 F. (2d) 96, 98 (C. C. A. 3).

The Board also found that the Protective Motor Service Company theretofore on February 6, 1936 had filed an application with the Interstate Commerce Commission for a certificate authorizing the continuance of operations in interstate or foreign commerce under the "Grandfather Clauses" of Sections 206 (a) and 209 (a) of the Federal Motor Carrier Act of 1925 (49 U. S. C. A. 306 (a) and 309 (a)). In this application Protective Motor Service Company by its petition seemingly sought the continuance of operations between Philadelphia on the one hand and New York City, Baltimore, Maryland, and Washington, D. C. and points in Pennsylvania, New Jersey and Delaware on the other. The Interstate Commerce Commission decided that the "meager" interstate services engaged in by Protective Motor Service Company did not meet the requirements of the grandfather clauses and denied the application. Assuming that the test of interstate commerce required by the grandfather clauses of the Motor Carrier Act is the same as that of the National Labor Relations Act, the weight of the decision of the Interstate Commerce Commission is greatly lessened because as noted by the Commissioner " . . . applicant attempted at the hearing to defeat its application in its entirety, in an effort to have the Commission establish the fact that it is not engaged in interstate commerce."

II. THE ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 470, is a labor organization affiliated with the American Federation of Labor. It admits to membership, among others, drivers and guards employed by the respondent.

III. THE UNFAIR LABOR PRACTICES

*The discriminatory discharges*[6]*; interference, restraint and coercion*

The respondent's employees had never been organized prior to the beginning of the dispute involved in the present proceeding, and there is testimony that its employees for many years understood generally that anyone attempting to organize the respondent's employees would be discharged. After the National Industrial Recovery Act had been declared unconstitutional in May 1935,[7] the respondent began reducing the wages and increasing the hours of work of its employees. By the late summer of that year some of the respondent's oldest drivers and guards were earning $31.50 for a work week averaging 60 to 70 or more hours, as compared with substantially higher wages for a work week which had previously averaged 48 hours. At about that time, the respondent hired several men considerably younger than its regular employees, at wages substantially lower even than those then being paid by the respondent. The hiring of these younger men resulted in a reduction in the hours of work of some of the older employees, many of whom worked only part time at best, and in a consequent decrease in their earnings.

[6] The complaint originally alleged that the respondent, during the period from October 30 to December 3, 1935, discharged 24 named persons employed by it as "drivers", and that it thereafter refused to employ them, because they had joined and assisted the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 470, herein called the Union, and had engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection. At the hearing, the complaint was amended over the respondent's objection to add the phrase, "or in other capacities", after the word "drivers". The ruling permitting the amendment is hereby affirmed. As to 1 of the 24 employees thus named, the complaint was dismissed upon motion of the respondent and without objection by counsel for the Board. Thereafter, the names of five additional employees were, upon their own motion, struck from the complaint by the Board. The names of two of these five employees were subsequently reinstated in the complaint by the Board, after a hearing had been held on a petition requesting such relief filed by three of them. All of these rulings are hereby affirmed. The case as it now stands involves alleged discriminatory discharge of the following 20 employees: R. W. Moore, Thomas J. Wohlan, Carl Jacobsen, George Vavricka, Joseph J. Ragone, James W. Connery, Anthony R. Wheatley, Clarence W. Bailey, Harry A. Glading, Harry C. Pfaff (also referred to as Charles Pfaff), Edward J. Graham, Steadman S. Kelly, Walter C. Gilbert, Benjamin Greitzer, Daniel J. McGeary, James Cooper, Frank H. Brown, Beauford L. Stephanson, Harry E. Uditsky, and C. W. Hartman.

[7] *A. L. A. Schechter Poultry Corp.* v. *United States*, 295 U. S. 495.

Some of the older employees who were not immediately affected by the hiring of the younger men feared that they might later suffer a similar reduction in hours and wages. In October 1935 the respondent instituted a general wage cut of 10 per cent.

At about the same time, the president of the Union, Morrissey, distributed circulars among the respondent's employees urging them to attend a meeting on Sunday, October 27, 1935, for the purpose of discussing union affiliation. The respondent's president, Marsh, saw a copy of the circular almost as soon as it was distributed and, on Friday, October 25, 1935, he asked several of the men about the meeting. He apparently believed, however, that the men would ignore the circulars, until he discovered on Saturday, October 26, that at least some of them were going to the meeting.

Approximately 30 or 35 of the respondent's drivers and guards appeared at the union meeting on the afternoon of Sunday, October 27. It was apparently there decided that Moore, an old and trusted employee of the respondent, would see Marsh and tell him what the men had in mind. By the following day, Monday, October 28, the respondent's secretary and general superintendent, William West, had obtained a list of the names of many or all of the men who had attended the meeting the day before. Marsh did not wait to be approached by Moore, but called him into the office, asked him how the meeting was, and inquired as to the nature of his complaint. Moore stated his personal grievances, and then referred to the pay cuts, the long hours of work, and the effect of the hiring of younger men at lower wage rates. Moore also told Marsh that the men were willing to form an independent or company union instead of joining an outside union, if that was what Marsh wanted them to do, and he suggested that Marsh call a meeting of the employees for the purpose of discussing their proposed organization. He further explained to Marsh that "any demands that the men asked would be fair." Marsh, in return, told Moore during their conversation that day that "There is one thing that I will not have, and that is that man McGlone coming down here telling me how to run my business."[8] Marsh further stated that his business was no place for a union; that any difficulties which existed could have been straightened out without recourse to union organization, had the men made a personal appeal to him; and that he would have no general meeting of the employees as Moore proposed, but that he would wait in his office Tuesday night, October 29, to see any of the men who wanted to talk

[8] McGlone is an officer of another local of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America. Marsh apparently identified him, erroneously, with the Union in the present proceeding.

to him. Marsh knew that a second union meeting was to be held that Tuesday night.

Thereafter, on Monday and Tuesday, October 28 and 29, Marsh called to his office and personally interviewed, either individually or in small groups, most or all of the men who had attended the union meeting of October 27. He asked them whether they had attended the meeting, and told them in substantially the same terms as he had used with Moore of his opposition to union organization among the respondent's employees. Marsh, himself, explained at the hearing that he called in and spoke to all these men on October 28 and 29, 1935, because be wanted to know what their grievances were and why they had decided that they should organize in order to remedy their grievances, because he wanted to discuss with them the advisability of the course they were taking, and because he wanted to tell them that he objected to their organizing without first discussing it with him. On the morning of Tuesday, October 29, Marsh assembled in the office all the employees then on the respondent's premises, of whom there were some 50 or 60, and restated his position as to their joining a union. In part he said: "The company is not big enough to have a union. We will not tolerate a union in this company. Let there be no more talk about unions." Later the same day Marsh, West, and the respondent's chief mechanic, Caccia, warned several of the men against engaging in union activity. Nevertheless, the union meeting that night was attended by a number of the respondent's employees, although not by as many as had been at the first meeting.

Marsh admitted at the hearing that he requested several employees on October 29, 1935, to go to the meeting that night and get him all the information they could, and that he was told by some of them who attended that meeting. Indeed, at least some of the men who attended the meeting that night apparently gathered first at the respondent's garage; and the chief mechanic, Caccia, told Marsh which of the men were at the garage that evening, and Marsh sent down to the garage to find out who was there. The morning of the next day, October 30, Marsh summarily discharged Moore, Uditsky, Jacobsen, Vavricka, and Connery. All but one of these five men had been at the meeting the night before, and all of them without exception were admittedly regarded by Marsh as leaders in the movement to organize. At the hearing, Marsh described the discharge of these five men as follows: "I told them that this thing could not continue. This was on Wednesday morning, when these men were discharged. There is no use—I want to make it perfectly plain that I told them that this condition of turmoil and meeting all around,

downstairs and upstairs, down in the garage, could not continue, and I asked them to abandon this particular purpose for the time being, and that we would discuss the matter, and I would ask them to come up and see me on Tuesday night, and I waited for them there for that purpose, and they chose to disregard my request, and we parted company right then and there." Admittedly, these five discharged employees included some of the respondent's oldest and most trusted men.

Three more employees were discharged on November 2, 1935, and the other employees named in the complaint were discharged from time to time thereafter during November and until December 3, 1935. All of the employees who were thus discharged and who are involved in the present proceeding had attended one or both of the union meetings on October 27 and 29, 1935, and some of them had joined the Union and had paid part or all of their initiation fees.[9]

[9] The record reveals, and we find, the following facts as to the employees involved in the present proceeding:

| Name | Union activity | Occupation | Approximate length of service | Date of discharge |
|---|---|---|---|---|
| R W. Moore | Joined Union and attended first meeting | Driver | 8 years | Oct 30, 1935 |
| Harry E. Uditsky | Attended first union meeting | Driver and guard. | 6 years | Oct 30, 1935 |
| Carl Jacobsen | Joined Union and attended both meetings | Guard | 6 years | Oct. 30, 1935 |
| George Vavricka | Joined Union and attended both meetings | Driver | 7 years | Oct. 30, 1935 |
| James W. Connery | Joined Union and attended both meetings | Driver and guard. | 8 years | Oct. 30, 1935 |
| Anthony R. Wheatley | Joined Union and attended second meeting | Driver and guard | 22 months | Nov. 2, 1935 |
| Harry A. Glading* | Joined Union and attended both meetings | Guard and clerk | 8 years | Nov. 2, 1935 |
| Clarence W Bailey* | Joined Union and attended second meeting | Driver and guard | 2½ years | Nov 2, 1935 |
| Charles Pfaff* (Harry C. Pfaff) | Joined Union and attended second meeting | Guard | 4 years (Intermittent) | Nov 4, 1935 |
| Thomas J Wohlan | Attended first union meeting | Guard | 7 years | Nov. 7, 1935 |
| Joseph J Ragone | Attended both union meetings | Guard | 7½ years | Nov 12, 1935 |
| Edward J Graham | Attended first union meeting | Guard | 2 years | Nov. 16, 1935 |
| Frank H Brown* | Joined Union and attended both meetings | Driver | 8 years | Nov 14 1935 |
| Steadman S Kelly* | Joined Union and attended both meetings | Driver | 7½ years | Nov 18, 1935 |
| Walter C Gilbert* | Attended both union meetings | Driver | 5 years | Nov 19, 1935 |
| C. W Hartman | Attended first union meeting | Driver | (Does not appear) | Nov. 22, 1935 |
| Daniel J. McGeary | Joined Union and attended both meetings | Driver | 3 years | Nov. 22, 1935 |
| Benjamin Greitzer* | Attended both union meetings | Driver | 2 years | Nov 25, 1935 |
| James Cooper* | Joined Union and attended second meeting | Driver | 2 years | Dec 3, 1935 |
| Beauford L. Stephanson* | Attended both union meetings. | Guard | 3½ years | Dec 3, 1935 |

*Received or was offered a letter of recommendation from the respondent, stating that he had been discharged only because of a reduction in force.

To Greitzer, who was one of the last men to be discharged, Marsh said: "I am sorry, Mr. Greitzer, I hate to let you go. I told you boys about going up to that union meeting." Greitzer thereupon asked, "Is that why I am getting out?" In response, Marsh nodded his head to indicate that it was.

Bailey, who was discharged on November 2, 1935, testified at the hearing that, shortly after his discharge, he was told by West that the latter would attempt to have him reinstated, but that the next day West told him that it had been decided at Marsh's home the night before that none of the men who had been to the union meetings would be rehired. West added, according to Bailey, that: "I am sorry to say it, but some more men are going." Bailey's testimony was denied by West, but, in view of the other evidence as to West's attempts to discourage union activity among the respondent's employees, we accept Bailey's testimony and find that West made the statements attributed to him. Further light on the respondent's purpose in discharging these employees and on its attitude toward union activities is provided by Marsh's testimony at the hearing that the respondent has had no "trouble" since October 30, 1935, the date on which the first group of employees was discharged.

The respondent's position, as revealed by the record, is that the discharges were made because the employees in question had been guilty of "insubordination" and "breach of discipline," because it was necessary to put an end to the "turmoil" and "uproar" caused by union agitation, and because there were various complaints as to the capability and work of some of the men. In his own testimony, however, Marsh revealed that, by "insubordination" and "breach of discipline," he primarily meant union activities, the failure of the union adherents to consult him and obtain his permission before engaging in their union activities, and their participation in such activities without informing him of what was happening.[10] Marsh admitted that the gravity of an employee's offense in participating in union activities without confiding in him varied, in his opinion, directly with the length of the employee's employment and the trust in which he was held. As to the "turmoil" and "uproar," no showing was made that the gatherings of employees to which reference was thus made constituted any abnormal departure from the customary conduct of employees while off duty, or that they interfered with the discharge by employees of their duties. It was customary for groups of the respondent's drivers and guards to congregate in the cellar or garage between runs for talk and relaxation before going out again, and it

[10] Marsh testified generally that the employees in question were discharged because of "the attempted formation of this society or joining this society for the purpose of interfering with our duties and the duties of the other men I consider that a breach of discipline "

does not appear that their talking during the period of union activity differed in any material respect except subject of discussion. Marsh admitted that the groups in which the employees congregated during the period in question were never larger than eight men, and that the men were at no time requested to be quieter. Indeed, Marsh plainly indicated at the hearing that it was not the manner in which these discussions were conducted but rather the subject discussed—viz., union organization—which occasioned the respondent's disapproval.[11] However, some reference is made by the respondent to alleged vilificaiton of "loyal people" by union adherents, "loyal people" meaning those employees who were not taking part in union activities. Marsh's testimony as to this alleged vilification is almost completely lacking in convincing detail, consisting largely of a recital of complaints by Superintendent West, and by employee Weston who was called in and questioned by Marsh. Furthermore, it appears that group meetings on the respondent's premises of members of an association of the respondent's employees subsequent to the discharges here in question were held apparently without objection on the part of the respondent. As to the alleged inefficiency and inability of some of the men, no mention of these claimed deficiencies was made to the men at the time they were discharged, and Marsh's own testimony at the hearing indicates that inability and inefficiency were not the reasons for the discharges.

There is some indication that Marsh had particular objection on personal grounds to Moore and Kelly, because of alleged insolence or other misbehavior on their part. The claim apparently rests on statements made by them during conversations with Marsh on Monday,

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[11] Under cross examination by counsel for the Board, Marsh testified as follows:

Q Did you at any time go down into the basement and object to the discussions going on down there?

A No.

Q Did you give Mr. West any orders to go down there and stop the discussion?

A No, I did not

Q Did you tell them to stop that noise going on down there?

A. No I don't know that he complained about the noise I suppose he would tolerate any noise there, but he did complain, and very seriously, about this continued agitation.

Q His only objection, then, was to the fact that the discussions were being held?

A Exactly.

Q You gave him no instructions to go down and stop those discussions?

A. No.

* * * * * * *

Q. Did Mr. West complain to you about the meetings held on the pavement?

A Not particularly; only in a general way. He said—I don't think he cared about them talking on the pavement, or in the basement, or any other place. What he complained of was the subject matter of their conversation.

Q What was the subject matter of their conversation?

A The subject matter of their conversation was this agitation to join or form these societies or unions, or whatever it was

Q In other words, he objected to their talking about the Union?

A In that particular way, yes, sir.

Q You have already testified that you did not object to the manner in which those discussions were conducted?

A No.

October 28, 1935, the day immediately following the first union meeting. As we have pointed out above, all the conversations on October 28 and 29 between Marsh and various employees were solicited by Marsh and were marked by his questioning of the employees as to their grievances and their reasons for engaging in union activities. It was not unreasonable for Moore and Kelly to state, in response to these inquiries, their reasons for believing that Marsh had not always, in their opinion, been fair in his treatment of them. We believe it significant that Marsh, although he allegedly took serious objection to Moore's remarks on October 28, did not discharge Moore at the time the remarks were made but waited until after Moore had disregarded Marsh's admonition against union activities by attending the second union meeting on October 29; the manner in which Moore was then ordered to turn in his credentials is clear indication of the true reason for his discharge. Similarly with respect to Kelly, there is no showing that he had ever, prior to October 28, 1935, offered any objectionable advice or criticism, or that any untoward incident occurred between that date and his discharge on November 18, 1935.

Briefly stated, the respondent's position is that participation by its employees in union activities, particularly without consulting or advising Marsh, constituted insubordination and disloyalty warranting discharge, and that attempts by union adherents to persuade other employees to join the Union made them undesirable employees. The events in question occurred shortly after the effective date of the Act, but there was then no more reason than there is now for any such misconception of the Act's purposes and provisions. The Act plainly provides, as our decisions have since held, that union organization is the exclusive concern of employees, that they may in any lawful manner advance their right to organize and to engage in concerted activities, and that they are protected by the Act from any interference, restraint, or coercion by their employer in the exercise of these rights.

We find that the respondent, by discharging and thereafter refusing to employ R. W. Moore, Thomas J. Wohlan, Carl Jacobsen, George Vavricka, Joseph J. Ragone, James W. Connery, Anthony R. Wheatley, Clarence W. Bailey, Harry A. Glading, Harry C. Pfaff (also referred to as Charles Pfaff), Edward J. Graham, Steadman S. Kelly, Walter C. Gilbert, Benjamin Greitzer, Daniel J. McGeary, James Cooper, Frank H. Brown, Beauford L. Stephanson, Harry E. Uditsky, and C. W. Hartman, discriminated in regard to their hire and tenure of employment, and thereby discouraged membership in the Union.[12] By this discrimination, by its surveillance of the union meetings, and

[12] Hartman did not testify at the hearings, but the record shows that he was discharged and that "the operative factors" which induced the discharge were the same in his case as in the others See *Matter of The New York and Porto Rico Steamship Company* and *Commercial Telegraphers' Union, Marine Division, A F of L*, 34 N L R B 1028 footnote 26

by the anti-union statements made by Marsh, West, and Caccia to various employees, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take affirmative action designed to effectuate the policies of the Act.

We have found that the respondent discriminated in regard to the hire and tenure of employment of R. W. Moore, Thomas J. Wohlan, Carl Jacobsen, George Vavricka, Joseph J. Ragone, James W. Connery, Anthony R. Wheatley, Clarence W. Bailey, Harry A. Glading, Harry C. Pfaff (also referred to as Charles Pfaff), Edward J. Graham, Steadman S. Kelly, Walter C. Gilbert, Benjamin Greitzer, Daniel J. McGeary, James Cooper, Frank H. Brown, Beauford L. Stephanson, Harry E. Uditsky, and C. W. Hartman because of their union membership or activity. To effectuate the policies of the Act, we shall order the respondent to offer all of them except Beauford L. Stephanson immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, dismissing if necessary any employees hired since their discharge. We shall further order the respondent to make all of them except Beauford L. Stephanson whole for any loss of pay they have suffered because of the respondent's discrimination by paying to each of them a sum of money equal to the amount he would normally have earned as wages from the date of the discrimination against him to the date of the offer of reinstatement, less his net earnings during such period.[13] In view of the fact that our

[13] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for the unlawful discrimination and the consequent necessity of seeking employment elsewhere. See *Matter of Crossett Lumber Company* and *United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N L R B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation* v. *N L R B*, 311 U S 7

original Decision of April 28, 1936, was set aside on July 18, 1938, the period from the latter date to February 6, 1942, the date of the Proposed Order herein, will be excluded in computing the back pay due these employees.

Since Beauford L. Stephanson died on June 2, 1936, no order or reinstatement will be entered as to him. However, the respondent will be directed to pay his personal representatives a sum of money equal to the amount he would normally have earned as wages from the date of the respondent's discrimination against him to the date of his death, less his net earnings during such period.[14]

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

## Conclusions of Law

1. International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 470, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of R. W. Moore, Thomas J. Wohlan, Carl Jacobsen, George Vavricka, Joseph J. Ragone, James W. Connery, Anthony R. Wheatley, Clarence W. Bailey, Harry A. Glading, Harry C. Pfaff (also referred to as Charles Pfaff), Edward J. Graham, Steadman S. Kelly, Walter C. Gilbert, Benjamin Greitzer, Daniel J. McGeary, James Cooper, Frank H. Brown, Beauford L. Stephanson, Harry E. Uditsky, and C. W. Hartman, and thereby discouraging membership in International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 470, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

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

## ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the

[14] See *Matter of Rapid Roller Co., a corporaton* and *Local 120, United Rubber Workers of America, affiliated with the C. I. O.*, 33 N. L. R. B. 557, footnote 55.

respondent, Protective Motor Service Company, Philadelphia, Pennsylvania, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 470, or in any other labor organization of its employees, by discharging any of its employees or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act.

(a) Offer to R. W. Moore, Thomas J. Wohlan, Carl Jacobsen, George Vavricka, Joseph J. Ragone, James W. Connery, Anthony R. Wheatley, Clarence W. Bailey, Harry A. Glading, Harry C. Pfaff (also referred to as Charles Pfaff), Edward J. Graham, Steadman S. Kelly, Walter C. Gilbert, Benjamin Greitzer, Daniel J. McGeary, James Cooper, Frank H. Brown, Harry E. Uditsky, and C. W. Hartman immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing if necessary any employees hired since their discharge;

(b) Make whole R. W. Moore, Thomas J. Wohlan, Carl Jacobsen, George Vavricka, Joseph J. Ragone, James W. Connery, Anthony R. Wheatley, Clarence W. Bailey, Harry A. Glading, Harry C. Pfaff (also referred to as Charles Pfaff), Edward J. Graham, Steadman S. Kelly, Walter C. Gilbert, Benjamin Greitzer, Daniel J. McGeary, James Cooper, Frank H. Brown, Harry E. Uditsky, and C. W. Hartman for any loss of pay they have suffered because of the respondent's discrimination by paying to each of them a sum of money equal to the amount he would normally have earned as wages during the period from the date of his discharge to July 18, 1938, and during the period from February 6, 1942, to the date of the respondent's offer of reinstatement, less his net earnings during such periods;

(c) Pay to the personal representatives of Beauford L. Stephanson a sum of money equal to the amount he would normally have earned as wages during the period from the date of his discharge, December 3, 1935, to the date of his death, June 2, 1936, less his net earnings during such period;

(d) Post immediately in conspicuous places throughout its premises in Philadelphia, Pennsylvania, and elsewhere, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and (3) that the respondent's employees are free to become or remain members of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 470, and that the respondent will not discriminate against any employee because of membership or activity in that organization;

(e) Notify the Regional Director for the Fourth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.