

IN THE MATTER OF UNION PACIFIC STAGES, INC. and AMALGAMATED
ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH
EMPLOYEES OF AMERICA, LOCAL DIVISION 1055.

Case No. C-133.—Decided December 19, 1936

Motor Bus Industry—Interference, Restraint or Coercion: expressed opposition to labor organization, threats of retaliatory action; interference with organizational activity; discrediting and vilifying union; propaganda against union; attempt to persuade employees not to join or to resign from union; intimidating union leaders and members; engendering fear of loss of employment for union membership and activity; questioning employees with regard to matters which are subjects of negotiation with union; bargaining with individual employees; circumvention of collective agreement with union—*Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* awarded.

Mr. E. J. Eagen for the Board.

Mr. Roy F. Shields, of Portland, Ore., for respondent.

Green, Tanner & Boesen, by *Mr. K. C. Tanner*, of Portland, Ore., for the Union.

Mr. Aaron W. Warner, of counsel to the Board.

DECISION

STATEMENT OF CASE

On April 3, 1936, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division 1055, hereinafter referred to as the Union, filed with the Regional Director for the Nineteenth Region a charge that Union Pacific Stages, Inc., Portland, Oregon, hereinafter referred to as the respondent, had engaged in and was engaging in unfair labor practices contrary to the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act. On June 12, 1936, the Board issued a complaint against the respondent, signed by the Regional Director for the Nineteenth Region, alleging that the respondent had committed unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7), of the Act. An allegation that the respondent had committed acts in violation of Section 8, subdivision (2), of the Act was added by amendment on August 3, 1936, at the hearing.

In respect to the unfair labor practices, the complaint, as amended, alleged in substance:

1. That the respondent, during the period from March 4 to March 31, 1936, discharged and thereafter refused to reinstate Hebe Dobbs, C. B. Kiesel, F. H. Woodford, and Harold G. Allen, all employees of the respondent, because they joined and assisted the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division 1055, a labor organization, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.¹

2. That the respondent, during the period from February 12 to February 16, 1936, interfered with the administration of the Union by preventing its officers from procuring the free, voluntary and unbiased expression of opinion from its members in regard to labor policies.

3. That the respondent, by such acts, and by sending for and hiring non-union operators in preference to available union operators, by making statements tending to discourage membership in the Union, by rewarding with promotion and other favors the discontinuance of membership in the Union, by the promotion of non-union employees over union employees of greater skill and experience, and by the employment of special agents to spy upon the union representatives, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On June 25, 1936, the respondent filed an answer to the complaint, alleging that the Act as attempted to be applied in the complaint is unconstitutional and void. It admitted the discharge of the persons named in the complaint but averred that their employment was terminated for good cause and not for the reasons alleged. It denied that it had made statements tending to discourage membership in the Union, and alleged that any statements so made by any of its agents or employees were expressions of individual unauthorized opinion. It admitted the employment of special agents, but only "to check the conduct and honesty of its employees handling its funds or coming in contact with its patrons, and that respondent pursued this policy with respect to all of its employees regardless of their membership or nonmembership in any union". The respondent also denied that it had interfered with the administration of the Union, and moved to dismiss the complaint.

¹ The complaint also included an allegation in regard to the discharge of John H. Gish, which was stricken during the hearing.

Pursuant to notice thereof, Harry Hazel, duly designated by the Board as Trial Examiner, conducted a hearing commencing on August 3, 1936, at Portland, Oregon.² The respondent and the Union were represented and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues, was afforded to all parties.³

Upon the record thus made, the transcript of the hearing, and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Trial Examiner, on September 11, 1936, duly filed an Intermediate Report, finding and concluding that the respondent, by its discharge and refusal to reemploy Hebe Dobbs, C. B. Kiesel and F. H. Woodford, and by other specified acts, had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7), of the Act. The Trial Examiner found that the complaint, in so far as it related to Harold G. Allen, and in so far as it charged the respondent with violation of Section 8, subdivision (2), of the Act, was not sustained. On the basis of his findings and conclusions, the Trial Examiner recommended that the respondent (1) cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act; (2) offer to Hebe Dobbs, C. B. Kiesel and F. H. Woodford immediate and full reinstatement to their former positions, without prejudice to any rights and privileges previously enjoyed; (3) make whole the aforementioned employees for any losses of pay they have suffered by reason of their discharge; and (4) file a report in writing with the Regional Director for the Nineteenth Region on or before September 25, 1936, setting forth in detail the manner and form in which the respondent has complied with the foregoing requirements.

On September 21, 1936, the respondent filed exceptions to the Intermediate Report, and requested the privilege of making an oral argument before the Board. Exceptions to the Intermediate Report were also filed on September 25, 1936, by the Union. On October 10, 1936, pursuant to notice thereof, a hearing was held before the Board in Washington, D. C., for the purpose of oral argument on the exceptions.

² The hearing was continued at Boise, Idaho, on August 5, 6 and 7, and was then resumed at Portland, Oregon, on August 10, 11 and 12, 1936.

³ Owing to the inability of two of the respondent's witnesses, W. H. Kuse and Herbert Goodland, to appear at the hearing, their testimony was received by means of deposition.

The Board finds nothing in the exceptions filed by the respondent and the Union, or in the oral argument at the hearing before the Board, requiring any material alteration of the Trial Examiner's findings and conclusions, except that the Board, as appears below, has reserved its decision in relation to the case of F. H. Woodford.

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

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSINESS

The respondent, Union Pacific Stages, Inc., is a corporation duly organized and existing under the laws of the State of Oregon, having its principal office in the City of Portland, County of Multnomah, State of Oregon. Its common stock consists of 10,000 shares of par value \$100 each, of which 6,500 shares have been issued. Except for the qualifying shares of the directors, all of the issued stock is owned by the Union Pacific Railroad Company, a corporation duly organized and existing under the laws of the State of Utah, having its principal office in the City of Omaha, State of Nebraska.

The respondent operates an interstate bus transportation system, extending through the States of Oregon, Washington, Idaho, Wyoming, and Utah, and transporting for hire persons, express, and mail. Terminal facilities are located in Portland, Oregon; Spokane, Washington; Boise, Idaho; Salt Lake City, Utah, and elsewhere. The Union Pacific Railroad Company operates a trans-continental railroad system between Council Bluffs, Iowa, and various points on the western coast of the United States.

The respondent maintains a joint business office at 2116 Leavenworth Street, City of Omaha, State of Nebraska, with the Interstate Transit Lines, a corporation duly organized and existing under the laws of the State of Nebraska. The stock of the Interstate Transit Lines is owned jointly by the Union Pacific Railroad Company and the Chicago & Northwestern Railroad Company. It operates an interstate bus transportation system extending from Chicago, Illinois, to Salt Lake City, Utah, and between various other points, and transporting for hire persons, express, and mail. The Interstate Transit Lines and the respondent are operated as a single unit, under the same general management.

In the regular course of the respondent's business its buses transport persons, express, and mail on a continuous journey between Salt Lake City, Utah, and Portland, Oregon. The time of arrival and departure of some of the buses operated by the respondent

and by the Interstate Transit Lines is published in the railroad time tables of the Union Pacific Railroad Company. Among the printed provisions on the aforementioned time tables is one to the effect that "Tickets good for passage over Union Pacific rail lines between any two points between which the Interstate Transit Lines or Union Pacific Stages, Inc. furnish motor bus service will be honored on motor buses".

The respondent's business is carried on through its divisional offices, which are located in Portland, Oregon; Spokane, Washington; and Boise, Pocatello and Burley, Idaho. A subdivision of the Pocatello division is located in Salt Lake City, Utah. A superintendent is in charge of each of the divisions. The respondent employs approximately 135 regular operators on its buses.⁴

It was agreed by stipulation of the parties at the hearing that the operations of the respondent "occur in the course and current of commerce among the several states and are an integral part of the operation of the instrumentalities of commerce and constitute commerce among the several states", and that "Hebe Dobbs, C. B. Kiesel, F. H. Woodford, and Harold G. Allen were, prior to their discharges on the dates alleged in complaint herein, employed as drivers and operators on the interstate motor bus transportation system of the respondent Union Pacific Stages, Incorporated, and assisted it in the continuous interstate transportation of persons, mail, and express for hire".

The Board finds that the respondent is engaged in traffic, commerce, and transportation among the several States, and that the drivers, operators, mechanics and other employees employed on the buses operated by the respondent are directly engaged in such traffic, commerce, and transportation.

II. THE UNION

Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, is a nation-wide labor organization, admitting to membership operators, ticket agents, baggagemen, and garage employees, but excluding foremen and others engaged in a supervisory capacity.

Local Division 1055 was organized among the employees of the respondent on August 13, 1934, and received its charter on November 23, 1934. Its original membership was 102, which later increased to 109. At the time of the hearing the membership had decreased to 72.

⁴ Many of the facts recited above were obtained through stipulation of the parties at the hearing.

III. RELATIONS BETWEEN THE RESPONDENT AND THE UNION PRIOR TO
THE DISCHARGESA. *Early negotiations leading to the first agreement*

The respondent was first apprised of the union activities of its employees in September or October, 1934, through the receipt of a letter from its Portland division, signed by C. W. Van Avery, an employee who later became the president of the Union. The letter indicated the intention of some of the employees to join a labor organization. R. J. Walsh, the respondent's president, stated that neither he nor T. J. Manning, the general superintendent, would go into the Portland territory while the Union was being formed. The respondent's local officials, however, did not profess to the same degree of tolerance. V. S. Clark, the assistant superintendent of the Portland division, on learning that the employees were going to demand an increase in wages, called them one after another into his office and stated that they were influenced by "radicals", and that the management would "lock the cars up in the barn" before it would accede to any such demand. Walter Kuse, the superintendent of the Portland division, questioned the employees as to their union activities, and gave them his unsolicited opinion that a wage increase was not possible.

The first meeting between the Union and the respondent occurred on February 19, 1935, at Portland, Oregon. Among those instrumental in arranging the meeting were C. W. Van Avery, the president of the Union, and Hebe Dobbs. Van Avery has been employed by the respondent as a driver since December 20, 1927, and had actively participated in the formation of the Union in August and September, 1934. Van Avery testified at the hearing that the meeting with the management was occasioned by the discharge of an employee named Warren Lampman, allegedly for union activities, and by the question of a wage increase.

The request for a conference was made by the Union on December 21, 1934, through Van Avery and C. B. Kiesel, its secretary. There was a considerable delay before the conference took place, due to the insistence on the part of the respondent's president, Walsh, that the Union prove its right to represent the employees. Finally an election was held under the supervision of the old National Labor Relations Board during the week of January 28 to February 4, 1935, to determine the matter of representation. One hundred and nine of the 135 eligible employees cast their ballots in favor of the Union, which was then certified as the sole bargaining agency. Walsh was notified of this fact, and thereupon assented to a conference.

The negotiations were conducted on behalf of the Union by William Cooper, 13th International Vice President, Hebe Dobbs, representing the employees of the Boise division, W. J. Ewing, representing the employees of the Salt Lake City division, Charles Goodman, representing the employees of the Spokane division, and Van Avery.⁵ The respondent was represented by Walsh, T. J. Manning, the respondent's general superintendent, and W. H. Kuse, who had become the assistant general superintendent. At the outset of the meeting Walsh said: "Make it snappy. I am going to Seattle tonight." When the Union proposed that any results of the negotiations should be put in writing, Walsh objected, stating that a verbal contract would suffice. He also demurred to a suggestion that notes be taken by a stenographer. However, after three days of bickering, the respondent entered into a written agreement with the Union.⁶

B. The respondent's attitude towards the Union during the existence of the agreement

About the time of the formation of the Union, the respondent ceased hiring drivers in the localities where they were needed, and began instead to recruit all of its new drivers at Omaha. The respondent has explained this change of policy on the ground that Omaha provided convenient and superior training facilities. The Union, however, contends that the respondent's aim was solely that of undermining the organization of its employees. Van Avery testified that nine drivers and three shop men were sent to the Portland division from Omaha to take the places of discharged employees, whereas no local men had been employed. The consequence of this was a lowering of the number of union members in Portland from 24 (which included all the drivers in the division) to 15. Van Avery testified further that the new drivers were invariably hostile to the Union. One of them had explained that the "Omaha boys" could not join the Union "because of the management", and because they "would lose out all around". There is also evidence, as will appear later, that the respondent's superintendents have attempted to intimidate union employees, on occasion, by threatening the Union with destruction. Finally, the credi-

⁵ Dobbs, Ewing and Goodman have since been discharged by the respondent. Cooper was not an employee. Van Avery is still in the respondent's employ.

⁶ The agreement, signed on February 23, 1935, was to remain in effect for one year, and did not provide for renewal. Its purpose was stated to be "to establish an understanding between the Company and the Union with respect to working arrangements and conditions, basic hours and scales of wages during the life of this agreement . . ." The respondent agreed to meet and deal with the duly accredited representatives of the Union on differences arising between them with respect to services and working conditions. See Respondent's Exhibit No 27.

bility of the Union's contention is bolstered by the testimony of J. D. Rigney, member of the Idaho Utilities Commission of the State of Idaho from July 1, 1929, to October 1, 1935. Rigney testified that on or about July 1, 1935, in the course of his dealings with the respondent, he was told by Herbert Goodland, the superintendent of the respondent's Boise division, that the respondent was sending non-union men into Boise fast enough to hold the Union "under control", and to render it ineffective. As a result of this conversation, Rigney advised his son, who was employed by the respondent, that no good would come of his belonging to the Union.

This attempt on the part of the respondent to undermine the strength of the Union becomes increasingly manifest because of the conduct of Walsh and Manning during this period. In November, 1935, Walsh made a tour of the respondent's divisions, and, in a series of meetings, informed the employees that he had taken steps toward securing an increase in pay, but that this was a matter with which the Union had nothing to do. He also stated that the employees had no need of a union in order to safeguard their rights, and that they were not obliged to "pay tribute". Manning had recourse to the same strategy. In July, 1935, the respondent having been advised through the Union of a grievance on the part of one of its Spokane employees, George Auld—the matter related to back pay and was clearly contemplated in the provisions of the agreement—Manning nevertheless made an adjustment directly with Auld, stating that "he didn't want anyone that was not satisfied, that the Union could not get him anything that the company could not give him". In view of the agreement which existed between the respondent and the Union, it is difficult to deduce anything from these activities on the part of the respondent's officials other than that they were attempting to circumvent the provisions of the agreement by arousing in the employees the feeling that it was superfluous to negotiate with the management through the Union. It is clear that such conduct on the part of the respondent constitutes interference with the rights of its employees guaranteed by Section 7 of the Act.

In addition to the foregoing, there was considerable testimony revealing active hostility toward the Union on the part of other of the respondent's officials. As far back as September, 1934, Goodland had warned driver Dan Gilbert that the Union would do him no good, and that he would just be throwing money away by joining. He also stated "that the company would break it (the Union) up sooner or later". He informed driver George Perry that as a result of the organization of the Union, the respondent would

formulate a book of elaborate rules, and threatened that "the first one you break, it will be too bad". In April, 1935, Goodland counseled driver Harold G. Allen that "it was not necessary to pay protection in the Union".

Driver Burnam Scrivener testified that on or about June 4, 1935, in Goodland's office, Goodland waved before him some blue slips of paper, saying: "Here is a bunch of fellows that have been fired." He then said: "I don't know whether there is such a thing as the Regional Labor Board any more," and added, "I guess you know that the N. R. A.'s knocked out." He then asked Scrivener: "Who is paying you, the Union or the Union Pacific Stages?" When Scrivener replied that he was paid by the respondent, Goodland exclaimed: "What do you want that God damned Union for, anyhow?"

Hebe Dobbs testified that Goodland had cooperated with the Union under the terms of the agreement until the National Industrial Recovery Act was declared unconstitutional, and that thereafter the cooperation ceased. Goodland discharged driver Worley without granting him a hearing, and informed Dobbs that "The N. R. A. has been thrown out, which takes that right away from you men".

The Union membership in Boise dropped from 23 to 16 while Goodland remained superintendent. He was subsequently transferred from Boise by Manning because of the numerous complaints by the union employees.

There was testimony in a similar vein regarding George Gormley, who replaced Goodland as superintendent of the Boise division. Driver Ball Thompson testified that one day in February, 1936, at two o'clock in the morning, he was requested by Gormley to reveal the contents of a questionnaire submitted to its members by the Union.⁷ Thompson said he had not seen the questionnaire, and was thereupon ordered by Gormley to secure the information by telephoning to Hebe Dobbs at once. After the call was made, Gormley said: "This is a hot spot here in Boise, and I think you and I could talk." Gormley then informed Thompson that the respondent could replace employees "as fast as they went out", and that "any time they wanted to fire a man, they could get something on him". On another occasion, Gormley told driver Knapton that he admired him for not belonging to the Union, and that the Union "would not get us any place".

At Portland, superintendent Kuse stated to driver Kiesel that in his opinion the drivers were solicited for membership by the Union

⁷ See Union's Exhibit No. 8.

only because of its need of financial support, and that "he had never worked where a labor organization had dictated to him, and that when it got to that point that a labor organization was to dictate to him, he was going to quit and find employment elsewhere". In addition, Kuse questioned the drivers in the Portland division as to how they were inclined toward the Union.

There was further testimony in this connection in regard to the discharge of driver Lampman. Lampman had been active in the organization of the Union. Early in December, 1934, as a consequence of an accident in which some damage was done to his bus, Lampman was suspended for ten days. He spent this time, together with Cooper, an official of the Union, organizing the employees in Boise. He testified that when he returned to Portland at the end of the suspension period, he was sent for by Kuse, who wanted to know what he had been doing in Boise. Lampman stated that he had been organizing for the Union. Kuse then said: "I know it, and Omaha knows it, too. They have changed their minds about that accident, and you are discharged."

The respondent has denied some of the foregoing evidence, and has sought to avoid the remainder by declaring that it is not responsible for the personal attitudes and antagonisms of its superintendents. Neither position is convincing. The abundance of the testimony, implicating practically all of the respondent's officials, indicates a concerted effort to discredit the Union as a bargaining agency. That this effort was not unproductive is evidenced by the testimony of Van Avery that the Union members became apprehensive of displaying their union buttons, and that it became increasingly difficult to induce employees to serve in an official capacity in the Union because of the fear of losing their jobs. In addition, there was a marked decline in union membership. Considered as a whole, the record discloses a consistently hostile attitude toward the Union on the part of the respondent, which is reflected in, rather than attributable to, the antagonistic attitudes of the individual superintendents.

C. The second conference between the respondent and the Union

The first agreement expired on February 23, 1936, and a second conference took place between the Union and the management on that date. At the outset, Walsh took issue with the Union on the question of seniority, and stated: "Well, you can't run business with seniority." He then took from his pocket a petition bearing the signatures of 13 employees of the Spokane division,⁸ purporting to

⁸ The total number of drivers in the Spokane division was 24 or 25.

oppose the type of seniority provision proposed by the Union. The representatives of the Union thereupon requested an adjournment of the meeting in order to investigate the attitude of the Spokane employees. Walsh retorted: "If you are going to go out and contact the men, we are certainly going to have Mr. Manning go too." Manning accordingly arrived at Spokane and interviewed about 15 drivers. The Union representative of the Spokane employees, Lester Grimm, reached Spokane after Manning's arrival, and found his fellow employees uncommunicative and changed in attitude. In one instance, Grimm testified, he had spoken to a new driver prior to the conference, and had found him friendly and sympathetic toward the Union. On his return, however, the driver refused to answer the Union's questionnaire, or even to speak to Grimm.⁹

As a result of the premature adjournment of the conference, a period of time elapsed during which there was no agreement between the Union and the respondent.¹⁰ During this period, the respondent discharged drivers Dobbs, Kiesel, and Woodford. About March 12, 1936, negotiations were resumed, and a new agreement was entered into on March 17, 1936. Further details of these negotiations will be discussed later in relation to the discharge of Hebe Dobbs.

IV. THE DISCHARGES

Witnesses for the Union testified, and it was not denied, that in the last few years the respondent has discharged an unusually large number of employees.¹¹ The respondent has explained that its policy in this regard was governed by the need of increasing the quality of its service. Superintendent Goodland testified by deposition that there had been a meeting of the respondent's superintendents in the fall of 1934, and that one of the principal subjects discussed by Manning was the need of decreasing the number of accidents on the respondent's lines. Goodland testified further that "it was necessary that we do something with these men or we couldn't continue with the company". The ensuing discharges resulted in a feeling of insecurity among the employees, which was in a large measure responsible for the growth of the Union during this period.¹²

In March, 1936, the respondent discharged Hebe Dobbs, F. H. Woodford, C. B. Kiesel, and Harold G. Allen. The complaint al-

⁹ The question of seniority was finally settled in the Spokane territory by a ballot conducted jointly by the respondent and the Union. The Union won, by a vote of 12 to 11.

¹⁰ The respondent refused a request by the Union to extend the prior agreement for 30 days.

¹¹ As has been previously testified, these were replaced by recruits from Omaha, Nebraska. Van Avery testified that about 49 drivers and three shopworkers had been sent from Omaha up to the time of the hearing.

¹² This fact was brought out by the respondent's counsel in his argument before the Board.

leges that they were discharged because they joined and assisted the Union. The respondent has denied this allegation, and has set forth other grounds for their dismissal from service. In deciding between these conflicting claims, the Board has given due consideration to the entire background of the discharges, a large part of which has already been reviewed in Part III hereof. The Board has also noted that, with the possible exception of Allen, the respondent has not contended that the discharges were occasioned by inefficiency, or in consequence of the respondent's alleged endeavor to lessen the number of accidents. In this respect, the discharges are unusual. The respondent has alleged in its answer that "Hebe Dobbs and C. B. Kiesel were discharged because of persistent rude, discourteous and improper conduct toward respondent's passengers in violation of respondent's rules and orders; that F. H. Woodford was discharged for mishandling of company funds, and for smoking while driving and while taking up tickets in violation of respondent's rules and orders; that Harold G. Allen was discharged because of his lack of capacity and judgment in handling respondent's stages, and failure to report an accident in accordance with the respondent's rules and orders".

These discharges will now be considered individually.

1. *Hebe Dobbs* was employed as a driver in the respondent's Boise division in June, 1929. His record as a driver had been good, and his ability had not been questioned. He was one of the first to join the Union, and assisted Van Avery in its organization. He was chairman of the Union committee in the Boise division, and as such participated in the conference between the Union and the management in February, 1936. On March 4, 1936, he was discharged by the respondent. Aside from a single instance of disciplinary action in March, 1932, he had received no complaints from the respondent concerning his driving during the entire period of his employment.

On March 3, 1936, Dobbs had difficulty with a passenger named Kennedy at Nampa, Idaho. Kennedy was the business agent for a traveling group of Major Bowes' performers. While boarding the bus at Nampa, he attempted to take into the bus a large case, which Dobbs prevented him from doing. Dobbs testified it was a rule of the respondent that large cases should be placed on the top of the bus.¹³ Kennedy thereupon became irritated, and asserted that "No God damned stage driver is going to tell me what to do", and added, "This is going inside or we won't go." In the course of the argu-

¹³ The case contained musical glasses which required careful handling. Dobbs testified that this fact was not explained to him until after the episode related above had occurred.

ment which ensued, Dobbs, resenting a "personal" remark made by Kennedy, told the latter either to "shut up" or to "settle" the matter immediately. Kennedy quieted down, and nothing more was said. He was friendly during the course of the ride with Dobbs from Nampa to Weiser, Idaho, a distance of 65 to 70 miles. Dobbs did not consider the incident unusual and attributed its occurrence to the temperamental nature of "show troupe people". However, when he returned on his run the next day, he was informed by fellow employees that he was "on the spot" and was "going to be fired off the territory". He was informed further that the Nampa agent, who had said to Dobbs at the Nampa depot that "he was glad, damned glad to get them (Kennedy and the troupe) out of there", had nevertheless turned in a report against him, that the management had immediately procured statements from the manager of the show troupe and from other members of the troupe who had been within hearing distance of the Nampa episode, and that the investigation was being conducted in such a thorough manner that it looked "like Dobbs was out". Dobbs submitted a report of the incident to Gormley, the superintendent at Boise, at about 10 P. M. on March 4, 1936. Gormley said he would send the report to Omaha. When Dobbs reported for his run on the following morning, he was told by a bookkeeper in the office that someone else was to take the run. On the next day Dobbs was taken out of service by Manning, who assigned as a reason that, because of the argument between Dobbs and Kennedy, the latter had refunded his tickets for the trip from Weiser to Burley, Idaho, and had taken the train instead.

It is not disputed that Kennedy did exchange the bus tickets for train accommodations. However, it was testified by L. B. Frye, an employee of the Union Pacific Railroad Company in charge of the railroad station at Weiser, that Kennedy had made inquiry in regard to transportation by train prior to leaving Nampa, and, failing to receive satisfactory information, had requested that an agent of the railroad company should meet him at Weiser. Accordingly, Frye visited Kennedy at his hotel room at Weiser. Frye testified that Kennedy was disturbed at the slow progress made by the bus on account of a "slow" order issued by the State, and that he commented on the resulting two hour delay in the journey from Nampa to Weiser. Kennedy explained to Frye that the troupe's performance was not over until late that night, and that the slow traveling by bus would necessitate an all night journey, thus rendering the troupe unfit for the next day's performance. Kennedy therefore requested that a train be made available for the troupe, and this was done after some negotiations by wire with the railroad officials at

Omaha.¹⁴ After the journey by train to Burley, the troupe thereafter travelled on the respondent's buses.

When notified of his discharge, Dobbs secured a number of statements from witnesses of the Nampa incident to the effect that he had been unduly provoked by Kennedy and had conducted himself in a commendable manner under the circumstances. These were given to Manning at the time of the resumption of negotiations between the management and the Union on March 12, 1936, and Manning told Dobbs that he would make another investigation. It was testified, however, that as the negotiations progressed, Manning, who had been entrusted by Walsh with the responsibility of concluding an agreement with the Union,¹⁵ accepted the proposal of Van Avery that Dobbs be reinstated. According to the testimony, Van Avery consented to the signing of the agreement provided that Dobbs would be reinstated "a week from Wednesday". Manning thereupon stated: "Hebe, I will do better than that; I will have you back to work by Saturday."¹⁶ The negotiations were thereupon concluded. About two weeks later Dobbs received a letter from Manning, informing him that he would not be reemployed.

At the hearing, it was testified by driver George Perry that he had been informed confidentially by Manning's assistant, Mr. Motz, that Dobbs' discharge was due to his causing the respondent all the trouble he could, and that Dobbs had been discharged at the first opportunity.

The evidence points unmistakably to the conclusion that Dobbs was discharged because of his union activity. His conspicuous position as the Boise committeeman made him an obvious target for the respondent's ill will toward the Union. After seven years of faithful service, his discharge for a doubtful fault appears to be an unduly severe consequence. It is highly improbable, in the light of the evidence, that Kennedy's use of the train facilities from Weiser to Burley was due to anything more than the superior advantages of that mode of travel under the existing conditions. The Board is satisfied from the record that the Nampa incident was seized upon as a convenient means of eliminating a troublesome leader of the Union.

2. *Carroll B. Kiesel* entered the respondent's employ on June 28, 1927, when the respondent inaugurated its service in the Portland, Oregon, region. He made the first run out of Portland, on July 1, 1927, and thereafter operated a bus between Portland and Pendle-

¹⁴ It was necessary to delay a passenger train for 20 minutes at Weiser in order to provide this accommodation.

¹⁵ The testimony reveals that he referred to the agreement as his "baby".

¹⁶ Manning denies that he acceded to any such proposal. However, the testimony was corroborated by several witnesses.

ton, Oregon, for approximately four years. He testified that during this time his relations with the respondent were entirely satisfactory. In April or May, 1931, he was transferred at his own request to "The Dalls" run, which was more difficult. When he later asked to be transferred back to the Pendleton run, the respondent refused his request on the ground that he was doing very well where he was. He remained on "The Dalls" run until March 10, 1936, when he was discharged.

Kiesel was a charter member of the Union, and was elected to the office of secretary-treasurer. He wore his membership button in plain view on the lapel of his coat. As an official of the Union, he signed the first letter to the management in December, 1934, requesting a conference. Soon thereafter, Superintendent Kuse, as has already been set forth, questioned Kiesel closely about the Union. In January, 1935, Kuse, noticing the union button on the lapel of Kiesel's coat, asked him who had given him permission to wear it.

On March 10, 1936, Kiesel was summoned to the respondent's office and was informed by Manning that he was to be taken out of service. Manning stated that he could not retain a man of Kiesel's "disposition and actions" in the employ of the respondent and cited three instances of alleged discourtesy to passengers. Kiesel testified that the culminating incident of discourtesy upon which his discharge was allegedly based occurred in December 1935. Kiesel testified further that he had no knowledge of two of the alleged incidents and that the third was merely a case of his joking with a passenger. He had been reprimanded by Manning about four years before this for what Manning termed a habit of "cutting people awfully short" in his answers and also in 1930, when Manning admonished him to avoid arguments with motorists. About a year prior to his discharge Kiesel had been reprimanded by Kuse for discourtesy to a passenger in Portland. On the other hand, in January, 1936, Kuse had complimented Kiesel, saying: "Buzz, I am getting some mighty nice reports about the way you are handling things on your run." Kiesel had also been told by Clark, the assistant superintendent at Portland, that he was one of Clark's best men.

The testimony in regard to Kiesel's discharge thus reveals a sudden change in attitude on the part of the respondent. Although Kiesel had been reprimanded for discourtesy on more than one occasion, his employment continued uninterruptedly for nine years. After the last reprimand, he had received a compliment from Kuse in reference to his work. For several months thereafter he was informed of no further complaints, and was then peremptorily dis-

charged. The Board, having reviewed the entire record, finds that Kiesel's discharge was motivated by his activity in the Union.

3. *Harold G. Allen* was employed by the respondent on April 10, 1934, as a garage worker in the Boise division, and became a driver on April 15, 1935. On this occasion, Goodland informed him that it would be unnecessary to join the Union, or to pay for "protection". On August 2, 1935, Allen drove his bus through a blocked-off street in Gooding, Idaho, and damaged a stretch of new concrete curbing. He failed to report the accident to the respondent, and testified that he had not realized he had caused damage. When questioned by the respondent, he offered to resign, but was retained as a driver. He then became a member of the Union, and wore a union button. In November, 1935, he called on Superintendent Gormley in the company of Dobbs to make a complaint in regard to his salary.

On March 31, 1936, a bus driven by Allen was forced off the road and into a ditch by an oncoming truck. There was no damage to the bus, and no injury to the 19 passengers, but Allen was unable to get the bus back on the road. Although he was 17 miles from the nearest town and about three miles from a telephone, the evidence indicates that Allen could have sent word of his predicament to the respondent by means of passing motorists. Instead, Allen chose to await the arrival of the bus coming in the other direction. The latter bus was late, and the respondent was therefore unable to send a relief bus until five and a half hours had elapsed. Allen was immediately withdrawn from service as a driver.

After a review of the evidence, the Board is satisfied that the respondent discharged driver Allen for reasons which it deemed adequate and necessary for the efficiency of its service. There is no evidence that the respondent was motivated by Allen's activities in the Union.

4. The case of *F. H. Woodford* has been reserved for further consideration by the Board, and will be disposed of in a subsequent decision.

V. CONCLUSIONS IN RESPECT TO THE UNFAIR LABOR PRACTICES

In accordance with the foregoing findings of fact, the Board concludes that the respondent has discriminated with respect to the hire and tenure of employment of Hebe Dobbs and Carroll B. Kiesel for the purpose of discouraging membership in the Union. The discharge of these employees, however, is only one manifestation of the respondent's intolerance of the Union. The record discloses a series of threats, intimidations and subterfuges by the respondent from the

time it was first aware of the Union's existence, directed toward hindering effective organization of its employees. This is in violation of the Act. The right to self-organization and to bargain collectively must be free from interference with and restraint of any kind by the employer.

The Board finds that the respondent, by the acts above set forth, has interfered with, restrained, and coerced 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 purposes of collective bargaining and other mutual aid and protection as guaranteed in Section 7 of the Act.

The Board finds further that the aforesaid acts of the respondent tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The record does not sustain the allegation contained in the amended complaint that the respondent has violated Section 8, subdivision (2) of the Act, and the complaint in so far as it relates to this allegation will be dismissed. The complaint will also be dismissed with respect to the discharge of Harold G. Allen.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding the Board finds and concludes as a matter of law:

1. Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division 1055, is a labor organization, within the meaning of Section 2, subdivision (5), of the Act.

2. By discriminating in regard to the hire and tenure of employment of its employees, thereby discouraging membership in the labor organization known as Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division 1055, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivision (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 and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1), of the Act.

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

ORDER

Upon the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Union Pacific States, Inc., and its officers and agents, shall:

1. Cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of their rights 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 purposes of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

2. Cease and desist from in any manner discouraging membership in Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division 1055, or any other labor organization of its employees, by discriminating in regard to hire and tenure of employment or any term or condition of employment, or by threats of such discrimination.

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

(a) Offer to Hebe Dobbs and Carroll B. Kiesel, and each of them, immediate and full reinstatement, respectively, to their former positions, without prejudice to their seniority or other rights and privileges previously enjoyed;

(b) Make whole Hebe Dobbs and Carroll B. Kiesel, and each of them, for any losses of pay they have suffered by reason of their discharge by payment to them, respectively, of a sum of money equal to that which each of them would normally have earned as wages during the period from the date of the severance of his employment to the date of such offer of reinstatement, computed according to the average weekly earnings of each for six months immediately preceding such discharge, less the amounts, if any, which each earned during such period;

(c) Post notices in conspicuous places in all of the respondent's divisions, stating (1) that it will cease and desist as aforesaid; and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

And it is further ORDERED that:

4. The complaint be, and it hereby is, dismissed with respect to the discharge of Harold G. Allen, and with respect to the allegation in the complaint charging the respondent with violation of Section 8, subdivision (2), of the Act.

5. The decision of the Board in the case of F. H. Woodford be, and it hereby is, reserved for further consideration.

[SAME TITLE]

SUPPLEMENTARY DECISION

April 2, 1937

On December 19, 1936, the Board issued its Decision in this matter finding that the respondent by the discharge of two of its employees, Hebe Dobbs and Carroll B. Kiesel, because of their activities in the Union, and by other acts directed toward hindering the effective organization of its employees, had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and (3), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act, 49 Stat. 449. The Board ordered that the respondent (a) offer to Hebe Dobbs and Carroll B. Kiesel immediate and full reinstatement to their former positions, and (b) make whole the said Hebe Dobbs and Carroll B. Kiesel for any loss of pay they had suffered by reason of their discharge. The complaint was dismissed as to the discharge of another employee, Harold G. Allen, because of lack of evidence that his discharge was motivated by his activities in the Union. The case of a fourth employee, F. H. Woodford, was reserved for further consideration by the Board.

Upon the entire record in the proceeding, the Board makes the following additional:

FINDINGS OF FACT

Woodford had been employed by the respondent as shop mechanic and had been discharged on February 12, 1932, because of alleged personal difficulty with the police in Nampa, Idaho. He was reemployed on June 21, 1935, as a driver in the Boise, Idaho, division of the respondent's line. At the time of his reemployment, Woodford promised T. J. Manning, the respondent's general superintendent, that he would "try and make good". As in the case of other employees, he was informed by Herbert Goodland, the superintendent of the Boise division, that it was unnecessary to join the Union in order to get along with the management. Nevertheless, he joined the Union soon after it was formed, and wore his union button on the belt of his uniform.

On March 9, 1936, Woodford was summoned to the office of the superintendent in Boise by Manning, and was charged with three violations of the company's rules. The first concerned his smoking

while on duty, and was dismissed by Manning, according to Woodford, as trivial. The second had to do with the alleged tampering with a governor on the motor of Woodford's bus, and was denied by Woodford. The third charge was regarded by Manning as of a more serious nature and concerned the failure of Woodford to account to the respondent for a 60 cent fare collected on January 21, 1936. This offense was admitted by Woodford, and resulted in his being discharged. At the hearing, Woodford acknowledged that he received the fare, but testified that because of traffic conditions he had been in a hurry, had misplaced the fare in his pocket, and had thus inadvertently neglected to account for its receipt in his report. However, according to his further testimony, he found the money in his pocket on the following day, and repaid the respondent through the purchase of a ticket for the amount of the unreported fare. He said nothing at the time to either Manning or the local superintendent.

When notified of his discharge, Woodford appealed to Manning for his retention in service. Manning declined to assist him in this regard, but arranged instead for Woodford's employment by the Interstate Transit Lines, at Las Vegas, New Mexico, which is affiliated with the respondent. According to Woodford, Manning commented: "You ought to get along all right down there; there is no Union down there." However, prior to the time set for his departure to Las Vegas, Woodford got into further difficulty for allegedly destroying property in a cafe at Pendleton, Idaho, and was notified by Manning that he was no longer wanted.

The Board is impressed by the lapse of time between the alleged misconduct of Woodford and his eventual discharge—the respondent had knowledge of Woodford's action through the report of its agent on January 21, 1936¹—and by the testimony relating to his chances of getting along in Las Vegas because "there is no Union down there." These facts are given added significance by the circumstance that Woodford's discharge occurred at approximately the same time as the discharges of Dobbs and Kiesel.² On the other hand, Manning has explained the delay in discharging Woodford by his testimony that it was his custom to speak with drivers charged with offenses of the kind alleged against Woodford before taking any action, and that the matter was therefore delayed until his next trip to the Boise division. This explanation, under the circumstances, is plausible. Furthermore, there is no evidence that Woodford's activities in the Union were such as to attract the attention of the respondent.

¹ Respondent's Exhibit No. 26.

² Dobbs was discharged on March 4, 1936, and Kiesel on March 10, 1936.

The Board finds that, while the matter is not entirely free from doubt, there is insufficient evidence to warrant the conclusion that Woodford was discharged because of his activity or membership in the Union.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding the Board makes the following additional findings and conclusions as a matter of law:

1. The respondent, by its discharge of F. H. Woodford, did not discriminate in regard to the hire and tenure of employment of its employees to discourage membership in a labor organization, within the meaning of Section 8, subdivision (3), of the Act.

2. The respondent, by its discharge of F. H. Woodford, did not interfere with, restrain or coerce 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, within the meaning of Section 8, subdivision (1) 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 complaint be, and it hereby is, dismissed with respect to the discharge of F. H. Woodford.