

IN THE MATTER OF HILL BUS COMPANY, INC. and BROTHERHOOD OF  
RAILROAD TRAINMEN, ROCKLAND LODGE NO. 329, SPRING VALLEY,  
NEW YORK

*Case No. C-141.—Decided May 3, 1937*

*Motor Bus Industry—Interference, Restraint or Coercion:* expressed opposition to labor organization, threats of retaliatory action; discrediting union; questioning employees regarding union affiliation and activity—*Company-Dominated Union:* initiation and sponsorship; domination and interference with formation and administration; check-off agreement with; closed shop agreement with; discrimination in favor of in employment; coercion to join; soliciting and encouraging membership in; disestablished as agency for collective bargaining—*Discrimination:* discharges pursuant to closed shop agreement with company-dominated union; for union membership and activity—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. David A. Moscovitz* for the Board.

*Messano & Messano*, of Jersey City, N. J., for respondent.

*Isserman & Isserman*, by *Mr. Sol D. Kopelsohn* and *Mr. Abe Isserman*, of Newark, N. J., for the Brotherhood.

*Mr. Wallace B. Berkowitz* and *Mr. James J. Harkins*, of Jersey City, N. J., for Hudson Bus Transportation Drivers' Association.

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

## DECISION

### STATEMENT OF CASE

Upon charges duly filed by Brotherhood of Railroad Trainmen, Rockland Lodge No. 329, hereinafter referred to as the Brotherhood, the National Labor Relations Board, by John D. Moore, Acting Regional Director for the Second Region (New York, New York) issued its complaint, dated October 6, 1936, against Hill Bus Company, Inc., Westwood, New Jersey, hereinafter referred to as the respondent. The complaint, as amended, alleged that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act. The complaint and notice of hearing thereon were duly served upon the respondent and the Brotherhood.

The allegations of the complaint, as amended, are as follows:

1. That the respondent, a New Jersey corporation, owns and operates a motor bus transportation system and is engaged in commerce among the several States;

2. That the respondent, during the period from August 19 to August 25, 1936, discharged and thereafter refused to reinstate Chester Thomas, Hugo Weisslader, Ralph Suter, Charles Hollingsworth, Arthur LeStrange,<sup>1</sup> John O'Boyle, Archie Dunn, Henry Holzenthaler, Harry Rever,<sup>2</sup> Howard Matthews, Hewitt Dunn, Frank Harrison, Leroy Sassenscheid, James Lynch, Arthur Riha, Herbert Kimber, Mervyn Brown, and Gilbert Grace, all employees of the respondent, because they joined and assisted the Brotherhood of Railroad Trainmen, Rockland Lodge No. 329, a labor organization, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

3. That the respondent has dominated and interfered with the formation and administration of, and has contributed support to, a labor organization of its employees known as the Hudson Bus Transportation Drivers' Association, hereinafter referred to as the Association.

4. That the respondent, by such acts, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On October 22 and October 30, 1936, the respondent filed answers to the complaint and to the amended complaint, respectively. It admitted the allegations of the complaint with reference to its business, and admitted the discharge of the employees named in the complaint. It averred, however, that it discharged Chester Thomas, Hugo Weisslader, Ralph Suter, and Charles Hollingsworth because they had violated the respondent's rules, and the remainder because of their failure to retain their membership in the Hudson Bus Transportation Drivers' Association. It alleged that it was bound by an agreement with the Association to employ only regular members of the Association, and that it was precluded from reinstating the discharged employees by reason of an order of the Court of Chancery of New Jersey restraining the respondent "from taking any action whatsoever effecting injury, or destroying the rights of the . . . Association". It denied the allegations in the complaint in respect to the illegal relations between the respondent and the Association. Finally, it challenged the constitutionality of the Act and moved that the complaint be dismissed.

Pursuant to notice, a hearing was held in New York City from October 26 to November 19, 1936, before Walter Wilbur, the Trial

<sup>1</sup>The name of Arthur LeStrange was stricken from the complaint at the hearing.

<sup>2</sup>This name appears in the transcript of the testimony as Harry Reaver. However, in the proceedings between these employees and the respondent in the courts of New Jersey this name is spelled as it appears in the Board's complaint, and this spelling will be retained throughout the decision.

Examiner duly designated by the Board. All parties were represented by counsel and participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues.

At the commencement of the hearing, the respondent contended that the Board was without jurisdiction because of a prior proceeding between the same parties, pending in the Court of Chancery of New Jersey. This contention was overruled by the Trial Examiner. Exceptions were made by the respondent to this and other rulings of the Trial Examiner during the course of the hearing. The Board finds no prejudicial error in any of the Trial Examiner's rulings at the hearing and they are hereby affirmed.

On December 1, 1936, the Board, acting pursuant to Article II, Section 37 of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the proceeding to be transferred and continued before it.

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

#### FINDINGS OF FACT

##### I. THE RESPONDENT AND ITS BUSINESS

The respondent, Hill Bus Company, Inc., is, and has been since September 20, 1934, a New Jersey corporation having its principal office and place of business in Westwood, New Jersey. Ernest Capitani is the president and owner of a majority of the stock of the respondent, and is in complete charge of its operations. Capitani is also the president of five or six other bus lines located in New Jersey and New York, hereinafter referred to as the Capitani lines.

The respondent operates an interstate motor bus transportation system extending from Westwood, New Jersey, to New York City, and transports passengers for hire between various points in New Jersey, and between New Jersey and New York City. Its activities are admittedly interstate in character and subject to the regulations of the Interstate Commerce Commission. It maintains a garage in Westwood, New Jersey, and owns and operates approximately ten buses, employing about 20 drivers, three mechanics and two cleaners. The persons named in the complaint are all bus drivers engaged in the course of both the intrastate and interstate business of the respondent.

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

## II. THE LABOR ORGANIZATIONS INVOLVED

A. *The Brotherhood*

The Brotherhood of Railroad Trainmen, organized on September 23, 1883, is a labor organization having approximately 900 lodges in the United States, Canada, and Newfoundland, and a reported membership of approximately 116,274.<sup>3</sup> Rockland Lodge No. 329 was organized by the employees of three of the companies of which Capitani is president, Rockland Transit Co., Rockland Coaches Inc., and Spring Valley Motor Coach Co., and has contracts with these companies in respect to rates of pay, wages, hours of employment, and other conditions of employment. On about August 16 or 17, 1936, 19 of the respondent's drivers (18 of whom are named in the complaint) also became members of the organization.

B. *The Association*

Hudson Bus Transportation Drivers' Association is a labor organization which has been in existence approximately five years. Membership in the Association is limited to the employees of the Capitani lines. Bernard F. Johnson,<sup>4</sup> who has been employed by the Hudson Bus Transportation Company for 12 years<sup>5</sup> and is the president of the Association, testified that the Association had its origin upon the expiration of an agreement between that company and International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, Local 461. Within a month of the termination of this agreement, the Association was organized and entered into negotiations with the Hudson Bus Transportation Company on behalf of the drivers in its Jersey City garage. Johnson testified further that similar organizations sprang into being at approximately the same time on every independent bus line in Hudson County, New Jersey. Although these numerous organizations are not affiliated in one central body, they nevertheless conduct joint meetings for the purpose of discussing "each one's troubles". The matters considered at these joint meetings include the grievances of members of the organizations toward their employers and the provisions of proposed agreements between the organizations and the various bus companies in Hudson County.

<sup>3</sup> These figures are obtained from the *Handbook of American Trade-Unions*, 1936 Edition, Bulletin No 618, an official publication of the United States Department of Labor, Bureau of Labor Statistics.

<sup>4</sup> Johnson testified that his father was a supervisor of buses in Hudson County, New Jersey, with authority to grant and revoke the licenses of bus owners and operators.

<sup>5</sup> Capitani was associated with the Hudson Bus Transportation Company during this entire period.

At its inception, the membership of the Association numbered 20 drivers. Its meetings were held irregularly in the Jersey City garage of the Hudson Bus Transportation Company. Although it elected officers and entered into agreements with the company which were renewed yearly, up to April, 1936, it had adopted neither a constitution nor by-laws. In March, 1936, the employees in the Englewood garage of the Hudson Bus Transportation Company became members of the Association. Thereafter the Association held monthly meetings in a store-house in the rear of the Jersey City garage, which had been designated for the use of the Association by Capitani. At the time of the hearing, the Association had approximately 57 members, and had entered into agreements with the Hudson Bus Transportation Company<sup>o</sup> and the respondent.

### III. RELATIONS BETWEEN RESPONDENT AND THE ASSOCIATION

When the controlling interest in the respondent was purchased by Capitani in July, 1935, none of the respondent's employees were affiliated with a labor organization, although the record discloses that at a prior date an unsuccessful attempt had been made to organize and maintain a benefit association. During the early part of 1936, efforts on the part of the Brotherhood to organize the respondent's employees also failed, as will be described later.

#### *Early efforts of the respondent on behalf of the Association*

In January, 1936, shortly after it had come to the attention of the respondent that the Brotherhood was seeking to secure members among its employees, Michael Dellatorre, the respondent's superintendent, warned several of the employees against participation in union activities. Although Dellatorre has denied the charges of the Brotherhood in this connection, the convincing testimony of numerous employees precludes any doubt as to Dellatorre's active hostility toward that organization. Ralph Suter, employed by the respondent as a driver for a year and a half, was discharged by Dellatorre in January, 1936, because, in the opinion of Dellatorre, Suter was "dissatisfied" with his position. Suter subsequently regained his place, having first ascertained from Edward Murray, the respondent's treasurer, that his discharge had been occasioned by a report to the respondent concerning his activities on behalf of the Brotherhood. Suter testified that Capitani also made reference to his union activities, asserting that a union was undesirable "because it would back him up against the wall". Hewitt Dunn, employed as a driver for three and a half years, testified that at the time of Suter's discharge, Dellatorre asked for information concerning any-

<sup>o</sup> Separate agreements were drawn for the Englewood and Jersey City garages, respectively. See Respondent's Exhibits Nos. 5 and 6.

one who talked of union activity or of joining the Brotherhood, and asserted "it would be a bad thing" if any of the employees should become members of the organization. Mervyn Brown, employed by the respondent for about four years, gave evidence of a similar nature. Harry Rever, who had been employed by the respondent for 19 months, testified that in January, 1936, Dellatorre said to him: "Well, Harry, you know I had buses years ago down in Jersey City, and my men joined a union and what good did it do them? It didn't do them any good, because I cut the runs down and instead of making what they did before they went to the union, they made only half. The best thing for you to do is to keep your nose clean and keep out of the union."

At the same time that Dellatorre discouraged the efforts of the Brotherhood, he also ripened sentiment among the employees for the introduction of the Association. He began by acquainting several of the drivers with the advantages of an organization which would provide for employees during periods of illness. Although Dellatorre insists that this was his sole purpose in speaking to the employees, the evidence is clear that he went much further. John O'Boyle, employed by the respondent for two and a half years, testified that as early as January, 1936, in a conversation relating to health insurance, Dellatorre suggested that the employees needed something similar to the "nice little association down in Jersey City", adding that "when they want things from Capitani, they go and get it". In March, 1936, Dellatorre instructed Arthur Riha, an employee who had been with the respondent for two years, to place a notice on the bulletin board of the Westwood garage calling the employees to a meeting for the purpose of discussing Dellatorre's suggestions. Riha, after discussing the matter with fellow employees, declined to post the notice on the ground that the employees did not desire a benefit association. Dellatorre thereupon prepared his own notice, dated April 1, 1936, which appeared in the Westwood garage as follows:

"TO ALL OPERATORS

"During the present illness of one of our operators Frank Jolosky a thought has come to my mind that the operators of this company should band together and form some sort of a Mutual Benefit Organization among themselves, to assist each other in time of illness as I know from my observations that none of the operators can afford to be out any length of time without suffering to themselves and to their families.

"I have a number of plans in mind and I would gladly assist you in starting an organization of this kind for your mutual benefit.

"All operators who are interested in an organization of this type will kindly sign their names below. Every operator should be interested in this.

"M. A. DELLATORRE"<sup>7</sup>

That the admonition contained in the last sentence of the notice was heeded is evidenced by the fact that 19 employees signed in spite of the previous statements of many of them to Riha that they did not want another benefit association.

After the events described above, no further reference was made to the subject of benefit organizations. Instead, Dellatorre directed Riha to visit Johnson at the Jersey City garage of the Hudson Bus Transportation Company. Dellatorre, in his testimony, disclaimed any responsibility for Riha's visit to Johnson, and asserted that he was in fact unaware at the time of the existence of the Association and of Johnson's connection with it. However, he admitted that he knew there was an organization of the employees of the Jersey City line, and testified that he had known Johnson for a period of about 30 years. Furthermore, Dellatorre was aware that the organization in Jersey City was not a benefit organization, since, prior to his position with the respondent, he had made an unsuccessful effort to induce the Association to purchase health insurance for its members. In the light of this evidence, Riha's testimony, and the testimony of numerous witnesses to the effect that Dellatorre had made frequent reference to the Jersey City organization, we are satisfied that Riha was sent to Johnson by Dellatorre with the purpose of inviting the Association to organize the respondent's employees.

Riha was accompanied in his visit to Johnson by Herbert Kimber, an employee of the respondent for over three years. Kimber, acting as spokesman, questioned Johnson about the Association, and was informed that the Association did not provide for sick benefits, but intended to do so when it had sufficient funds in its treasury. However, any doubts Kimber might have entertained were soon set at rest by Johnson, who stated that he had himself intended to visit the respondent's garage to organize the respondent's employees, and assured Kimber that there would be no trouble with Capitani, who "knew all about the Association". Johnson asked no questions of Kimber concerning the latter's right to represent the respondent's employees, and testified that he took this authorization for granted. At the close of the interview, Kimber departed with a copy of the agreement between the Association and the Hudson Bus Transportation Company for the Englewood garage as an example of what might be accomplished, and with the understanding that Johnson was to come to Westwood in order to explain the workings of the Association to Kimber's fellow employees.

<sup>7</sup> Respondent's Exhibit No. 3.

On the week following Kimber's visit to Jersey City, Johnson, Robert Wenck, the secretary of the Association, and Jack Kerr, another officer of the Association, came to Westwood. Their coming was announced by a notice of a meeting placed on the bulletin board by Kimber. At the meeting, which was attended by 10 or 12 employees, Johnson produced a copy of the constitution and by-laws of the Association, which Kimber read aloud. A short discussion followed, but was brought to a hasty conclusion because of the necessity for the drivers to resume their work. Finally Kimber, left alone with Johnson, Wenck, and Kerr, was directed by Wenck to proceed to collect the dues. It was also agreed that Kimber should take care of the adjustment of the grievances of the Westwood employees. Johnson then entered the respondent's office, and returned with a complete list of the respondent's employees for Kimber's use.

A week later, a second meeting was held by Johnson, Wenck, Kimber, and six or seven employees, in the respondent's garage. On this occasion, Wenck gave Kimber a set of dues cards for all of the respondent's drivers, and instructed Kimber to collect the dues, which amounted to \$1 per month, on the first pay day of each month. It was taken for granted that all of the employees would become members of the Association, and Kimber subsequently did in fact collect dues from all of them. Kimber testified that after the first dues collection, he arranged with the respondent's bookkeeper that this sum should be deducted monthly from each driver's pay.

Prior to the collection of dues, Kimber drafted an agreement for the use of the Association in negotiating with the respondent on behalf of its employees. Kimber then gave Johnson two copies of this instrument, the essential features of which were taken from the agreement with the Hudson Bus Transportation Company for the Englewood garage, and requested that Johnson arrange a meeting with Capitani. Pending the completion of these arrangements, Kimber recruited 18 of his fellow employees for the Association. Finally, after some delay, a meeting was held on May 12 or 13, 1936, between the respondent, represented by Capitani, and the Association, represented by Johnson, Kimber, and Rever. The negotiations were brief, and after a short discussion in regard to the rates of pay specified in the proposed agreement, resulting in some minor alterations in the draft, the agreement was signed.<sup>8</sup> It contained the following provision:

"1. No man will be permitted to operate a bus who is not a member of the Hudson Bus Transportation Drivers Association."

<sup>8</sup> See: Respondent's Exhibit No. 2. The agreement was made retroactive, reciting that it was to run for the period of one year from May 1, 1936, to May 1, 1937.

In spite of the obvious importance of these events to the respondent's employees, no move was taken by the Association toward notifying them of their new rights and duties. Kimber made mention of the new agreement to some of the employees in chance conversations, but called no meeting of the employees as a body to discuss its provisions. It remained for Dellatorre, at a routine "safety" meeting of the employees conducted by the respondent, to announce that the agreement was in force, and to read it aloud. Dellatorre also announced that all grievances were to be adjusted through Kimber.

In this manner the undertaking initiated by Dellatorre was brought to a successful culmination in the establishment of the Association as a labor organization with a closed shop agreement with the respondent. Kimber has testified that his participation in this enterprise was unauthorized by his fellow employees, an admission which is fully borne out by the evidence. At no time was Kimber designated by the respondent's employees as their representative either to explore the problem of organization with Johnson or to negotiate with Capitani. The signatures appended to Dellatorre's notice in the early part of April, 1936, indicated at the most the interest of the employees in the formation of a benefit organization, and not in the formation of the Association.

Furthermore, the record discloses that many of the employees joined the Association in April, 1936, under compulsion. Rever testified that he joined the Association when Kimber said he would have to join if he wanted to keep his job. James Lynch, employed by the respondent since August, 1932, resisted the demands made upon him by Kimber for dues until he was told by Dellatorre: "What is the matter, Jimmie? I hear you are not going to go along with the rest of the boys? . . . I hear the rest of the boys are going into the Hudson Bus Drivers Association . . . If the rest of the boys join, you have to join. This is going to be a closed shop." These incidents occurred prior to the signing of the agreement. Frank Harrison, employed by the respondent for over a year, testified that at the "safety" meeting in May, 1936, Dellatorre, in assisting Kimber to collect dues, stated: "You either pay it or you don't go to work." This testimony was corroborated by Gilbert H. Grace, employed by the respondent for over three years. Hewitt Dunn testified that he knew he was joining a union "run under the company." It is evident that under these circumstances, the employees joined the Association through fear rather than through self determination.

We have repeatedly held in previous decisions that the formation and administration of labor organizations are the concern of employees, and not of employers. Section 7 of the Act provides that "Employees shall have 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.” Section 8, subdivision (1) of the Act provides that it shall be an unfair labor practice for an employer to “interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.” Section 8, subdivision (2), of the Act provides that it shall be an unfair labor practice to “dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.” The application of these sections of the Act to a situation such as exists in this case is illustrated by *Matter of Ansin Shoe Manufacturing Company and Shoe Workers’ Protective Union, Local No. 80*,<sup>9</sup> decided June 12, 1936, where we said:

“The charge against respondent is that it dominated and interfered with the formation and dominates and interferes with the administration of the progressive union and contributes financial and other support to it. Sidney Ansin (treasurer and general manager of the respondent), testifying at the hearing, sought consistently to give the impression that respondent was purely passive in all the events described above; it did not call the meetings, write the by-laws, or propose the form of the new organization. It did not, in other words, actively take a part in initiating or forming the specific organization here attacked.

“We do not so narrowly interpret section 8, subdivision (2), of the Act, as to require this direct and immediate link between the employer and the out-lawed organization. This section does not stand alone; its meaning is derived not solely from its words but from related sections and from the purposes of the Act. This section makes specific one of the ways in which an employer can interfere with the broad right of the employees under section 7 to bargain collectively through representatives of ‘their own choosing’, and is to be construed so as to further the intention of section 7. Its object is to protect the rights of employees from being hamstrung by an organization which has grown up in response to the will and the purposes of the employer, an organization which would not be, in the sense of section 7, an organization of the employees’ choice. The workers may be aware of their employer’s antipathy to union organization and seek to propitiate him by acceptable conduct. This may be unavoidable. But the employer can be prevented from engaging in overt activity calculated to produce that result. If labor organizations are to be truly representative of the employees’ interest, as was the intention of Congress as embodied

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<sup>9</sup> I. N. L. R. B. 929.

in this Act, the words 'dominate and interfere with the formation of any labor organization' must be broadly interpreted to cover any conduct upon the part of an employer which is intended to bring into being, even indirectly, some organization which he considers favorable to his interests."

These principles are applicable here; in fact, the participation of the respondent in the organization of its employees in the instant case was more direct. The successful organization of the respondent's employees by the Association was almost entirely due to the intervention and solicitation of employees by the respondent's supervisor, Dellatorre. Proceeding sometimes with caution and subtlety, but often fostering his design with abrupt warning as to the consequences of non-conformity, Dellatorre succeeded in erecting a barrier against the influence of the Brotherhood, and in herding the employees into the safe pasturage afforded by the closed shop agreement between the respondent and the Association. The respondent has thus substituted its will for the freedom of choice guaranteed to its employees by the Act. We find, therefore, that the respondent has dominated and interfered with the formation of the Hudson Bus Transportation Drivers' Association.

#### IV. EVENTS LEADING TO THE DISCHARGES

The effect of belonging to an organization not truly representative of their aims soon became manifest in the dissatisfaction of the respondent's employees with the Association. Kimber testified that grievances arose immediately concerning the failure of the respondent to pay the rates specified in the agreement, but that he was powerless to adjust them with the respondent either through his own efforts or through the Association. The complaints were so persistent that Kimber, according to his testimony, would have resigned from the Association had it not been for his fear of losing his job. The grievances were discussed at the meetings of the Association in June and August, 1936, the July meeting having been postponed when an insufficient number of members attended.<sup>10</sup> Johnson testified that at the close of each meeting he visited Capitani in an effort to secure an adjustment of the complaints.<sup>11</sup> However, he made no list of the grievances or other matters which he discussed with Capitani, nor any record of adjustments made, and made verbal reports to the employees. This procedure in no way served to allay the prevalent discontent.

<sup>10</sup> Inasmuch as the respondent's employees work in shifts, the attendance at these meetings was always limited, and they were conducted whether a majority of the members was present or not.

<sup>11</sup> The evidence disclosed that Capitani was always in the vicinity of the meetings when they were held, although he did not attend.

In consequence of the circumstances thus described, all of the respondent's drivers with the exception of Frank Jolosky joined the Brotherhood on August 16 and 17, 1936. The effect of this move upon the respondent and the Association was electric. Dellatorre learned of what had occurred on August 18 through one of the shop employees, and immediately conveyed the information to Capitani. Dellatorre then boarded Kimber's bus and demanded to know how many of the drivers had affiliated with the Brotherhood. Kimber testified that Dellatorre "seemed mad". On the same day, the respondent held a meeting of its employees, attended by Capitani, Dellatorre, Johnson, Wenck, and about 15 drivers, on which occasion each driver was requested to declare whether he was a member of the Brotherhood. As to what occurred at this meeting Johnson testified as follows:

"At the discussion at that meeting they (the employees) were satisfied with the wages, they were satisfied with the working conditions, but they were not satisfied with the representation and the representative in that barn was Herbie Kimber. I didn't appoint him, the men said they didn't elect him. He was the spokesman for the group, he was the spokesman that came to my house, and I took it for granted that the men put him there, him and Riha, they said they didn't elect him, and I don't know if they did or not."

According to the testimony of several employees, Johnson asserted that there would have been no trouble had Dellatorre lived up to the agreement and the rules of the Association. No action of any sort was taken at the meeting and it was testified by Riha that Capitani remarked at its close

"That he would not really hold it against us for joining the Brotherhood, but we could continue on with our work and that would be all there would be to it."

It was also testified that Capitani informed his employees that they would have to find another place to hold their meetings in the future.

After the meeting, on the same evening, Dellatorre discharged Chester Thomas. On the next day, August 19, several of the respondent's employees noticed that new men were being broken in on Jolosky's bus. On August 20, Riha, who was talking to a Public Service<sup>12</sup> driver in his bus, was accosted by Capitani, who, mistaking the identity of the strange driver, said: "If I ever catch a Rockland driver<sup>13</sup> in the bus with you I will split your both heads open." Riha testified that subsequent to this Capitani followed him

<sup>12</sup> A rival Company.

<sup>13</sup> I e., a member of the Brotherhood.

with his automobile. On the same day, Dellatorre discharged Ralph Suter and Hugo Weisslader. On August 22, Dellatorre also discharged Charles Hollingsworth. On August 24 and 25, the remainder of the employees who had joined the Brotherhood were discharged as they came to work. We will now consider these discharges.

#### V. THE DISCHARGES

As above stated, the respondent proceeded to discharge its employees who were members of the Brotherhood immediately upon ascertaining definitely the extent of their activity in that organization. It is clear from the record that the summary dismissals on August 24 and 25, 1936, were the result of the insistence of the Association that the respondent abide by the terms of the agreement. Dellatorre has testified in this connection that he was instructed to discharge the employees by Capitani on August 24. The conversation and the attendant circumstances, as related by Dellatorre, were as follows: "Mr. Capitani came up to Westwood . . . 'Mike', he says, 'You had better get the things ready for tomorrow morning'. I said, 'What do you mean?' He said, 'Johnson told me we have got to let the men go', so I said, 'All right, why do we have to let them go?' He said, 'It is due to the fact that they have violated their contract, the by-laws whatever they have,' and he says, 'They have got to be let go.' So I said, all right, and we both sat down, and we arranged the schedule for the following morning. The next morning I come in and I told the men one by one just what was what and said their places were taken by organization men." This evidence was corroborated by Johnson, who testified that he had warned Capitani against any violation of the agreement. Johnson also testified that he had instructed Capitani on August 21 to break in new drivers preparatory to the replacement of the employees who were members of the Brotherhood, and had himself supplied men for this purpose.<sup>14</sup> Johnson testified further that on August 21, at a special meeting of the Association attended by the drivers of the Englewood and Jersey City garages of the Hudson Bus Transportation Company, it was resolved that the respondent's employees would be expelled from the Association unless they resigned from the Brotherhood.<sup>15</sup> On August 24, Johnson notified Capitani for the first time that the members of the Brotherhood

<sup>14</sup> The drivers whom Johnson supplied were members of the Association who worked as "extra" drivers for the Hudson Bus Transportation Company

<sup>15</sup> The discharged employees have contested the authority of the Association under its constitution and by-laws to expel them from membership, and have made tenders of subsequent dues. However, in view of the findings that the Association has been illegally established in the respondent's line, this matter is of no importance in the decision of the case, and will not be discussed.

were to be discharged, an injunction which Capitani executed through Dellatorre without delay.<sup>16</sup>

The Brotherhood took steps toward securing the reinstatement of its members in the respondent's line. The agreements between Rockland Coaches, Inc., Rockland Transit Co., and Spring Valley Motor Coach Co., and the Brotherhood expired on August 28, 1936. On August 24, representatives of the Brotherhood arranged a meeting with Capitani for the purpose of negotiating a renewal of these agreements. On August 27 or 28, at the meeting between the parties, the Brotherhood demanded that prior to the signing of any agreement it was necessary for Capitani to reinstate the discharged employees. Capitani testified in this regard that "They (the Brotherhood) said that it wasn't so important about these paragraphs (of the proposed agreement), that we discussed, or that we could not agree on, but the main thing was to put the Hill men back to work." Capitani testified further that on the following day the Brotherhood threatened to go on strike if the reinstatement was not effectuated immediately. Capitani, disturbed by the possibility of a strike on several of his bus lines, sent for Johnson, and, according to his testimony, "told Johnson I was going to break his contract because of the fact I didn't want these lines to go on strike and we couldn't afford to tie them up". Capitani, in spite of Johnson's protests, thereupon signed the following statement:

"SPRING VALLEY MOTOR COACH CO., INC.

SPRING VALLEY

NEW YORK

*August 29th, 1936.*

"TO WHOM IT MAY CONCERN:

"I agree that in the event that the present contract now in existence on the property of the Hill Bus Co. is annulled or cancelled that I will enter and place into effect same contract now in existence with the Rockland Coaches, Inc. and the Spring Valley Motor Coach Co., Inc.

"In the event that this contract is not cancelled prior to its expiration date May, 1937—I will not renew same but shall enter into a contract with the Brotherhood of Railroad Trainmen covering the Hill Bus Co.

"ERNEST CAPITANI, *Pres.*

"ROCKLAND COACHES, INC.

"SPRING VALLEY MOTOR COACH CO., INC." <sup>17</sup>

<sup>16</sup> Although not strictly essential to the decision of this case, it is of extreme interest to note the manner in which Johnson assumed the direction of the respondent's affairs. Considered in the light of the respondent's eagerness to organize the Association among its drivers, the curious simultaneous origin of similar organizations in every independent bus line in Hudson County, the close association of these organizations, and the fact that Johnson is the son of the superintendent of buses in Hudson County, all become significant.

<sup>17</sup> Respondent's Exhibit No. 1, at p. 143.

On August 30 and 31, the respondent reinstated all of the employees whom it had discharged at the request of the Association, thereby replacing the drivers supplied to Capitani by Johnson.

On September 1, 1936, the Association filed a bill in the Court of Chancery of New Jersey against the respondent, Ernest Capitani and Michael Dellatorre, setting forth the contract between the Association and the respondent, alleging that "commencing Monday, August 31st, 1936 the regular members of said complainant association were to be supplanted by other drivers of some other organization contrary to the terms of the contract", and requesting that the Court give such relief as would remedy this alleged situation *pendente lite*. On the same day, an order was issued by the Court, calling upon the respondent to show cause why the relief asked for by the Association should not be granted, and ordering *pendente lite*, and until the further order of the Court, that the respondent be enjoined "from firing, dismissing, replacing or refusing to permit its drivers who are regular members of the complainant association from carrying out their usual employment". This order of the Court was duly served upon the respondent, and resulted in a second and final discharge of the employees whom the respondent had reinstated on August 30 and 31.

#### VI. EFFECT OF THE PROCEEDINGS IN THE NEW JERSEY COURTS

The proceeding thus begun in the Court of Chancery in New Jersey has resulted in protracted litigation involving the Association, the respondent, and the Brotherhood. On September 8, 1936, the discharged drivers applied to the Court for leave to be admitted as intervening defendants, and were so admitted. The discharged drivers thereupon filed an answer and counter-claim against the respondent, alleging that they were illegally ousted from its employment, and another counter-claim against the Association, contesting the right of that organization to deprive them of their membership. At the same time, the discharged drivers filed a petition in contempt against the respondent, alleging that their discharge immediately after the issuance of the restraining order of the Court was in violation of that order and in deprivation of their rights as members of the Association. On October 2, 1936, the Court rendered its opinion, dismissing the counter-claims and petition in contempt filed by the discharged drivers, and stating that "the . . . intervening defendants are not entitled to contest collaterally the right of the complainant to bring this suit . . . If these intervening defendants had been unfairly ousted from the complainant's association, or if they have a grievance against it, their rights may be protected by the institution of a proper suit". On October 8, in accordance with its

opinion, the Court issued an interlocutory decree restraining the respondent, *pendente lite*, and until the further order of the Court, from injuring the rights of the Association. On October 10, the discharged drivers appealed from this order of the Court to the Court of Errors and Appeals of the State of New Jersey, where the appeal was pending at the time of the hearing before the Board. On October 26, the discharged drivers also filed a bill in the Court of Chancery of New Jersey for the purpose of compelling the Association to reinstate them as members in good standing in the Association. An order to show cause was issued by the Court on the same day, returnable on November 5, on which date the matter was continued to November 19, and then continued for an indefinite time.

Prior to the filing of the bill in the Court of Chancery of New Jersey on October 26, the Brotherhood had filed charges with the Regional Director for the Second Region, as we have already described. The respondent in its answer has alleged that the discharged employees had submitted themselves to the Court of Chancery of New Jersey, and were not now entitled to a hearing by the Board. The respondent has also contended that a decision of the Board in conflict with the decision of the Court of Chancery of New Jersey "would jeopardize and embarrass the respondent, and might subject respondent to contempt proceedings". Neither of these contentions is of serious merit. Aside from the fact that the Board has obvious jurisdiction in this proceeding under the clear mandate of the Act, nothing has transpired in the courts of New Jersey which can even be said to lend color to the respondent's assertions. The Court of Chancery of New Jersey, in its opinion of October 2, 1936, made no attempt to adjudicate the rights of the discharged employees in relation to the Association, and explicitly stated they were free to seek a proper remedy. Furthermore, the Court of Chancery of New Jersey did not have before it for consideration the questions raised in this proceeding. In the Court's opinion, the issue was defined as relating only to the alleged violation of the agreement between the respondent and the Association, and the opinion recited that in the answering affidavits filed by the respondent's counsel it was stated, and was admitted on the record, that the respondent had violated the agreement by the reinstatement of its discharged employees. Thus, the Court found no occasion to examine into the history of the Association or the legality of the agreement, and referred to the relation of the discharged employees to the Association in the following terms: "I might add that the intervening defendants seek to inject into the issue between the complainant and the original defendants all the elements of a labor dispute—an issue which is clearly collateral to the issues herein." It was therefore clearly contemplated in the decree of the New Jersey Court that the discharged

employees should seek elsewhere for an adjudication in regard to the labor dispute, as indeed they have done.

#### VII. CONCLUSIONS IN RESPECT TO THE DISCHARGES

In view of the finding that the respondent has dominated and interfered with the formation of the Association, it necessarily follows that the closed shop agreement between the respondent and the Association, designed to insure the permanence of their illegal relation, is void. The respondent, therefore, is in no position to set forth the agreement as a defense to the discharge of the employees named in the complaint. Furthermore, it is clear that these employees were discharged because they had joined and assisted the Brotherhood.

In regard to Thomas, Suter, Weisslader, and Hollingsworth, the respondent relies on an additional defense, contending that their discharges were occasioned by their violation of the rules of the respondent, and had no relation to their activities in the Brotherhood. It is a frequent contention of employers in cases before the Board that discharges were for inefficiency and violation of company rules rather than for union activities. In *Matter of Pennsylvania Greyhound Lines, Inc., et al. and Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America*,<sup>18</sup> decided on December 7, 1935, we said that "In reaching a decision between these conflicting contentions the Board has had to take into consideration the entire background of the discharges, the inferences to be drawn from testimony and conduct, and the soundness of the contentions when tested against such background and inferences. (Compare *Norris v. Alabama*, 294 U. S. 587 (1930).) Moreover, as the Supreme Court has stated, 'Motive is a persuasive interpreter of equivocal conduct', so that the Board may properly view the activities of the respondents in the light of the manifest interest and purpose described above. (*Texas & New Orleans Railroad Co. v. Brotherhood of Railroad & Steamship Clerks*, 281 U. S. 548 (1930).)" Applying these principles to the instant case, the conclusion is inescapable that the respondent discharged Thomas, Suter, Weisslader, and Hollingsworth in retribution for their disregard of the respondent's wishes in regard to the Brotherhood. The record is replete with incidents displaying the concentration of purpose of the respondent in making the Association the exclusive organization among its employees. Its diligence in pursuing this objective was complemented from the first by its persistent efforts to ward off the influence of the Brotherhood. In the light of this background, we do not consider

<sup>18</sup> I N. L. R. B. 1.

that the sudden discharge by the respondent of several employees of long standing immediately following their affiliation with the Brotherhood is satisfactorily explained by the resurrection of a number of charges concerning offenses many of which had occurred a considerable time prior to the discharges, and on account of which the offenders had already been penalized. In reaching this conclusion, we must consider the strenuous conditions under which the drivers of the respondent must operate.<sup>19</sup> In Suter's case, it is significant that he had been dismissed once before by Dellatorre because of his union activities. We find on the basis of a study of the entire record, that the discharges of Chester Thomas, Ralph Suter, Hugo Weisslader, and Charles Hollingsworth were occasioned by their membership in the Brotherhood.

In accordance with these findings, we conclude that the respondent has discriminated with respect to the hire and tenure of employment of Chester Thomas, Ralph Suter, Hugo Weisslader, Charles Hollingsworth, John O'Boyle, Archie Dunn, Henry Holzenthaler, Harry Rever, Howard Matthews, Hewitt Dunn, Frank Harrison, Leroy Sassenscheid, James Lynch, Arthur Riha, Herbert Kimber, Mervyn Brown, and Gilbert Grace for the purpose of discouraging membership in Brotherhood of Railroad Trainmen, Rockland Lodge No. 329.

We also conclude that the respondent, by the acts above set forth in paragraphs III, IV, and V, 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.

We find further that the discharged employees were employees of the respondent at the time of their discharge, and ceased work because of the aforementioned unfair labor practices. The record

<sup>19</sup> It was testified by some of the employes that it was necessary to speed in order to maintain the schedules set by the respondent. In the light of the respondent's charges that the discharged drivers had violated traffic regulations and had engaged in "playing tag" with other buses, the following document containing confidential instructions from Dellatorre to the respondent's employees is of interest:

"MAY 26, 1936

"To ALL OPERATORS (CONFIDENTIAL) :

"The following instructions must be carried out right to the minute otherwise you will receive time off.

"Leave Westwood at 15 after and 15 of, arrive at Madison and Washington at 7 and 37 after, Monument Englewood at 19 and 49 after, move up to the R. R. tracks and wait for the 84 and keep far enough in front of him so that he cannot overtake you on Grand Ave.

"Also when you arrive at the N. Y terminal stick around the waiting room as there are always people seeking information who may be going over our route. Pull up on the stand five minutes before your leaving time and if the Eagle does not pull out on time blow your horn and inform the starter.

"Destroy this slip after you have read it.

"M. A. D."

discloses that at the time of the hearing these employees had not obtained any other regular and substantially equivalent employment.

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

The discharges described above form an inseparable part of the respondent's attempt to foist upon its employees an organization inimical to their interests and contrary to their wishes. Only by the restoration of these employees to their former positions and by the withdrawal of all recognition from the Association as their representative can the respondent reestablish itself within the confines of the law, and we will so order. For the sake of completeness, and in order that the respondent conform its conduct to the requirements of the Act, it follows that the respondent must also cease requiring as a condition of employment that its employees become members of the Association.

It will be noted that the order requires the respondent to make whole the discharged employees by giving them back pay for the period from the dates of the initial discharges to the date of reinstatement prior to the order of the Court of Chancery of New Jersey, and again for any period of time which may elapse from the effective date of the decision of the Board in this case to the date of the offer of reinstatement to the discharged employees by the respondent. We have not ordered the respondent to make whole the discharged employees for the losses of pay from the date of the order of the Court of Chancery of New Jersey to the date of this decision.

#### 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. Brotherhood of Railroad Trainmen, Rockland Lodge No. 329, is a labor organization, within the meaning of Section 2, subdivision (5), of the Act.

2. Hudson Bus Transportation Drivers' Association is a labor organization, within the meaning of Section 2, subdivision (5), of the Act.

3. By its domination and interference with the formation and administration of the Hudson Bus Transportation Drivers' Association, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the Act.

4. By discriminating in regard to the hire and tenure of employment of Chester Thomas, Ralph Suter, Hugo Weisslader, Charles Hollingsworth, John O'Boyle, Archie Dunn, Henry Holzenthaler, Harry

Rever, Howard Matthews, Hewitt Dunn, Frank Harrison, Leroy Sassenscheid, James Lynch, Arthur Riha, Herbert Kimber, Mervyn Brown, and Gilbert Grace, thereby discouraging membership in the labor organization known as Brotherhood of Railroad Trainmen, Rockland Lodge No. 329, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3), of the Act.

5. 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, subdivision (1), of the Act.

6. The persons named in Paragraph 4 above were employees of the respondent at the time of their discharge, within the meaning of Section 2, subdivision (3) of the Act.

7. 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, Hill Bus Company, Inc., and its officers, agents, successors, and assigns 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 dominating or interfering with the formation or administration of any labor organization of its employees, or contributing financial or other support thereto;

3. Cease and desist from in any manner discouraging membership in Brotherhood of Railroad Trainmen, Rockland Lodge No. 329, or any other labor organization of its employees, or encouraging membership in the Hudson Bus Transportation Drivers' Association, by discriminating in regard to hire and tenure of employment or any term or condition of employment, or by threats of such discrimination.

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

a. Withdraw all recognition from the Hudson Bus Transportation Drivers' Association as the representative of its employees for the purposes of dealing with the respondent concerning grievances, rates

of pay, wages, hours of employment, and other conditions of employment; and completely disestablish the Association as such representative;

b. Offer to Chester Thomas, Ralph Suter, Hugo Weisslader, Charles Hollingsworth, John O'Boyle, Archie Dunn, Henry Holzenthaler, Harry Rever, Howard Matthews, Hewitt Dunn, Frank Harrison, Leroy Sassenscheid, James Lynch, Arthur Riha, Herbert Kimber, Mervyn Brown, and Gilbert Grace, 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;

c. Make whole Chester Thomas, Ralph Suter, Hugo Weisslader, and Charles Hollingsworth, and each of them, for any losses of pay they have suffered by reason of their discharge by payment to each of 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 September 1, 1936, computed at the average weekly wage earned by each of them at the time of the discharge;

d. Make whole John O'Boyle, Archie Dunn, Henry Holzenthaler, Harry Rever, Howard Matthews, Hewitt Dunn, Frank Harrison, Leroy Sassenscheid, James Lynch, Arthur Riha, Herbert Kimber, Mervyn Brown, and Gilbert Grace, and each of them, for any losses of pay they have suffered by reason of their discharge by payment to each of 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 on August 24 or 25, 1936, to the date of his reinstatement prior to September 1, 1936, computed according to the average weekly wage earned by each of them at the time of the discharge;

e. Make whole the persons named in Paragraph 4 (b) above, and each of them, for any losses of pay they may suffer by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each of them would normally earn as wages during the period from the effective date of the decision of the Board in this matter to the date of such offer of reinstatement, computed at the average weekly wage earned by each of them at the time of the discharge;

f. Post notices in conspicuous places in the respondent's garage in Westwood, New Jersey, stating (1) that the respondent will cease and desist as aforesaid; (2) that the Hudson Bus Transportation Drivers' Association is so disestablished and that the respondent will refrain from any recognition thereof; and (3) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.