

In the Matter of WALD TRANSFER & STORAGE COMPANY, INC. and LOCAL UNION No. 367, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, and ROBERT RANSOM, *et al.*

*Case No. C-212.—Decided September 23, 1937*

*Motor Truck Transportation Industry—Jurisdiction of Board:* company engaged in separate interstate and intrastate functions; continuation of interstate transportation by instrumentalities operating within confines of state of destination—*Strike—Discrimination:* non-reinstatement of strike leaders—*Reinstatement Ordered—Back Pay:* awarded from date of refusal to reinstate, excluding period between intermediate report and decision.

*Mr. Karl H. Mueller* for the Board.

*Hirsch, Susman and Westheimer*, by *Mr. Harry Susman*, of Houston, Tex., for the respondent.

*Mr. Rolland Bradley* and *Mandell & Combs*, by *Mr. W. A. Combs*,<sup>1</sup> of Houston, Tex., for Local 367 and Robert Ransom, *et al.*

*Mr. Millard L. Midonick*, of counsel to the Board.

## DECISION

### STATEMENT OF THE CASE

On December 14, 1936, Local Union No. 367, International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, herein called Local 367, filed a charge with the Regional Director for the Sixteenth Region (Fort Worth, Texas) alleging that Wald Transfer & Storage Company, Inc., Houston, Texas, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On January 18, 1937, the Acting Regional Director duly issued and served upon the parties a complaint and notice of hearing. The complaint alleged that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (3), and (5), and Section 2, subdivisions (6) and (7) of the Act.

With regard to the unfair labor practices, the complaint alleged

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<sup>1</sup>Mr. W. A. Combs did not appear in the case as associate counsel until the last two days of the hearing. Since the hearing Mandell & Combs have become sole counsel for the parties named above.

in substance that the respondent discharged and refused to reinstate Robert Ransom, Ramsey Robertson, R. B. Crawford, William White, M. L. Hale, Carl Lee, J. R. Feagin, W. H. Whearley, Buford Sample, T. H. Ransom, L. McRight, Steve Patchinsky, Leon Warburton, Kelsie Linn, and Paul Mangrum for joining and assisting Local 367 and for engaging in concerted activities for the purpose of collective bargaining and other mutual aid and protection; and that on or about November 3, 1936, and at all times thereafter, the respondent has refused to bargain collectively with Local 367 as exclusive representative of the truck drivers and helpers employed by the respondent, said employees constituting an appropriate bargaining unit.

Thereafter the respondent filed its answer. The answer denied the constitutionality of the Act, denied the jurisdiction of the National Labor Relations Board over the parties and subject matter, attacked by way of demurrer the sufficiency of certain allegations of the complaint, denied specifically and generally each and every allegation of the complaint charging unfair labor practices, denied that the truck drivers and helpers constitute an appropriate unit, and that Local 367 was the representative for the purposes of collective bargaining. The answer further alleged that none of the persons named in the complaint were employees of the respondent, within the meaning of Section 2, subdivision (3) of the Act, and that Local 367 was not a labor organization within the meaning of Section 2, subdivision (5) of the Act.

On November 19, 1936, prior to the filing of the charge, Local 367 petitioned the National Labor Relations Board, herein called the Board, for an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On December 21, 1936, the Board authorized the Regional Director to conduct an investigation and provide for an appropriate hearing. Pursuant to an amended notice, a joint hearing on the complaint and petition was held in Houston, Texas, on February 8, 9, 10, 11, 12, 13, 17, and 18, 1937, before Walter Wilbur, the Trial Examiner duly designated by the Board. The Board, Local 367, and the respondent were represented by counsel.

At the hearing the Trial Examiner overruled demurrers based by the respondent upon the alleged unconstitutionality of the Act and the insufficiency of the allegations of the complaint. A demurrer at the hearing for lack of jurisdiction over the business of the respondent by reason of its intrastate character, was overruled by the Trial Examiner in his Intermediate Report.

Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all the parties. The parties were granted a reasonable period for

oral argument at the close of the hearing, and were afforded an opportunity to file briefs. Counsel for the Board, the respondent, and Local 367 (Mr. Bradley) presented oral arguments. None of the parties filed briefs. During the course of the hearing charges of unfair labor practice were withdrawn respecting the discharges of Robert Ransom, Buford Sample, M. L. Hale, J. R. Feagin, Steve Patchinsky, Leon Warburton, and Kelsie Linn, and the complaint dismissed as to these individual complainants.

Subsequent to the hearing, upon the application of Local 367 and five persons named in the complaint, Robert Ransom, Carl Lee, William White, Ramsey Robertson, and L. McRight, an order of the Regional Director for the Sixteenth Region, dated May 3, 1937, dismissed the complaint as to the applicants and continued the complaint in full force and effect only as to the alleged discriminatory discharges of R. B. Crawford, W. H. Whearley, and Paul Mangrum. By order of the Regional Director on July 6, 1937, the previous order of May 3, 1937, was vacated as to the five individuals named therein and the complaint continued in full force and effect as to these also. Owing to an oversight on the part of counsel for Local 367, the order of May 3, 1937, was not at that time requested to be vacated as to T. H. Ransom. In his exceptions to the subsequent Intermediate Report, counsel for the individuals named in the complaint has requested that we continue the case as to T. H. Ransom, and the Board hereby continues the complaint in full force and effect as to him. Subsequent to July 6, 1937, the Trial Examiner was advised that the name of Robert Ransom should be deleted from the order of July 6, 1937, and the complaint dismissed as to him. By order of the Board dated April 29, 1937, Local 367 was permitted to withdraw its petition, and the representation case was thereby closed. The issues remaining to be considered therefore relate only to the alleged discriminatory discharge or refusal to reinstate Ramsey Robertson, Paul Mangrum, R. B. Crawford, Carl Lee, William White, T. H. Ransom, W. H. Whearley, and L. McRight. Local 367 as such has withdrawn all charges.

Subsequently the Trial Examiner filed his Intermediate Report, finding that the discharge and refusal to reinstate each of the eight individuals named in the complaint did not constitute a violation of the Act. Exceptions to the Intermediate Report have been filed in behalf of the eight individuals named in the complaint.

The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the admission and exclusion of evidence and finds that no prejudicial errors were committed. Those rulings are hereby affirmed. We also affirm the findings of the Trial Examiner in his Intermediate Report that, as to Ramsey Robertson, William White, Paul Mangrum, L. McRight, and W. H. Whearley,

the respondent's discharges and refusals to reinstate were not discriminatory. However, based upon the findings hereinafter made, we are reversing similar findings in the Intermediate Report with respect to R. B. Crawford, Carl Lee, and T. H. Ransom.

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

### FINDINGS OF FACT

#### I. THE RESPONDENT AND ITS BUSINESS

The respondent, incorporated in Texas, has its office and principal place of business in Houston, and carries on a business consisting of two distinct and separate parts, namely, warehouse storage and trucking transfer. The personnel of the two departments of the business in some cases overlaps, but the functions of the two departments are distinct. The warehouse activities are completely localized. Space is rented for the storage of furniture and household goods for local owners, and of automobiles, tires, plumbing supplies, store fixtures and miscellaneous commodities for dealers' account. The warehouse receives, acts as custodian, and delivers upon the signor's order. All its transactions are wholly intrastate.

In contrast to the localized nature of the storage division, the respondent's transfer business consists of the transportation of commodities by motor truck. Of approximately 26 pieces of equipment in all, none leaves the State of Texas at any time. About 12 four-wheel city trucks are presently in use. Four of these city trucks are used only for the moving of household furniture and goods from and to points in Houston and vicinity. The drivers and helpers assigned to these trucks are men of special skill for this service and in general do nothing except aid in storing articles of local origin in the warehouse. They are virtually a part of the warehouse end of the respondent's business. The remaining eight city trucks, each manned by a driver and helper, are used to pick up freight arriving by ship and rail at Houston from points outside the State of Texas for ultimate delivery to points within the city of Houston. Except for intermittent wholly local haulage when incoming freight falls off, these city drivers are exclusively engaged in moving goods of extra-state origin. About 14 six-wheel trucks are used for what is termed the "line" service, that is, for inter-city deliveries of commodities originating outside of Texas to inland points outside of Houston in the State of Texas. Each of the line trucks carries one driver who works almost exclusively in this inter-city service. A helper, who does all the loading and unloading, accompanies the line and city drivers.

The line trucks operate under a "one-way" permit from the Railroad Commission of Texas to haul specified types of commodities

from Houston and Galveston to inland points, and return hauls are not permitted except for rejected goods. Application to the Interstate Commerce Commission is also pending under a claim by the respondent that this hauling constitutes interstate commerce. The respondent's present franchise is limited to commodity service for the Universal Carloading and Distributing Company of Texas, the Newtex Steamship Company, the Morgan Line, and the Southern Steamship Company. Almost all of the respondent's city and line delivery service is done for Universal and Newtex. These companies do not themselves own and operate instrumentalities of interstate commerce. They undertake by contract with various commodity owners located on or near the northeastern coast of the United States to cause goods to be delivered to various points in Texas. The commodities are caused by these shipping companies to converge in New York and Philadelphia and then to be shipped by rail or water in carload or shipload lots to Galveston or Houston. Although commodities belonging to many owners are gathered for shipment with Universal and Newtex named as the consignor and consignee under new bills of lading, the original packages are preserved throughout. The respondent undertakes with Universal, Newtex, and the other shippers, to complete the last lap of the continuous interstate journey. The shippers are paid by the owners of the commodities for the entire trip. In the case of Newtex, freight arriving at Houston is loaded on the respondent's trucks at the steamship dock "warehouses" and delivered to authorized destination points at San Antonio, Waco, Dallas, and Fort Worth. In the case of Universal, freight is picked up at the dock "warehouses" at Houston and Galveston, or, in the case of rail shipments, at the railroad siding warehouse of the Universal in Houston, for delivery to authorized destination points in the same localities that are serviced for Newtex. In addition, some local deliveries are made at Houston for Universal. In all instances the freight originates in entirety without the State of Texas, and is delivered to the ultimate consignee in the original packages. The respondent admits that the goods it handles have moved in interstate commerce until they reach Galveston and Houston, and it has repeatedly claimed before the Interstate Commerce Commission that its trucks continue the interstate movement. The goods unloaded from steamships pause in the dock "warehouses" only until they can be sorted and reloaded upon the respondent's trucks at shipside. The delay before reloading at the docks is usually a matter of a few minutes although several hours sometimes pass before a truck or space is available for loading or before sorting and loading are completed. The situation at Universal's railroad siding warehouse is substantially similar, and although there, too, every effort is made by the respondent to

move incoming freight as rapidly as possible, two or three days sometimes elapse in a busy season before the respondent's equipment is available to remove accumulated commodities. The halt of movement at warehouse and wharf thus appears as merely incidental to and part of a continuous interstate movement, and there is no independent warehousing service and prolonged retention operating on any of the commodities arriving from outside of the State of Texas to bring them to rest within the State.

Some local deliveries for Universal to points in Houston have been mentioned above. The four-wheeled city pick-up and delivery trucks are used for this service, the freight being hauled from shipside or from the Universal's Houston warehouse. This freight also originates from points without the State of Texas. Except for such city service for Universal, the city trucks are engaged in general local transfer service whereby goods of local origin are moved from place to place within Houston.

It is thus apparent that the operations of the respondent above described fall into distinct factual categories and must be treated as different in law. The respondent's warehouse business and the operation of four special commodity trucks used solely in the handling of household furniture in direct connection with the warehouse are wholly intrastate in character. In the operation of the line or inter-city trucks, on the other hand, the respondent is engaged in traffic, transportation, and commerce among the several States, and the drivers and helpers employed by the respondent in the inter-city service are directly engaged in such traffic, transportation, and commerce. The city pick-up and delivery service we find to be of mixed character, but since the same crews are used indiscriminately both in purely local haulage and to a substantial extent<sup>2</sup> for the delivery to destination of interstate shipments, the operation of such service must be considered as a whole, and we find it to be engaged in traffic, transportation, and commerce among the several States, and that the drivers and helpers employed by the respondent in operating its city trucks are directly engaged in such traffic, transportation, and commerce.

## II. THE UNION

Local 367 is a local union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, affiliated with the American Federation of Labor. Local 367 is a labor organization whose membership is drawn from among employees of various trucking companies at Houston, Texas, including drivers and helpers in the employ of the respondent.

<sup>2</sup> Cf. *National Labor Relations Board v. Santa Cruz Fruit Packing Company*, C. C. A. 9th, decided July 31, 1937.

## III. THE UNFAIR LABOR PRACTICES

The withdrawal of Local 367 from the case subsequent to the hearing along with several individuals leaves only eight individual persons complaining of discriminatory discharge and discriminatory refusal to reinstate.

The evidence shows that until early in October 1936 there was no organization among the respondent's employees. After brief organizational activities, a charter was issued to Local 367 on October 7, 1936, and it was installed on October 11, 1936. Of approximately 32 eligible employees in the respondent's trucking service, 16 joined Local 367 at its inception, and its membership steadily and rapidly increased until November 1, 1936, when almost all of them had joined. During the period covered by the occurrences described herein, the records of Local 367 reveal both more members and a larger proportion of eligible employees enrolled in the plant of the respondent than in that of any other trucking company in Houston.

Testimony of the persons named in the complaint indicates that literally no sign of displeasure toward individual employees by reason of union membership or activities was shown during October 1936 by K. M. Wald, the president of the respondent, or by the lower ranking executives. This is substantiated by an incident in the latter days of October 1936 when Reeves, second in charge of the respondent's business, discharged Crawford for driving with excessive speed as demonstrated by an automatic clock permanently installed in each truck. Crawford testified that he resorted to Wald for reinstatement, and, despite displaying his union membership card, Wald returned him to his job over Reeves' head with an assurance that he was not averse to unions or membership therein. In another instance occurring in the latter half of October 1936, M. S. Johnson, a former line driver, told Wald of the likelihood of his becoming business agent of Local 367 and enlisted his agreement to help in getting other trucking operators to join in wage contracts with Local 367 comparable with that to be negotiated in the future with the respondent. Although Wald obviously knew Johnson to be very active in union organization, he later offered him a responsible supervisory position in the warehouse which Johnson turned down for a full time position as an official of Local 367.

Unfortunately, Wald's conduct toward his men as a group was less exemplary. On October 14 or 15 he caused an advertisement to be placed to appear in a Houston newspaper on October 16 requesting experienced white truck drivers to apply for jobs at the respondent's offices. Wald admitted that he had no need for men at the time but that he had heard rumors of a proposed demonstration strike to be held at his plant and wanted to be prepared for a walk-out. On

the night of October 15, 1936, Wald held a "safety meeting" of the drivers and helpers, at which he congratulated them on the satisfactory reports received from the respondent's liability underwriters, discussed various matters of mutual interest, and held out the hope of a bonus payment. While such "safety meetings" were held with the employees at irregular intervals, it is apparent that much of Wald's preliminary talk was really introductory to the serious business of the meeting. He reported the rumor of a proposed demonstration strike in his plant, pointed out to his employees the favorable position they already enjoyed with respect to wages and other conditions of employment, the fact that he had done nothing to interfere with their joining Local 367, and urged the unfairness of singling him out for discriminatory action. He also threatened that in the event of such a strike, other workers could easily be obtained to carry on the business of the respondent. The testimony suggests that Wald's concern at this time was not so much to avoid a strike at his plant as to have the strike, if called, city-wide, so that his business would not be singled out for adverse action by Local 367.

The discharge of Ramsey Robertson, one of the individuals named in the complaint, and as to whom charges have not been withdrawn, is here relevant as forming part of the background of events shortly preceding the walk-out and strike discussed hereinafter.

*Ramsey Robertson.* On October 29, Wald released Ramsey Robertson from the respondent's employ, and this action is made the basis of an allegation of discriminatory discharge. Robertson was one of only two Negroes then in the employ of the respondent, neither of whom were drivers or helpers. He had been in the respondent's employ for nine years, except for several short periods, and had been shifted from one position to another in an effort to find employment for which he was suited. At first he had been a regular driver of a city truck but had lost this position when the respondent adopted a policy of employing only white drivers. Once he had operated a truck for casual pick-up and delivery service which has long since been discontinued. Robertson was last hired in May or June 1936 as an assistant warehouseman for handling and checking goods of local origin and destination. When the quantity of this work fell off, however, he drove during approximately one-third of his working time a city truck used both for local haulage and for delivery to destination of interstate shipments. We conclude that the nature of Robertson's duties bring him within the jurisdiction of the National Labor Relations Board.

However, the charge of discrimination in the case of Robertson must fall since there is no evidence whatsoever that the respondent had the slightest suspicion that Robertson was a member of Local 367 and there is convincing testimony to the contrary. Although

Robertson was made titular vice president of Local 367, presumably for the purpose of attracting Negro membership, he did nothing to make himself known or conspicuous as a union member. The cause of his discharge was and is plausibly attributed to his incapacity by reason of advanced years to fulfill the duties of the only position remaining available to him. A supplementary explanation indicates that the incidence of a slack warehouse season made it possible to combine Robertson's checking job with packing duties for which he was not qualified, and both jobs are now handled by one man.

On November 1, 1936, and for some time thereafter, the seamen at the Port of Houston were out on strike. Although representatives of the seamen and longshoremen requested Local 367 on Sunday morning, November 1, 1936, to stage a simultaneous strike, this proposition was rejected.

Some time on November 1, Hicks, a checker for the respondent at the waterfront, telephoned Wald that picket lines had formed and were not going to let the trucks go down to be loaded. Later Hicks telephoned to say that Local 367 and the seamen had come to an agreement to pass drivers with Union cards through the lines. Wald then asked Hicks how many of his drivers had no Union cards, and Hicks replied only Lacey and Mangrum; of these, the latter is one of those named in the complaint. Upon Wald's query whether it would be possible to have these men join the Union immediately, Hicks' answer was negative.

Hicks evidently contacted Johnson or some other Union official about this situation and later called Wald again to report that Lacey and Mangrum could pay the initiation fee and get a receipt for the dues, and that this would be sufficient to pass them through the picket lines pending the receipt of their Union cards on the following day. Wald ordered this procedure to be followed so that the freight could be picked up.

It appears from the testimony that ten of the line drivers got their freight on Sunday, November 1, and started inland. Among them were Mangrum, Crawford, and Lee, three of those named in the complaint. They and nine other line drivers who returned to Houston Monday, November 2, came from the road in groups of two, five, and five. When Mangrum, Crawford, and Lee reported to the respondent's warehouse, they learned that drivers who had come in earlier that day had refused to go to the docks and had been immediately replaced, apparently with outsiders. Each of the later arrivals took the same position and was similarly replaced. William White, the fourth of the line drivers among those named in the complaint, was not among the drivers who got freight on Sunday. When he called at the docks Monday morning, he found

the picket line impassable and so reported to Wald. Although White's testimony is not lucid, a fair inference from his statements and other evidence in the record indicates that Wald may have had reason to include him in the group that refused to go to the docks later on Monday. White's truck was in fact sent out during the day manned by one of the respondent's city drivers.

On the date of these refusals to work, substantially all of the eligible employees of the respondent were Union members. However, each of the employees named in the complaint flatly denied that in refusing to go to the docks he was acting in pursuance of any common plan or for any Union purpose, or that he was actuated by any motive other than to avoid physical injury at the hands of striking seamen and longshoremen. More credible testimony by A. D. Scott, present president of Local 367, intimated that the unofficial cessation of work on the part of this group of line drivers might have been motivated both by the usual distaste of friends of labor for crossing picket lines and by a desire to lend weight to the simultaneous drive of Local 367 to obtain a favorable contract from Wald.

What motivated the respondent's employees in their ceasing work on November 2, 1936, we need not decide. It is enough that the testimony of all the witnesses for Local 367 and the entire record leaves not the slightest room for doubt that the walk-out of November 2 was not caused by unfair labor practices on the part of the employer. Certainly Wald had not been guilty of discriminatory discharges up to this time, and it also appears that he had not, and probably has never, refused to bargain collectively in good faith. On the showing made by the individuals named in the complaint, they gave Wald no alternative to replacing them on November 2, 1936, if he was to get his freight moved. Dispatch in the movement of freight was an important factor in the respondent's efforts to satisfy its customers.

On November 10, 1936, Local 367 voted to strike. On November 12 the men ceased work, and the strike continued in effect until settled through the efforts of the Regional Director for the Sixteenth Region on December 4, 1936.

As to the charge of discriminatory refusal to reinstate, we must consider certain other happenings of importance as bearing on Wald's actions subsequent to November 2, 1936. Shortly prior to October 15, 1936, Wald had received information that some of his line drivers were engaging in the secret practice of "back-hauling" of cotton, onions, and other commodities to Houston from inland points, in violation of the terms of his franchise which permitted only a one-way haul for a specified limited group of shippers at

fixed rates. After the meeting with his employees on the night of October 15, 1936, he drove out to intercept some of the line trucks on their return run and found four of them parked near a roadside restaurant. One of the trucks, whose driver was a man named Richards, was found to be thus illegally loaded with onions. Statements made by Richards and information from other sources led Wald to believe that the practice was more or less general among the line drivers. Discharging Richards forthwith, Wald instituted an investigation which revealed that Johnson, business agent of Local 367, and possibly others, were in fact implicated, though Wald at that time had definite proof only as to Richards. Wald's investigation was still under way when the discharges of November 2 occurred.

We will now discuss these discharges individually.

*William White.* William White was hired by the respondent in February 1936. After one month he became a line driver and continued as such until November 2, 1936. Unlike Mangrum, Crawford, and Lee, White was put back on regular duty the day following the walk-out and made several runs before he was finally laid off on November 8, 1936. When he inquired about reinstatement, he was told that he would not be allowed to work until the respondent could "check up" on him. In point of fact Wald had turned up at least five receipts for illegal loads signed with Johnson's name. One of these bore White's truck license number. From this Wald inferred that White was implicated in the back-hauling, either by lending Johnson his truck or by himself driving the truck and signing Johnson's name to the receipt. It is impossible for the Board to decide whether White was in fact implicated or whether Johnson's story is true, to the effect that he, Johnson, mistakenly inscribed White's number because of the similarity to his own. We do find that Wald had strong suspicions as to White's honesty on the basis of the palpable evidence uncovered. We further find that the seriousness of the offense lends plausibility to Wald's contention that his discharge of White on November 8, 1936, and subsequent refusal to rehire, was motivated only by suspicions of back-hauling. Further support for Wald's position as to White is the fact that White, although a member of Local 367, participated in no Union activities except for attendance at meetings and the payment of dues.

*Paul Mangrum.* Paul Mangrum was hired in the middle of October 1936 to replace Richards, who had been caught "back-hauling". He was one of those most recently employed, and for this reason was admittedly under no suspicion of back-hauling. We have indicated above that his discharge on November 2, 1936, was caused by his refusal to go down to the docks. His immediate replacement resulted in there being no opening left for his reinstatement. By

November 3, 1936, the crest of the pre-Christmas hauling activity had subsided, and the tendency until after the hearing in February 1937 was for the respondent to contract rather than expand his line driving staff. In any event it seems impossible to conclude that Mangrum's discharge on November 2 was motivated by his Union activities when he had been a member of Local 367 for only one day and had joined the Union at the insistence of Wald himself so that he could pass through the seamen's picket line. Although the fact that Wald procured his membership for his own ends is no evidence of a pro-Union attitude on Wald's part, it nevertheless indicates that no hint of animosity toward Mangrum for this membership can be attributed to Wald.

*R. B. Crawford.* R. B. Crawford had been employed intermittently by the respondent in various capacities for several years. Roughly a year and a half prior to the discharges he began to drive a line truck. After about a year he quit for three months and was rehired in the same capacity during the three or four months prior to November 2, 1936. He joined Local 367 as a charter member on October 4, 1936, was one of those replaced on November 2, 1936, and has never been reinstated.

As the reason for not reinstating Crawford, Wald testified at the hearing that he suspected and still suspects Crawford of "back-hauling". Wald admitted that he had no tangible specific evidence to support his suspicion, but insisted that until his prolonged investigation should prove Crawford's innocence, he would presume that the man was implicated for the sole reason that he was a line driver and therefore likely to be tainted by his proximity to those proven guilty.

The fact, however, that other line drivers discharged and replaced on November 2, 1936, were subsequently reinstated despite the circumstance that Wald's back-hauling investigation was similarly incomplete as to them, invites close scrutiny of Wald's proffered explanation as to Crawford. This circumstance, taken in conjunction with significant passages from Wald's own testimony, leads us to the conclusion that Wald has discriminated illegally by singling out in the process of reinstatement those he believed to be aggressive in collective action—in his own words, "leaders", "engineers", and "speech makers"—from those he believed to be docile and harmless. In response to cross-examination as to his reason for distinguishing between those line drivers reinstated and those refused reinstatement, Wald testified that he was convinced of the honesty of three of the men by talking to them<sup>3</sup> but that, for some reason not clearly stated,

<sup>3</sup> It is significant that, of these three, Wald testified he did not see Mathews on the picket line during the strike of November 12 to December 4, 1936, and that Matusik did not go out on strike at all.

he could not believe Crawford or Lee innocent of wrong until the conclusion of his investigation. Wald testified that he suspects the implication of all line drivers who composed a group which he described as a "gang". He also testified that among the 12 men whom he promised to reinstate, without designating them by name, under the strike settlement of December 3, 1936, he intended to include only those who he thought were "misled" or "enticed" to strike by the misrepresentation of their leaders. These leaders were the "strong-arm gang" whom he distrusted, and among the "strong-arm" men, Wald admitted at the hearing, he numbered some of the individuals<sup>4</sup> named in the complaint and now before us. He further testified that on November 2, the day of the walk-out of 12 line drivers, upon watching the movements of the men all day, he suspected and resented the influence of certain of the men who persuaded successive arrivals to stand together with them in ceasing to work. Wald's resentment and distrust of the leaders among his men, and his method of retaliation, is traceable as far back as the summer of 1935.<sup>5</sup> At that time, upon the presentation of a group demand for the dismissal of one of the respondent's mechanics, who was distrusted by the workers, Wald testified that he fired the "boys . . . who were the speech makers".<sup>6</sup>

At the time of his discharge, Crawford was earning on an average of \$25 a week from the respondent. He is not now regularly employed.

*Carl Lee.* Carl Lee was employed by the respondent in the capacity of a line driver for approximately five months prior to his discharge on November 2, 1936. He too had joined Local 367 as a charter member on October 4, 1936. His case is precisely the same as Crawford's in almost every respect and it is a similarly implausible assertion on Wald's part that reinstatement has been denied for several months because of suspicion of participation in "back-hauling" when the basis for the suspicion is impalpable and the suspicion unreasonable to entertain. If in fact Wald is doubtful on this score about Crawford and Lee, he must also be uncertain about the other similarly situated line drivers whom he has reinstated. From the fact that the absence of exoneration has not stood in the way of those reinstatements, we infer that the sole reason offered for Wald's continued rejection of Crawford and Lee is not the true reason. Other indications in the record compel us to find that Wald's purpose was to prevent militant and effective cooperation among his employees under the leadership of those whom he thought undesirable. Such

<sup>4</sup> At this point, Wald declined to name the particular individuals he had in mind.

<sup>5</sup> Although the incident related may have occurred prior to the effective date of the Act, it nevertheless constitutes additional background to aid in the clarification of Wald's present motives.

<sup>6</sup> Record, p. 1254.

discriminatory thrusts tend to discourage membership in the labor organization against whose members they are directed by weakening the effectiveness and hence the attractiveness of cooperative activity, and by undermining generally the morale of the union. Moreover, such discrimination constitutes interference with, restraint and coercion of the respondent's 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.

Carl Lee was paid by the respondent an average of \$22.50 a week during the period of his employment. He is not now regularly employed and earned a total of \$45 between the time he left the employ of the respondent and the date of the hearing.

*T. H. Ransom.* T. H. Ransom was employed by the respondent in June 1936 in the capacity of an extra helper on a city truck. He was made a regular helper early in October 1936. On October 18 he joined Local 367. He left the respondent's employ on November 12, 1936, as a result of the strike beginning on that date, and the respondent has since refused him reinstatement.

Wald asserts that the reason for refusing to reinstate T. H. Ransom was the hiring of another helper to take his place prior to the strike settlement of December 4, 1936. We cannot believe that this is the true reason in view of Wald's testimony that several others taken on during the strike interval were displaced to make room for those taken back under the strike settlement agreement of December 3, 1936. And several of those reinstated were helpers doing the work that T. H. Ransom had also been performing. To this we add the circumstance that he has never sought to conceal his active interest and influence in union affairs, and on the occasion of a union meeting of November 9, 1936, at which Wald spoke, T. H. Ransom rose to direct a question at him.

These several circumstances, taken together with Wald's antagonism toward the leaders among his employees, convince us that Wald's failure to reinstate T. H. Ransom among the number he agreed to reinstate at the strike settlement was not coincidental but purposeful.

T. H. Ransom was paid by the respondent, during the period of his employment as a regular helper, an average of \$15 a week. He is not now regularly employed and earned a total of \$11 between the time he left the employ of the respondent and the date of the hearing.

*L. McRight and W. H. Whearley.* L. McRight and W. H. Whearley, the last of the individuals named in the complaint, can be considered together. Like T. H. Ransom, these men were also among

those who ceased the performance of their work for the first time at the beginning of the strike on November 12, 1936. Both had been intermittently employed by the respondent as extra helpers at the docks for a period of about two months prior to the strike.

Prior to November 12, 1936, McRight had not joined Local 367, but when he found the strike effective on that day he signed up. Whearley was a charter member of Local 367 as of October 4, 1936. Neither has in any way made himself conspicuous by assuming a leading or militant role in union activities.

Both of these men were merely extra helpers who were drawn from a group of day-by-day applicants for whatever work there happened to be, and they were paid for their services by the hour. Both had given satisfactory service and were normally preferred to less experienced applicants.

Failure to reinstate McRight and Whearley is plausibly attributed to abrupt diminution of available work for them to do. At the time of the strike the respondent was in the midst of its busy season of pre-Christmas hauling. Shortly afterward there was a slack in business with a curtailment of force and less extra work was available. This condition extended beyond the strike settlement of December 4, 1936, and down to the date of the hearing. Moreover, McRight and Whearley were principally engaged in handling empty beer cases. During the strike the Brewery Workers Union insisted that this work was within their jurisdiction, and the respondent thereafter engaged help for this service from their membership. Wald testified that he could not give McRight and Whearley regular jobs as they had never had any regular jobs with him, but that they could report as before for such extra work as might be available. At the time of the hearing, however, he also indicated that the probability was that little or none was available.

We conclude that the evidence does not sustain the charges of discrimination preferred in the complaint as to McRight and Whearley.

We find, therefore, that the respondent, by declining to reinstate R. B. Crawford, Carl Lee, and T. H. Ransom, has discriminated in regard to hire and tenure of employment to discourage membership in a labor organization.

The respondent, by declining to reinstate R. B. Crawford, Carl Lee, and T. H. Ransom, has interfered with, restrained and coerced its employees in the exercise of the rights of 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.

We find, however, that in discharging and refusing to reinstate Ramsey Robertson, William White, Paul Mangrum, L. McRight, and W. H. Whearley the respondent has not been shown to have violated the Act.

We find that R. B. Crawford, Carl Lee, and T. H. Ransom were employees of the respondent at the time of their discharge and throughout the period during which their reinstatement was refused, and that their work ceased as a consequence of, or in connection with, a current labor dispute, and that they have not obtained any other regular and substantially equivalent employment.

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

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

We will order the respondent to reinstate R. B. Crawford, Carl Lee, and T. H. Ransom to their former positions, with back pay from December 4, 1936, the date at which some reinstatements were made under the strike settlement agreement. We find these reinstatements of some, and refusals to reinstate others, to have been the first discriminatory move on the part of the respondent. In view of the Trial Examiner's failure to find in his Intermediate Report that the respondent had discriminated against these three individuals, it could not have been expected to reinstate them after it had received the Intermediate Report (August 10, 1937) and therefore it should not be required to pay back pay from that time to the date of this decision.<sup>7</sup> However, the respondent will be required to pay back pay to Crawford, Lee, and Ransom from December 4, 1936, the date of the refusal to reinstate, to August 10, 1937, and from the date of this decision to the time of such offer of reinstatement, less any amounts earned by them during such periods.

We find that Crawford's average weekly wage was \$25, that Lee's average weekly wage was \$22.50, and that Ransom's average weekly wage was \$15.

As to the remaining men named in the complaint, the complaint is to be dismissed.

<sup>7</sup> *Matter of E. R. Haffelinger Company, Inc. and United Wall Paper Crafts of North America, Local No. 6*, 1 N. L. R. B 760; *Matter of The Boss Manufacturing Company and International Glove Workers' Union of America, Local No. 85*, Case No. R-115, decided August 27, 1937, *supra*, p. 400.

## 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 conclusions of law:

1. International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, Local Union No. 367, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. Ramsey Robertson, William White, Paul Mangrum, R. B. Crawford, Carl Lee, T. H. Ransom, L. McRight, and W. H. Whearley were employees of the respondent at the time of their discharges, and during the period in which reinstatement was refused, within the meaning of Section 2, subdivision (3) of the Act.

3. The respondent, by discriminating in regard to the hire and tenure of employment of R. B. Crawford, Carl Lee, and T. H. Ransom and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

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

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

6. The respondent has not discriminated in regard to the hire or tenure of employment of Ramsey Robertson, William White, Paul Mangrum, L. McRight, and W. H. Whearley.

## ORDER

Upon the basis of the above 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, Wald Transfer & Storage Company, Inc. and its officers, agents, successors, and assigns shall:

1. Cease and desist from

a. 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 purpose of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

b. In any manner discouraging membership in Local 367 or in any other labor organization of its employees by discriminating in regard to hire or tenure of employment or any term or condition of employment.

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

a. Offer R. B. Crawford, Carl Lee, and T. H. Ransom, and each of them, immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

b. Make whole R. B. Crawford, Carl Lee, and T. H. Ransom for any loss of pay they have suffered by reason of the refusal to reinstate them, by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the periods from December 4, 1936, the date of the refusal to reinstate them, to August 10, 1937, and from the date of this decision to the time of such offer of reinstatement, less the amount which each, respectively, has earned during said periods;

c. Post notices in conspicuous places where they will be observed by the respondent's employees stating (1) that the respondent will cease and desist as aforesaid, (2) that such notices will remain posted for a period of thirty (30) consecutive days from the date of posting;

d. Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.