In the Matter of MISSOURI-ARKANSAS COACH LINES, INC. *and* THE BROTHERHOOD OF RAILROAD TRAINMEN

Case No. C-273.—Decided May 14, 1938

Motor Bus Transportation Industry—Interference, Restraint, and Coercion: expressed opposition to labor organization; threats of retaliatory action; suggesting formation of company union; engendering fear of loss of employment for union membership; threat to close business; questioning employees regarding union affiliation and activity; discrediting union; coercion to join company-favored union—*Unit Appropriate for Collective Bargaining:* bus drivers; no controversy as to—*Representatives:* proof of choice: union authorizations—*Collective Bargaining:* refusal to recognize representatives, as exclusive representative; special form of remedial order: recognition as exclusive representative; negotiation—*Discrimination:* discharges: for union activities; to discourage membership in union; pursuant to closed-shop agreement with company-favored union—*Closed-Shop Contract:* invalid, when contracting union was not free choice of majority and was assisted by unfair labor practices—*Reinstatement Ordered:* discharged employees—*Back Pay:* awarded; union relief payments and job insurance payments not considered as earnings.

Mr. Paul F. Broderick and *Mr. Daniel J. Leary*, for the Board.

Mr. William L. Vandeventer, of Springfield, Mo., for the respondent.

Mr. W. P. Nutter, for the B. R. T.

Mr. Frank B. Williams and *Mr. William R. Collinson*, of Springfield, Mo., for the Amalgamated.

Mr. George Rose, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Brotherhood of Railroad Trainmen, herein called the B. R. T., the National Labor Relations Board, herein called the Board, by George O. Pratt, Regional Director for the Seventeenth Region (Kansas City, Missouri), issued its complaint, dated July 20, 1937, against Missouri-Arkansas Coach Lines, Inc., Springfield, Missouri, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

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

(1) That the respondent at various times had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act;

(2) That between the dates of May 28, 1937, and June 21, 1937, the respondent caused the discharge of five named employees, because they joined and assisted the B. R. T., thereby discouraging membership in a labor organization;

(3) That on or about May 16, 1937, and at all times thereafter, the respondent refused to bargain with the B. R. T., the exclusive representative of all its employees in an appropriate unit.

The complaint and an accompanying notice of a hearing to be held in Springfield, Missouri, on July 29, 1937, were duly served on the parties. On July 26, 1937, the respondent duly filed its answer, admitting that it was engaged in transportation between the States of Missouri, Arkansas, Tennessee, and Kansas, and admitting that it had discharged five of its employees, but denying that it had engaged in unfair labor practices in discharging them. The respondent also denied that it had refused to meet with the representatives of a majority of its employees or to bargain collectively with them.

Pursuant to the notice, a hearing was held at Springfield, Missouri, from July 29 to August 3, 1937, before W. P. Webb, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel, the B. R. T. by its agent, and all parties participated in the hearing. During the hearing a written motion to intervene was submitted by the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division No. 691, herein called the Amalgamated, which motion was granted by the Trial Examiner. Thereafter, the Amalgamated was represented by counsel, who participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties.

The parties did not avail themselves of the opportunity afforded for oral arguments at the close of the hearing, but thereafter, on August 26, 1937, the respondent filed a "statement, brief, and argument," and the Amalgamated filed a brief, to which we have given due consideration.

During the course of the hearing the Trial Examiner made numerous rulings on motions and on objections to the admission of evidence.

The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On October 30, 1937, the Trial Examiner filed his Intermediate Report finding that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act. The respondent and the intervenor, on November 17, 1937, each filed exceptions to the Intermediate Report. The Board has considered these exceptions and finds them to be without merit. On November 18, 1937, the Trial Examiner filed a supplement to the Intermediate Report.

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

Findings of Fact

I. THE BUSINESS OF THE RESPONDENT

The Missouri-Arkansas Coach Lines is a corporation organized and existing under the laws of the State of Missouri, having its principal place of business in Springfield, Missouri. It is engaged in the business of transporting for hire, passengers, light express, and newspapers, under regularly published tariffs, through the States of Kansas, Missouri, Arkansas, Tennessee, and Mississippi. An application is pending for an extension of its line into Alabama. For the year ending December 31, 1936, the corporation carried over 10,000 passengers, with a total business of approximately $150,000. It has a total pay roll of about 50, of whom 25 or 26 are bus operators, and operates 23 busses. It maintains a garage at Springfield, Missouri, and one at New Albany, Mississippi. Its lines run from Kansas City and Hamilton, Missouri, through Springfield, Missouri, and Memphis, Tennessee, to Florence, Alabama, with side lines to Jefferson City, Missouri, Fort Scott, Kansas, and Green Forest, Arkansas.

II. THE ORGANIZATIONS INVOLVED

Brotherhood of Railroad Trainmen, organized on September 23, 1883, is a labor organization, having lodges in the United States, Canada, and Newfoundland, and a reported membership of approximately 116,000. Recently, it has admitted motorbus drivers to membership.

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, organized on September 15, 1892, is a labor organization affiliated with the American Federation of Labor, having locals in the United States and Canada, and a reported membership of approximately 100,000. By the terms of its constitution, all employees of street and electric railways are eligible for

membership. In recent years, it has also admitted to membership bus drivers.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

The complaint alleges the discriminatory discharge of five named individuals [1] employed by the respondent as bus drivers. These men, as well as other bus drivers, testified to the acts of the respondent described below.

In the early part of 1937 the B. R. T. was conducting an organizational campaign among the bus operators in the Kansas City area, under the leadership of W. P. Nutter. Authority was received from the national headquarters to initiate such activities among the employees of the respondent. Bus operators of the respondent company, on the Kansas City run, were approached in Kansas City, and authorizations were signed by the bus drivers, giving the B. R. T. the right to represent them in collective bargaining.

About May 1, 1937, Raymond Kramer, a bus driver, met Floyd Jones, president of the respondent, who asked him if he had heard anything about the union or any organization which the boys were trying to join. Upon Kramer's saying that he "didn't know much about them," Jones added that he "didn't want them to become a member of any union, but if the time came they had to, he would put them in a union."

C. A. Howell and Edward Arnold, another bus driver employed by the respondent, signed authorizations to the B. R. T. on May 6, 1937. The next day Floyd Jones asked Arnold if he had joined the Union. Upon receiving a negative reply, Floyd Jones stated that he "didn't believe in unions and that sooner or later the union would get his job, if he joined." About the same time, Floyd Jones talked to Howell and told him, "I don't aim to have any union among my bus drivers," and he further said Howell "could just tell the boys they would be fired if they joined any union."

Kyron Jones signed an authorization to the B. R. T. on May 10, 1937. John Barrett, traffic manager of the respondent, told Kyron Jones, "I want to try to get a company union organized." After some discussion, in which Kyron Jones indicated his clear disapproval of company unions, the matter was allowed to rest.

On May 11 H. A. Hinds, one of the B. R. T. organizers, proceeded to Springfield. He met Floyd Jones who, upon learning of his mission, told him "to stay off his property and away from his bus operators" as they "had an organization that was good enough for

[1] Kyron Jones, Clifford A. Howell, James S. Jones, Herbert R. Kirby, Harley Means.

them." On the following day, May 12, Hinds was standing by the bus station on the street when Floyd Jones ordered him off and said he "didn't want him around his property." After a further meeting with Floyd Jones on May 13, 1937, when Jones denounced the B. R. T. as a "bunch of racketeers," Hinds proceeded with his organizing efforts and secured additional authorizations from the drivers.

James S. Jones signed an authorization to the B. R. T. on May 11, 1937. About this time, Floyd Jones met him as he came off his run and asked him if he "had signed up with any union yet," and then went on to say he did not want "his men to belong to any union."

Sometime about the middle of May as Kyron Jones was starting for Kansas City, Floyd Jones asked him if the "boys up at Kansas City" were "putting any pressure" on him to join the Union. Then he added, "Well, I don't want any union among my men." Later on in the conversation he warned Kyron Jones, "You are either in favor of a union or against it, and if you are even in favor of a union, I will fire you. I won't have a union man working for me." He continued, labeling the B. R. T. as "just a bunch of racketeers and gangsters." He also made the remark that he did not have to stay in the bus business and then asked Jones, "Where would you be then?"

On or about May 16, 1937, a meeting was held in the rooms of James Shertz, one of the bus drivers, in the Metropolitan Hotel. John Barrett, traffic manager for the respondent, informed Herbert R. Kirby, one of the respondent's bus drivers, "that the boys were going to have a meeting," and "they would like all the drivers that possibly could to attend." Barrett called Howell on the phone and told him that the "boys were up in Shertz's room waiting for him." When Howell refused to come, Barrett said, "Yes, come up; they are waiting for you to come so they can start." So Howell went up.

Soon after Howell arrived Shertz asked if there were any objections to inviting Barrett to the meeting. Howell and Kirby both objected to this suggestion. Howell based his objection on the fact that Barrett was not a driver but said that "it was all right" with him.

One of the men went out and supposedly called Barrett, who appeared in a few minutes. Barrett asked what they thought of a company union. Upon that suggestion, both Howell and Kirby again objected, and stated that they had already signed up with the B. R. T. Barrett told them, "I don't think Floyd Jones will recognize that union at all," but that "he would be in favor of a company union." He also made the remark that if Jones sold out to the Frisco Railroad, they would lose their seniority.

On the day following the hotel meeting, Barrett came to Howell and told him that he had been talking with Floyd Jones the night before. He stated that Floyd Jones had decided to put them in the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers, herein called the Teamsters, and that he had called in Joe Barrett, the Teamsters' representative.

Shortly thereafter, Joe Barrett, an organizer for the Teamsters, appeared at the respondent's place of business, and met with the drivers in Floyd Jones' private office. Within the next 4 days about 18 of the 22 drivers were signed up. To facilitate the process, Jones permitted the drivers to draw $6 on their wages to pay their dues. There was testimony to the effect, however, that the advancement of wages was customary.

About May 21, 1937, Floyd Jones called Raymond Kramer into his office, and in the presence of John Barrett and Smith, a Teamsters' organizer, Jones told him that "he was the one that had hired" him, and that "he was the one who was paying" him and that they would "belong to the union that he saw was best for" them. Kramer, who had already signed a B. R. T. authorization on May 14, then signed the paper for the Teamsters. Jones paid the $6 and Kramer gave him an I. O. U.

Harley Means, who had signed a B. R. T. authorization on May 18, met Floyd Jones in Kansas City soon after. Jones asked him whether he was going into the Teamsters. Means told him he was not. However, he did sign up for the Teamsters in Jones' office shortly thereafter.

On the 21st of May, the Teamsters discovered that they had no jurisdiction over the bus drivers, and transferred them to the Amalgamated.

Wheeler, who had signed a B. R. T. authorization on May 15 testified that about May 21 he was introduced by John Barrett, the traffic manager, to the Teamsters' organizers. He signed the Teamsters' authorization in Jones' private office. H. M. Estes, who signed a B. R. T. authorization on May 15, stated that he was called into Floyd Jones' office by John Barrett to meet Joe Barrett. He signed the Teamsters' application on May 20. Street, who signed a B. R. T. authorization on May 17, was introduced to Joe Barrett by John Barrett and signed a Teamsters' application on May 20.

Floyd Jones' outspoken hostility toward unions, and particularly toward the B. R. T., did not fail to have its effect upon his employees. Although he denied that he discouraged membership in the B. R. T. in the terms recounted by the employees, he admittedly discussed unions with them. Furthermore, he acknowledged that, in the presence of two of his employees, he had ordered Hinds, the

B. R. T. organizer, away from his property, and that he had given the use of his office to the Teamsters' organizer. This conduct was an unmistakable indication of his preference, which would serve to persuade those of his employees who were wavering in their allegiance. Coupled with these admissions, we have the testimony of men still employed by him, whose testimony on that account has added weight, that he or John Barrett had taken them in to see the Teamsters' representatives.

We find that the respondent, through its president, Floyd Jones, and its traffic manager, John Barrett, by the acts above set forth, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. *The refusal to bargain collectively*

1. The appropriate unit

The complaint alleges that the respondent refused to meet with the duly authorized representatives of the majority of its employees employed in the capacity of drivers and to bargain collectively with them. The answer denies refusing to meet with the representatives of the majority of its employees employed as bus drivers, but affirmatively pleads that all of its employees belong to the Amalgamated and that the respondent has met with their representatives and has entered into a contract with them.

The unit with which the respondent has assumed to bargain collectively through the Amalgamated is composed of the employees employed in the capacity of drivers. The unit which the B. R. T. claims to represent is composed of those same drivers. There would, therefore, appear to be no dispute among any of the parties, that the appropriate unit is composed of the respondent's employees employed in the capacity of bus drivers.

We find, therefore, that all the respondent's employees employed in the capacity of bus drivers, excluding office workers and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, and that such a unit insures to the employees the full benefit of their right to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Union of a majority in the appropriate unit

The respondent has a total pay roll of 50 employees of whom 25 or 26 are bus drivers. It has not challenged the claim that the B. R. T. represented a majority of the bus drivers on May 17, and, in fact, the respondent's counsel in his brief admits that the evidence

establishes conclusively the existence of such majority. At the hearing there were introduced into evidence 13 authorizations for the B. R. T. signed before May 17, 3 signed on May 17, 1 signed May 18, and 1 undated. Eleven of these signers identified their signatures on the witness stand, and 3 made statements indicating they had signed for the B. R. T. No question was raised by any party as to the fact of the employment of these bus drivers.

There was also introduced into evidence a statement signed by 21 bus drivers, to the effect that they were willing to join the Teamsters, of whom 15 had signed B. R. T. authorizations. In addition, 10 applications of the Teamsters, and 5 applications for membership in the Amalgamated, were offered as exhibits. These applications for membership in the Teamsters were transferred to the Amalgamated. All 15 of these application blanks were signed May 20, 1937, or later. Nine persons who signed these applications had also signed the B. R. T. authorizations.

There was no evidence introduced at the hearing that either the Teamsters or Amalgamated had any members among the respondent's bus drivers on May 17, 1937. The Amalgamated, as is pointed out above, submitted at the hearing applications signed by a majority of the bus drivers. In view of the acts of the respondent described above in Section III A, we find that the Amalgamated was not freely designated as the bargaining agent of a majority of the respondent's employees.

We therefore find that on May 17, 1937, and thereafter, the B. R. T. was the duly designated representative of the majority of the employees in the appropriate unit and, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

3. The refusal to bargain

On May 17, 1937,[2] Nutter sent a telegram to Floyd Jones advising him that the respondent's bus operators had selected the B. R. T. as their representative for collective bargaining, and asking him to advise Nutter as to the date when it would be agreeable for him to negotiate a contract. No reply was received to this message.

On this same day Hinds, after being informed that the B. R. T. had a majority, phoned to Floyd Jones' office to make an appointment with him to bargain with the B. R. T. After several efforts he succeeded in meeting Jones. Although he advised him that the

[2] In the complaint the telegram is referred to as being of May 16. The office draft of the telegram is dated May 16, 1937, but Nutter testified it was sent May 17, 1937.

B. R. T. had a majority, Jones stated "he didn't want to have anything to do with them."

On May 29, 1937, Nutter and an aid called on Floyd Jones and John Barrett, the traffic manager for the respondent. At that time Jones admitted receiving the telegram of May 17, but stated that "he didn't have to answer any telegrams." Nutter asked Jones if he would recognize and bargain with the B. R. T. This Jones refused to do, saying that "he had recognized the Amalgamated and that he was obliged to bargain with that organization." Nutter made no further efforts to get the respondent to bargain collectively.

On June 5, 1937, the respondent signed a closed-shop contract with the Amalgamated.

We find that the respondent, on May 17, 1937, and at all times thereafter, refused to bargain collectively with the B. R. T as the representative of its employees employed as bus operators in the appropriate unit in respect to rates of pay, wages, hours of employment, and other conditions of employment.

C. *The discharges*

Kyron Jones was discharged on May 28, 1937. He had been employed by the respondent as a bus operator for approximately 4½ years. He had signed a B. R. T. authorization on May 10, 1937. There is evidence showing that he was active in securing authorizations for the B. R. T. He apparently made no effort to conceal his membership, for when John Barrett, traffic manager for the respondent, took up the matter of forming a company union, Jones told him he had already "signed up into the B. R. T., an authorization to become a member."

Floyd Jones denied that he knew that Kyron Jones was a member of the B. R. T. at the time he was discharged. However, one of the witnesses testified at the hearing that Floyd Jones told him that he had a man in Kansas City watching their every move. It is clear that Floyd Jones knew that there was organizational activity going on, because of the conversations he had with the men. He admitted at the hearing talking about union conditions to the men, and also that he told them that they might have to join a union. About May 17, 1937, according to the testimony of Kyron Jones, Floyd Jones questioned him about the union activities in Kansas City, and then told him, "If you are even in favor of a union, I will fire you." He labeled the B. R. T. as "just a bunch of racketeers and gangsters." He also made the remark that he didn't have to stay in the bus business.

Floyd Jones admitted that Kyron Jones was a good driver. When he was discharged, nothing was said about his driving as a reason

for his discharge. He had received the Markel insurance medal about 6 months before, which was given for a year's driving without an accident. The respondent recognizes that it could not afford to discharge drivers for small offenses, because it costs several hundred dollars to train them.

The first reason for his discharge was his manner of delivering newspapers. A letter dated May 20, 1937, was introduced into evidence, from Springfield Newspapers, Inc., stating that a bundle of newspapers was thrown off at Collins, Missouri, in the mud and the papers ruined. There is no indication in the letter or in the testimony that this ever happened before on this line. Floyd Jones stated that he asked Kyron Jones about this incident, but relates no response, either admitting or denying it.

Floyd Jones, in telling of this, added that there was a complaint too that Kyron Jones was driving through the town too fast. Apparently this additional complaint was given to bolster up the charge as to the newspapers.

The respondent also produced a memorandum from the Kansas City Journal, dated May 17, 1937, reporting that the bundle of papers dispatched May 6, 1937, on the bus from Kansas City at 1:45 p. m., were carried through Deep Water, Missouri, and returned on a later bus. This complaint, for some unexplained reason, was not received until after Kyron Jones' discharge. Jones did not recall making the 1:45 run from Kansas City, although he did state that he had made all the runs out of Kansas City at various times.

The evidence on these delinquencies is obviously unsatisfactory. It can scarcely be expected that either Floyd Jones or Kyron Jones would recall who was on these particular runs on a certain day, after a lapse of more than 2 months. Floyd Jones testified that he had work sheets for each man, which, however, were not offered in evidence. Such evidence would have confirmed his testimony and in view of the conflict of testimony, its absence leaves us unconvinced that Kyron Jones made the runs.

The second reason given for the discharge was the failure to turn in a 25-cent charge for the transportation of a package. A waybill and an envelope were produced and it was pointed out that there was no notation relating to the receipt of the 25 cents. Kyron Jones identified the envelope as being similar to ones they used for such purposes. It was dated 4/25–26/37. Admitting that Jones failed to turn in this money, this negligence or fault scarcely seems a serious offense. It was never brought to his attention, for which the lapse of time afforded ample opportunity, nor was he ever asked to make any explanation.

The third and fourth charges were the matters of smoking and failure to stop at railroad crossings. The information as to these violations was secured from "checkers" reports. "Checkers" are men employed by a group of bus companies who ride the busses, and report any violation of rules by the drivers. These "checkers" send anonymous reports to the respondent. The respondent does not know when the inspection is to be made. To identify the driver reported on, the "checker" gives the bus number and the date. The Company then checks the run with its work sheet. An effort was made to introduce a "checker's" report into evidence, but the Trial Examiner excluded it on the ground that it was not signed.

Upon cross-examination Kyron Jones admitted it was not impossible that he might have smoked while driving during the past 4½ years while employed by the respondent. He was also questioned as to the failure to stop at a railroad crossing on October 6, 1936. He did not recall this, but stated that he heard about it first after his discharge.

Shortly after being discharged, Kyron Jones asked to be reinstated. He saw Floyd Jones, who told him that he had something in the file against him. He showed him two reports, both for 1936.

Floyd Jones testified that so many violations of company rules, State rules and Federal rules had piled up that he had to let Kyron Jones go, and that he had talked to Jones about them, but "I couldn't keep him in line." We are told about five violations, and nothing about the many others. All we know is that two of these were committed nearly 10 months before. Even if we should admit that the respondent established that these violations occurred they scarcely appear to be grounds for the discharge of a good driver who had been in the employ of the respondent for 4½ years. At worst, they appear to be isolated happenings, which by themselves would not ordinarily be grounds for discharge. In view of the vague character of these violations, we must look for some substantial reason for the Company to throw away an investment of several hundred dollars, which Floyd Jones testified was involved in the training of a driver. That reason appears in Kyron Jones' refusal to comply with the respondent's plans for the unionization of the drivers, and his activity in behalf of the B. R. T. after Jones had unmistakably indicated how he stood on the question. From all the evidence, we find Kyron Jones was discharged because of his activities in behalf of the B. R. T.

Jones was not gainfully employed between the time of his discharge and the date of the hearing. He received $210 in relief payments from the B. R. T. but these are not to be considered as earnings.

Clifford A. Howell, a bus operator, had been employed by the respondent for 11 years. He signed a B. R. T. authorization on May 6,

1937, being one of the first to sign. He also was active in discussing membership in the B. R. T. with the other drivers.

When the meeting in Shertz's room was planned, special efforts were made to have him there, as apparently he was regarded as a leader among the drivers. John Barrett, the traffic manager, who had already talked to him about forming a company union, called him on the telephone the night of the meeting and urged him to come. At the meeting, which Barrett also attended, when the subject of forming a company union was brought up, Howell stated that he "did not think it could be done," and besides, that he had already made application for membership in the B. R. T. John Barrett responded that he did not think Floyd Jones would recognize the B. R. T. At this meeting the drivers asked Howell about the B. R. T., and he explained all that he knew to them.

Howell testified that Floyd Jones called him into his office and told him that he had made a mistake in joining up with the B. R. T., and asked if they, meaning the drivers, had made up their minds that they could not be discharged if they joined up with the B. R. T. Floyd Jones testified, on the other hand, that he did not even know that Howell belonged to the Union. However, in view of John Barrett's attendance at the meeting in Shertz's room, where Howell explained about the B. R. T. and stated that he had signed up with it, the respondent must be charged with knowledge of his membership.

On cross-examination Floyd Jones admitted that he had "talked union" to some of the men. When questioned as to whether he had discussed the matter of joining the B. R. T., he at first stated that he had, but later, under persistent questioning, he said that he had never said anything about the B. R. T. to the five men who were discharged. However, in view of the admitted discussion about the Union with other employees, the favoritism shown the Amalgamated on the part of the respondent, and the testimony of drivers still in its employ, this denial is not convincing.

Jones, in response to a question of his attorney, told of a complaint against Howell for leaving a passenger at a station. A letter was introduced in evidence setting forth this complaint, in which the writer of such letter named Howell as having left her before the scheduled hour of departure. There is no explanation as to how she knew his name. On cross-examination, the respondent's counsel questioned Howell about this matter. Howell denied leaving the station before the scheduled time. Counsel questioned him further and asked whether the passenger did not hire a taxi and overtake him within a few miles. In response to this, Howell stated that the passenger might have missed the bus and that it was a somewhat common occurrence for passengers to take a taxi and endeavor

to catch up with the bus when they came after leaving time. On being pressed further, Howell denied knowing anything about this incident.

There was some testimony to the effect that Howell had been discharged previously about 9 months ago, but there is no indication as to the reason for his alleged discharge. Floyd Jones' testimony was very vague about this, even as to the fact of whether he had been laid off or not. Apparently whatever difficulty was involved was not very serious, as it did not make much impression upon Jones.

Howell was questioned on cross-examination as to his smoking on the bus. This he admitted he had done even in Floyd Jones' presence, and that nothing had been said with regard to this violation

Upon interrogation about his failure to stop at railroad crossings, he admitted that he might have done it twice in his life, but explained the two times as being caused by the failure of the brake to hold, and not due to any negligence on his part.

He was also questioned about not stopping at four crossings on September 12, 1936. Howell denied this. No evidence was introduced by the respondent to controvert this denial. The respondent tried to bring out on cross-examination that he had violated the rule as to talking to passengers. In denial he stated that he had only talked with passengers as much as courtesy demanded. He admitted passing a vehicle without sounding his horn but added that the horn was usually out of order.

On cross-examination Floyd Jones stated that Howell had at least 100 violations, although not as many as 200 violations, against him. In the light of Jones' claim that there were so many violations on Howell's record and the fact that the respondent maintained a personnel file on each driver, the evidence of any infraction of rules is rather scant. Floyd Jones classified generally these violations as not stopping at railroad crossings, not turning in all the cash received on the line, mishandling newspapers, and irresponsible driving. As to the newspapers and failure to turn in cash received on the line, Jones gave no testimony, nor was any mention made of them in the answer. As to the railroad crossings, no evidence was introduced by the respondent. Howell denied such violations. Nor is there any evidence as to the irresponsible driving. Jones testified that he offered to show Howell his file of complaints against him, but that Howell did not want to see them. Howell, on the contrary, stated that when Jones mentioned the reports against him he asked whether they were old reports, and Jones told him that they were.

The respondent did introduce evidence as to the passenger who, it is claimed, was left when the bus departed before scheduled time,

but this happened in March, and no action was taken with regard to it until 2 months later. In spite of an allegation of many infractions of rules, the respondent has failed to establish any convincing basis for Howell's discharge.

In view of the respondent's failure to offer evidence justifying the discharge of a man in its employ for 11 years, and in view of Howell's activity in and Jones' animosity towards the B. R. T., we find that the respondent discharged Clifford A. Howell because of his activity in behalf of the B. R. T.

Howell earned $13.82 between the time of his discharge and the date of the hearing. He received $60 in relief payments from the B. R. T. and $175 from job insurance.

James S. Jones was employed as a bus operator by the respondent for about 18 months. He signed a B. R. T. authorization on May 11, 1937. He was one of the drivers on the Kansas City run, who were the men who were first contacted by the B. R. T.

Floyd Jones and John Barrett spoke to him on several occasions about the Union. Barrett asked him to come to the meeting in Shertz's room where the company union was discussed. Jones could not come as he was out on his run.

About May 18, Floyd Jones called him into his office and told him to sign a paper asking for membership in the Teamsters. This Jones did. A little later he was called in by Floyd Jones to meet the Teamsters' organizer, Joe Barrett, and paid his 6 dollars for membership.

Some time later, Floyd Jones told him that the respondent had a man in Kansas City watching the drivers; that it was known that he had made a written statement to the B. R. T. unfavorable to the respondent with regard to its activities against the B. R. T.; and that if he wanted to work he had best withdraw the statement. James Jones replied that he could not withdraw the statement as it was before the Board in Kansas City. The next day he wrote to the Teamsters to attempt to get back the 6 dollars which he had paid for membership. At this time he told John Barrett and Miss Jones, the secretary of the Company, that he had signed up with the B. R. T. A few days later John Barrett told him he was transferred to the Amalgamated.

Jones was discharged on June 8, 1937. The respondent gave as its reason at the time of his discharge that he had had a wreck in Osceola, which involved it in a $75,000 law suit. This had happened 3 weeks before. However, in view of the subsequent offer of reemployment as described below, the respondent's excuse is unconvincing.

James Jones was a good driver, in spite of the wreck, according to Floyd Jones' testimony. Floyd Jones called him back to work

around July 4 and offered him a job. At that time James Jones was working elsewhere, selling cars on commission.

Floyd Jones testified that he did not tell him it was to be a permanent job, but that as he was putting him back to work that "naturally he would think that it was putting him back steady." James Jones also testified that when he was called back, Floyd Jones asked how he felt about the Union. When he said "same as always," Floyd Jones said he could not hold down two jobs. James Jones stated that if it had been promised as a permanent job, he would have taken it.

Floyd Jones stated that he would be willing to take James Jones back to work immediately if the Amalgamated would agree to it

Considerable effort was made by the respondent to line up James Jones in the Teamsters and the Amalgamated. After apparent success on their part, Jones declared he had signed up with the B. R. T. and wanted his money back from the Teamsters. In view of the evidence that Jones was a good driver, and the willingness of Floyd Jones to take him back, the conclusion is inescapable that the layoff or discharge was for the purpose of causing him to shift his membership and bring him back in line with the Amalgamated.

James Jones earned $22 between his discharge and the date of hearing, not including $30 in relief benefits received from the B. R. T.

Herby R. Kirby had worked for the respondent as a bus operator at various times during 7 or 8 years, and continuously since February 1937. He signed an authorization for the B. R. T. on May 10, 1937. There was evidence in the record that he was active in signing up members.

John Barrett asked him to attend the meeting at the Metropolitan Hotel in Shertz's room where the matter of the company union was discussed. When it was suggested that Barrett come to the meeting to talk to them, both Kirby and Howell had objected. After Barrett was brought in, Kirby talked in favor of the B. R. T. A few days later Barrett told him that the boys were lining up with the Teamsters, and that Floyd Jones would sign a contract. About 2 weeks after this, Barrett told him Floyd Jones was going to recognize the Amalgamated. Despite these suggestions, Kirby was one of the three or four who maintained their independence and were never induced even to sign one of the lists or applications for the Teamsters or Amalgamated.

On June 10, 1937, Kirby was discharged. Floyd Jones gave as a reason for the discharge that Kirby had been drinking and had had a wreck because of being under the influence of liquor. According to Jones' testimony, he did not learn of the drinking until he was in Kansas City over a month after the accident, and asked his city passenger agent, Watson.

Watson stated on the stand that he had played poker with Kirby the night of the wreck, and had been on the bus and had ridden with him about 30 minutes before between the two depots. At none of these times had he seen Kirby drink, although he stated he appeared to have been drinking and could smell liquor on his breath. He further testified that the person whose car was injured reported to his insurance company that he could smell liquor on Kirby's breath. On the other hand, we have the testimony of a bus driver who stopped at the scene of the accident, that he had stood close to Kirby and could smell no liquor on his breath, and that Kirby showed no signs of drinking.

The accident only involved $6 damage. There were no police charges.

This charge of drunkenness is the only basis for Kirby's discharge which the respondent could have had, as its record of employing him on various occasions indicates its satisfaction with his driving. Counsel for the respondent attempted to bring out that Kirby had been a habitual drunkard, and had been convicted of bootlegging. In its exceptions, it complains that the Trial Examiner refused to permit this evidence to be introduced, "for the purpose of impeaching his credibility as a witness." If the respondent employed Kirby knowing him to be a habitual drunkard—and Floyd Jones testified that he had known Kirby for a number of years—the respondent is scarcely in a position to plead this as the excuse. We must conclude that the matter of drinking is being used as an excuse to camouflage the real reason for Kirby's discharge.

Kirby testified that when he was discharged Floyd Jones told him "there's been too much irregularity and agitation." When asked by Kirby what he meant, Jones replied, "there's been a lot of agitation about unions." This was the only reason that Jones gave, making no mention of drinking.

Kirby has not worked since his discharge. He has received $60 in B. R. T. benefits.

We find that the respondent discharged Herbert R. Kirby on June 10, 1937, and discriminated against him with respect to hire and tenure of employment, under the circumstances set forth above, thereby discouraging membership in the B. R. T.

Harley Means, before his discharge, had worked as a bus operator for the respondent for 8 years. During that time he had had only one or two accidents, which had happened in the first 2 or 3 years of his employment. He had never been laid off. On May 18, 1937, he signed a B. R. T. authorization. He was discharged on June 20, 1937.

According to Floyd Jones' statement, Means was discharged because of the closed-shop contract the respondent had signed with the

Amalgamated. He testified that he asked Means if he intended to join the Amalgamated; that Means told him he did not intend to; that he then told Means that he had received word from the Amalgamated that he would have to join. At that time, Means informed him he was a member of the B. R. T. Jones claimed this was the first time he knew of it. Since this closed-shop contract was entered into with a labor organization which had been assisted by unfair labor practices, and which was not the free choice of a majority of the respondent's employees, and is therefore void and of no effect, it cannot operate as a defense for the discharge of Harley Means.

Means had not been gainfully employed from the time of his discharge until the date of the hearing. He has received $60 in B. R. T. relief payments and $105 from job insurance.

We find that the respondent discharged Harley Means on June 20, 1937, and discriminated against him, with respect to hire and tenure of employment, under the circumstances set forth above, thereby discouraging membership in the B. R. T.

D. *The closed-shop contract with the Amalgamated*

1. The background of the contract

As has been described in Section III A and B, the B. R. T. was selected as the representative of a majority of the bus drivers for the purpose of collective bargaining, and tried without success to meet with the respondent.

Shortly thereafter Joe Barrett, organizer for the Teamsters, appeared at the office of Floyd Jones. According to his admission, as noted above, Floyd Jones permitted this Teamsters' official to use his office. In the next few days a majority of the bus drivers of the respondent were introduced to the Teamsters' representative by either Jones or John Barrett, the traffic manager, and taken into Jones' office, where they signed up with the Teamsters.

When it was discovered by the Teamsters that it had no jurisdiction over bus drivers, this group of men was transferred to the Amalgamated without their knowledge or consent. Some of those who had not been signed up by the Teamsters were signed up by the Amalgamated in Jones' office. Apparently the same privileges which were extended to the Teamsters were also granted to the Amalgamated.

During all this time, from the beginning of May, Floyd Jones and John Barrett had been talking to the drivers and denouncing the B. R. T., prior to the decision to force the Teamsters upon them.

While this evidence is based to a great extent on the statements of the bus drivers who were discharged, we have the admissions of Floyd Jones that he discussed the organizing of the Union with his

employees and did offer his facilities to the opposing organizers. We also have statements by drivers who are still employed by Jones, similar to those of the drivers who were discharged. Their testimony has added weight, as it is not likely that they would falsify about their present employer.

By the first of June the Amalgamated had applications representing a majority of these employees. At least nine of those who signed Amalgamated applications had previously signed B. R. T. authorizations. In the first days of June a committee of the Amalgamated attempted to draw up a contract for the Amalgamated with the respondent. A contract dated June 5, 1937, was finally signed by the respondent and the Amalgamated.

2. The contract

The contract entered into between the respondent and the Amalgamated provides in part as follows:

> Section XVIII. All new operators after sixty (60) days shall become members of the Association and remain members as long as they are employed by the Company. All old operators shall become members within ten (10) days from this date.

Section 8 (3) of the Act provides:

> Nothing in this Act . . . shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is a representative of the employees as provided in Section 9 (a) in the appropriate collective bargaining unit covered by such an agreement when made.

Under this provision and in view of our findings above, the contract here in question is clearly invalid. The Amalgamated was not, on the date on which the contract was signed, the free choice of a majority of the respondent's employees and was a labor organization which had been assisted by unfair labor practices. The contract therefore does not fall within the proviso to Section 8 (3) of the Act quoted above, and is void and of no effect.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and

tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

We have found that five of the respondent's employees were discharged because of their union affiliations and activities. These employees are entitled to reinstatement with back pay.

Since the contract discussed under III D above was with an organization which had been assisted by unfair labor practices and is therefore void and of no effect, we shall order the respondent not to give it effect, and we shall also order the respondent to withdraw recognition from the Amalgamated as the exclusive representative of its employees.

We shall also order the respondent to bargain collectively with the B. R. T. as the representative of its bus drivers. Prior to the hearing many of the members of the B. R. T. joined the Amalgamated and by implication renounced their B. R. T. affiliations. We have found that such action was the result of the respondent's unfair labor practices. In the presence of such a finding and order, to refrain from ordering the respondent to bargain collectively with the B. R. T. would be to hold that the obligation of one subdivision of the Act may be evaded by the successful violation of another; that the freely expressed wishes of the majority of the employees may be destroyed if the employer brings to bear sufficient interference, restraint, and coercion to undermine the representatives' majority support. We cannot permit the purposes of the Act to be thus circumvented.

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

Conclusions of Law

1. Brotherhood of Railroad Trainmen, and Division No. 691, of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to the hire and tenure of employment of Kyron Jones, C. A. Howell, James S. Jones, Herbert R. Kirby, and Harley Means, thereby discouraging membership in the B. R. T., has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. The bus drivers employed by the respondent constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

4. The B. R. T. was on May 17, 1937, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with the B. R. T. as the exclusive representative of its employees in an appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

6. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the right to self-organization to form, join, and 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, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

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

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Missouri-Arkansas Coach Lines, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with B. R. T. as the exclusive representative of its bus drivers, exclusive of clerical workers and supervisory employees;

(b) Giving effect to its contract of June 5, 1937, with the Amalgamated;

(c) Recognizing the Amalgamated as the exclusive representative of its employees;

(d) Discouraging membership in the B. R. T., or any other labor organization of its employees, or encouraging membership in the Amalgamated or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

(e) In any other 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 or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Offer to Kyron Jones, Clifford A. Howell, James S. Jones, Herbert R. Kirby, and Harley Means, immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

(b) Make whole Kyron Jones, Clifford A. Howell, James S. Jones, Herbert R. Kirby, and Harley Means, for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period, but not deducting any amounts said employees may have received during such period as B. R. T. relief payments, or payments received from job insurance;

(c) Upon request, bargain collectively with the B. R. T. as the exclusive representative of all its bus drivers for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(d) Post in conspicuous places where they will be observed by the respondent's employees, and maintain for a period of thirty (30) consecutive days, notices stating (1) that the respondent will cease and desist in the manner aforesaid; (2) that the closed-shop agreement signed with the Amalgamated on June 5, 1937, recognizing it as the exclusive representative of the employees of the respondent is void and of no effect; (3) that the respondent will bargain collectively with the B. R. T. as the exclusive representative of the employees in the appropriate unit;

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