

In the Matter of WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, A CORPORATION and AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, LOCAL DIVISION No. 1079, ET AL.

*Case No. C-63.—Decided May 21, 1936*

*Motor Bus Industry—Interference, Restraint or Coercion:* espionage; surveillance of organizational meetings; expressed opposition to labor organization, threats of retaliatory action; propaganda against union; persuasion of employees to refrain from joining union; questioning employees regarding union affiliation—*Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. Jacob Blum* for the Board.

*Mr. Robert E. Lynch* and *Mr. William J. Hughes, Jr.*, of Washington, D. C., for respondent.

*Mr. Charlton Ogburn* and *Mr. Arthur E. Reyman*, of Washington, D. C., for the Union.

*Mr. Melvin C. Smith*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On March 5, 1936, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division No. 1079, hereinafter called Local No. 1079, filed with the Regional Director for the Fifth Region a charge that the Washington, Virginia and Maryland Coach Company, Clarendon, Virginia, hereinafter called respondent, had engaged in and was engaging in unfair labor practices prohibited by the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act. A supplemental charge was filed on March 10, 1936. On March 11, 1936, the National Labor Relations Board, by the Regional Director for the Fifth Region, issued its complaint against respondent. The complaint, and notice of hearing thereon, were duly served upon respondent and upon Local No. 1079 on March 13, 1936.

The complaint alleges that respondent discharged and refused reinstatement to William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton, W. A. Crissman, Joseph R. Harmon, George Bell,<sup>1</sup> Theodore W. Frederick, Joseph A. Garrison,

<sup>1</sup> Complaint amended at hearing to read "George Beall."

Lawrence Chase,<sup>2</sup> Robert T. Smith, Edward Moore,<sup>3</sup> George Birch, C. McCauly,<sup>4</sup> Joseph McDonald,<sup>5</sup> Harry F. Gildart, James Atwell, Roy Miller and Philmore W. Frederick, for the reason that they, and each of them, joined and assisted a labor organization and engaged in concerted activities with other employees of respondent for the purpose of collective bargaining and other mutual aid and protection, and that respondent had thereby engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act.<sup>6</sup> Respondent filed an objection to the jurisdiction of the Board and a motion that the complaint be dismissed on the ground that the Act is unconstitutional. Without waiving its objection to the jurisdiction of the Board, respondent filed an answer to the complaint admitting the allegations concerning its incorporation and admitting that it owns and operates motor bus transportation lines for the transportation of passengers and express for hire from points within the District of Columbia to points within the State of Virginia, and from points within the State of Virginia to points within the District of Columbia, but denying that it now operates any motor bus transportation line in the State of Maryland. Respondent's answer further admits the allegations that it discharged and refused reinstatement to the persons named in the complaint, and each of them, but denies the allegations with respect to the unfair labor practices.

On March 17, 1936, the Board directed that the proceeding be transferred to and continued before it, thereupon assuming jurisdiction of the proceeding pursuant to Article II, Section 35 of National Labor Relations Board Rules and Regulations—Series 1.

Pursuant to notice thereof, John M. Carmody, Trial Examiner duly designated by order of the Board, conducted a hearing on March 23, 24, 25 and 26, 1936, at Washington, D. C. Respondent, appearing by counsel, participated in the hearing. Full opportunity to be heard, to cross-examine witnesses and to produce evidence was afforded to all parties. Respondent's objection to the jurisdiction of the Board was overruled by the Trial Examiner. At the conclusion of the Board's case respondent made a motion to dismiss the complaint on the ground that the evidence did not support the allegations in the complaint. The Trial Examiner denied the motion. The rulings of the Trial Examiner are hereby affirmed.

On April 25, 1936, the Board issued and duly served notice of a further hearing to be held on May 1, 1936, at Washington, D. C., and

<sup>2</sup> Complaint amended at hearing to read "Lawrence J. Chase, Jr."

<sup>3</sup> Complaint amended at hearing to read "Everett Moore."

<sup>4</sup> Complaint amended at hearing to read "Clyde J. McCaulley."

<sup>5</sup> Complaint amended at hearing to read "Joseph McDonough."

<sup>6</sup> Complaint amended at hearing to include the name John Henry Dove.

on April 27, 1936, issued and duly served notice of postponement of the hearing to May 2, 1936. Pursuant to the notice thereof, J. Warren Madden, Trial Examiner duly designated by order of the Board, conducted a further hearing on May 2, 1936, at Washington, D. C. Respondent, appearing by counsel, participated in the hearing. Full opportunity to be heard, to cross-examine witnesses and to produce evidence was afforded to all parties. Counsel for the Board made a motion to dismiss the complaint as to the allegations of discriminatory discharge of Stanley F. Smith, R. C. Stanton and Harry F. Gildart. The motion was granted by the Trial Examiner. Respondent objected to the holding of a further hearing and the introduction of further testimony on the ground that the hearing was closed on March 26, 1936. The Trial Examiner overruled respondent's objection. The rulings of the Trial Examiner are hereby affirmed.

Upon the evidence adduced at the hearings and from the entire record now before it, the Board makes the following:

#### FINDINGS OF FACT

##### I. RESPONDENT AND ITS BUSINESS

1. Respondent, Washington, Virginia and Maryland Coach Company is, and has been since 1926, a corporation organized under and existing by virtue of the laws of the State of Virginia. Its main office and garage are located at Clarendon, Virginia, and it has an office and waiting room at 619—12th Street, N. W., Washington, D. C.

Respondent operates buses on regular schedule between points within the District of Columbia and points within the State of Virginia for the transportation for hire of persons, United States mail, newspapers and occasional express shipments. Respondent formerly operated a bus line between points within the State of Maryland and points within the District of Columbia, but this business was abandoned in 1930. However, at the present time it occasionally operates buses for the transportation of persons between points within the District of Columbia and a race track within the State of Maryland.

2. Respondent operates its bus line under an interstate permit granted it by the District of Columbia and an intrastate permit granted it by the State of Virginia. In other words it is not permitted to carry persons or property for hire between two points, both within the District of Columbia, but is permitted to carry persons or property for hire between two points, both within the

State of Virginia. Except in the case of the buses operating between the District of Columbia and the race track in the State of Maryland, all persons or property picked up within the District of Columbia must be carried into the State of Virginia. More than fifty per cent of the passengers picked up at points within the State of Virginia are carried to points within the District of Columbia.

3. Respondent carried approximately 1,800 passengers per day when it began operations in March, 1926. From March to December, 1926, inclusive, it carried a total of 882,272 passengers. Respondent's business increased considerably within the next three years; during the year 1929 it carried a total of 1,694,302 passengers. In 1933 the total number of passengers carried dropped to 1,571,596. However, in 1935 respondent carried a total of 2,436,236 passengers; and from January 1 to March 22, 1936, inclusive, respondent carried a total of 612,985 passengers.

United States mail is carried on respondent's buses between Washington, D. C., and points within the State of Virginia. This mail is carried under contract which between January, 1935, and February, 1936, inclusive, yielded respondent an income of \$546.75. Newspapers are carried on respondent's buses between Washington, D. C. and points within the State of Virginia. These newspapers are also carried under contract which between January, 1935, and February, 1936, inclusive, yielded respondent an income of \$588.15. All United States mail and newspapers picked up in Washington, D. C., are carried to points within the State of Virginia; and approximately thirty per cent of the United States mail picked up at points within the State of Virginia is carried to Washington, D. C. The record does not disclose what proportion of the newspapers picked up within the State of Virginia is carried to Washington, D. C., but it was testified to in behalf of respondent that the total amount of the newspapers picked up within the State of Virginia is comparatively small.

4. When respondent commenced operations in 1926 it owned nine buses and employed approximately 20 employees. It now operates a fleet of 48 buses, and employs approximately 80 men, 50 of whom are drivers, 27 of whom are employed at its garage, and three of whom are employed at its offices.

5. Respondent has applied for and received from the Federal Bureau of Motor Carriers, Interstate Commerce Commission, a certificate of convenience and necessity in accordance with the Motor Carriers' Act, 1935.<sup>7</sup>

<sup>7</sup> 49 U. S. C. A. Chap. 8; 49 Stat. 543.

## II. ORGANIZATION OF LOCAL NO. 1079

6. Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division No. 1079, is a labor organization. Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America is affiliated with the American Federation of Labor. Local No. 1079 now has 59 members.

7. Approximately 24 employees of respondent met on February 24, 1936, at the home of Theodore W. Frederick, an employee of respondent, for the purpose of organizing a union. The group held its second meeting, also at Frederick's home, and received its charter from the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America on March 3, 1936.

8. This meeting took place at about 11:30 P. M. Joseph Arnold, Vice-President of respondent, appeared at the meeting wearing a bus operator's cap. Arnold read the charter being presented to Local No. 1079 by C. H. Clark, 4th International Vice-President, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, asked questions concerning the union, and entered into the general discussion. Subsequently, West, Financial Secretary of Local No. 1079, arose and told Clark that he was talking to the Vice-President of respondent, the son of the President, Leon Arnold. Clark replied that he had not been aware of this, and asked Arnold to leave the meeting. Arnold asked if he could become a member of Local No. 1079. Clark replied in the negative, and Arnold then said that he would like to become an honorary member. Clark told him that he could not become an honorary member, and Arnold replied, "Well, gentlemen, if that is the way you feel about it, I will leave."

Arnold testified that Frederick had invited him to attend the meeting. However, Frederick denied that he had invited Arnold to attend the meeting. Frederick further testified that he had never before seen Arnold wearing a bus operator's cap. Arnold, in explaining his appearance in a bus operator's cap, said that he had been unable to find his hat and the bus operator's cap was the first thing he picked up.

9. Harmon, a member of Local No. 1079, testified that when he returned to work at respondent's garage on March 3, immediately after the meeting, Wilsey, Superintendent of the garage, approached him and said that he was surprised to learn that he had joined Local No. 1079, and that Arnold would put his buses in a lot and burn them before he would recognize Local No. 1079. Wilsey asked Harmon if it would be possible for him to meet Clark, and both started toward Frederick's house. Before reaching Frederick's house several employees informed them that Clark had gone. Wilsey and Harmon were returning to respondent's garage when they met Leon Arnold,

who was in an automobile. It was then some time after midnight. Harmon testified that Arnold stated he would not recognize a union. Wilsey testified that Arnold said that "things wasn't like that when he was a boy and something like that, and he had to work for what he got, and he had to work his way up, and he believed in every man standing on his own feet;" and further testified that he did not hear Arnold say he would not recognize a union, but that Arnold mumbled and that he could not hear all that was said. Arnold denied saying anything about a union on this occasion; and further denied making any statement similar to that which Wilsey testified he had made. Subsequently, in answer to the question, "If I tell you that Mr. Wilsey testified to that, was he mistaken?", Arnold replied "No."

10. It was testified to in behalf of respondent that respondent first learned of the activity among its employees in connection with the organization of Local No. 1079, about February 27, 1936.

On February 29, 1936, Wilsey, acting in accordance with orders given him by Leon Arnold, inserted a notice for help wanted in a newspaper, *The Washington Herald*. Respondent received between 500 and 600 responses to the notice, from which some men were selected and given employment on or about March 5, 1936, at the time respondent discharged 21 of its employees, as hereafter related.

On or about March 1, 1936, respondent circulated the following pamphlet among its employees:

"A Personal Message From Leon Arnold, Washington, Va. & Md. Coach Co., Inc., Arnold Operated

"Sometimes groups of individuals in a business organize themselves into cliques.

"Webster's definition of a clique is, 'a narrow circle of persons associated by common interests; a small and exclusive set, or coterie; generally used in a bad sense.'

"The reason that the word clique is 'generally used in a bad sense' is that the small and exclusive set composing it usually thinks more of promoting the selfish interests of the clique than the collective interests of the organization.

"The members are more concerned in serving their own ends than in serving the customers of the business who provide them with employment and pay their wages.

"One sure way to acquire a poor standing, both in position and pay, in a business organization is to acquire a good standing in a clique."

Respondent has characterized both the appearance of the notice for help wanted on February 29, 1936, and the personal message from Leon Arnold on or about March 1, 1936, as merely a "coincidence."

It contends that it had previously decided to discharge certain of its employees for inefficiency, and to employ new men. Respondent further contends that the "personal messages" had been distributed every Monday since October, 1935, that they are obtained in quantities from a firm in Chicago, Illinois, and that the message distributed on or about March 1, 1936, was the next one, in its logical sequence, to be distributed.

### III. THE UNFAIR LABOR PRACTICES

#### *The discharges of March 4, 5 and 6, 1936*

11. On March 4, 5 and 6, 1936, respondent discharged 21 employees, all of whom were members of Local No. 1079. Six of them were bus operators; they were discharged on March 4. Seven of them were employed on the day shift at respondent's garage, and were discharged on March 5. The remaining eight comprised the entire night force working at the garage; they were discharged during the night of March 5 or early in the morning of March 6.<sup>8</sup>

The facts concerning each of the 18 discharged employees now involved in the case are as follows:

(1) *William H. West*. West had been employed by respondent two years and eight months as a bus operator. He is Financial Secretary of Local No. 1079. He was discharged by England, Assistant Manager of respondent, on March 4, 1936. West reported for work on March 4, 1936, and was told by the cashier that he was wanted at the office. Upon arriving at the office, he was told by England that "Your services are no longer required; take your traps, turn them in to the company right away." He was given no reason why his services were terminated.

England testified that his records showed that West had been involved in no accidents. England also testified that reports made by respondent's "spotter" Mason<sup>9</sup> showed that West failed to collect any fare from a passenger on December 6, 1935, and that on November 27, 1935, a passenger on a bus that West was operating deposited 10¢ in the fare box upon entering the bus at 15th & K Streets, N. W., Washington, D. C., but that, in violation of the rules, West failed to request an additional fare of 10¢ when the passenger left the bus at Falls Church, Virginia. England also stated he had received complaints by telephone concerning West, but no evidence was offered concerning the nature of the complaints or who had made them.

<sup>8</sup> The complaint having been dismissed as to the allegations of discriminatory discharge of Stanley F. Smith, R. C. Stanton and Harry F. Gildart, these three discharges will not be dealt with.

<sup>9</sup> Mason was employed by respondent during the latter part of November and the first week in December, 1935, to ride respondent's buses and make reports to respondent concerning the conduct of its operators.

(2) *Herbert M. Hall*. Hall had been in the employ of respondent as a bus operator for two years and five months previous to his discharge. He is a member of Local No. 1079. Hall had worked about half of his run on March 4, 1936 when he was called into respondent's office at 2:55 P. M. England told him his services were no longer required. Hall requested the reason for his discharge. England stated he had "plenty of reasons." Joseph Arnold was present and said, "Hall, you are the first person that asked that question." England told Hall to go home and come back later. Hall returned to respondent's office later in the afternoon and received his pay. He again questioned England concerning the reason for his discharge, and England stated, "If you wasn't so damn dumb you would know why I am firing you; I am firing you for the same reason I am firing all of the rest of them." England testified that he made this statement to Hall because Hall's wife had talked with him concerning her domestic difficulties and had requested him to dismiss Hall.

A report of Mason's shows that on December 7, 1935, Hall complained to passengers on the bus he was operating concerning the small bus he was compelled to use on the route, and suggested that because of the large number of people using the bus the passengers should get together and see Arnold, and try to get a larger bus for the route. Shortly thereafter Leon Arnold reprimanded Hall for his action, but did not penalize him. He told Hall that up to that time his record had been "pretty good." England testified that Hall had no accident record.

(3) *Charles O. Magaha*. Magaha had been employed by respondent as a bus operator for two years. He is a member of Local No. 1079. Magaha reported for work on March 4, 1936, and was told that he was wanted at respondent's office. He went to the office and England told him his services were no longer required, and asked him to turn in his punch and "fare box covers", and get his pay. He was given no reason for the termination of his employment.

England testified that he talked with Magaha on several occasions before he was discharged concerning Local No. 1079, and told him to "use his own head." England further testified that Magaha had been involved in 12 accidents in 1935 and one in 1936. Reports made by respondent to an insurance company at the time of each of these accidents are included in Board's Exhibit No. 7. These reports show that Magaha was involved in one accident in 1934, 11 in 1935, and one on February 17, 1936. Mason's report made on December 3, 1935, stated that Magaha's "fare box checked O. K." A similar report made by Mason on December 8, 1935, showed that a passenger had deposited 10¢ in the fare box upon entering a bus Magaha was operating, and that Magaha had failed to ask for an additional 5¢ when the passenger left the bus in a 15¢ zone.

(4) *W. A. Crissman.* Crissman had been employed by respondent as a bus operator for about six and one half years. He is a member of Local No. 1079. Crissman reported to the cashier at respondent's office at the end of his run on the afternoon of March 4, 1936, and was told that England wanted to see him. England informed him that his services were no longer required, but stated no reason why he was terminating his employment.

A report of Mason's shows that on November 30, 1935, Crissman failed to collect an additional fare of 5¢ from a passenger. England testified that during the previous 6 months he had received complaints concerning Crissman, but no evidence was offered to show the nature of these complaints or by whom they were made. Joy, a frequent passenger on the bus operated by Crissman, testified that on one occasion Crissman had refused to honor a transfer he had received from another driver, and on another occasion refused to issue to him a transfer to a Columbia Pike bus, but instead overtook the Columbia Pike bus, pulled up beside it, held out his hand and said, "Hold your bus. I have got a passenger for you." Joy stated that "he made me go out before two bus-loads of people, and I felt like a fool. . . ." Aside from Joy's personal feelings in the matter it would appear that Crissman was courteous and did everything possible to assist a passenger in this instance. Crissman testified that respondent prohibited its drivers from issuing or accepting transfers during rush hours.

(5) *Joseph R. Harmon.* Harmon had been employed by respondent for about eight and one half years as a mechanic at respondent's garage. He is a member of Local No. 1079. He was a working foreman on the night shift. He was discharged by Wilsey, Superintendent of the garage, on March 6, 1936. Wilsey testified that when he discharged Harmon he said, "Go get it"; that Harmon replied, "I guess I am going on account of the union"; and that he told Harmon, "Well, you can figure it out that way for yourself." This conversation took place at about 5 A. M. on March 6, 1936. Harmon then went to respondent's office and received his wages from England. Harmon asked England, "What am I fired for, joining the union?" England replied, "No, just the way you went about it," and further stated that Harmon should have come to him for advice in the matter. England also told Harmon that he had always done good work and that he was sorry to see him go.

(6) *Joseph A. Garrison.* Garrison had been employed by respondent for about two years. He was employed as a bus washer on the night shift at respondent's garage. He is a member of Local No. 1079. Garrison was discharged by Wilsey early in the morning of March 6, 1936.

(7) *Everett Moore*. Moore had been employed by respondent one year and two months as a bus washer. He was employed on the night shift at respondent's garage. He is a member of Local No. 1079. Moore was discharged by Wilsey early in the morning of March 6, 1936.

(8) *John Henry Dove*. Dove had been employed by respondent for about one month as a bus washer. He was employed on the night shift at respondent's garage. He is a member of Local No. 1079. Dove was discharged by Wilsey early in the morning of March 6, 1936.

(9) *Robert I. Smith*. Smith had been employed by respondent about three years as a service man at respondent's garage. He was employed on the night shift. He is a member of Local No. 1079. Smith was discharged by Wilsey on March 6, 1936. Smith finished the night's work at about 6 A. M. on March 6, 1936, and went to the wash room. Wilsey came in and told him to go to the office. Smith saw England at the office and received his wages. England stated, "You guys started something and I got ahold of it before it went far enough to amount to anything. If it had gone on it might have been too bad."

(10) *Clyde J. McCaulley*. McCaulley had been employed for about one month at respondent's garage. He is a member of Local No. 1079. He was employed to assist in the changing of tire chains during the cold weather. However, on or about February 25, 1936, he was given work as a mechanic with the night shift. McCaulley was discharged by Wilsey the night of March 5, 1936.

(11) *James L. Atwell*. Atwell had been employed about seven years as a bus greaser at respondent's garage. He was employed on the night shift. He is a member of Local No. 1079. Atwell was discharged by Wilsey early in the morning of March 6, 1936. Wilsey told Atwell to go to the office and get his money when he finished work. When Atwell went to respondent's office England said, "Jim, you have kept your work up good, and we never had any trouble with you." Atwell testified that England told him he was being discharged for going to union meetings. However, England denied making any such statement.

(12) *Roy Miller*. Miller was first employed by respondent in September, 1935. He was employed as a mechanic at respondent's garage, and was transferred from the night shift to the day shift on or about March 3, 1936. He is a member of Local No. 1079. Miller was discharged by Wilsey on March 5, 1936. Miller testified that during his conversation with Wilsey at the time of his discharge:

"I said, 'What is the matter, is my work not satisfactory?'  
And he (Wilsey) said, 'Perfectly satisfactory, and if it wasn't,

you wouldn't be here two days.' And then I said, 'Well, what is the firing for?' And he said, 'What do you mean?' And I said, 'In other words you are firing me on account of the union,' and he said, 'Yes'."

However, Wilsey testified that when Miller asked him if he was being discharged because of the union, he made no reply, and walked away. Miller received his wages from England who gave him no reason why he was being discharged.

(13) *Theodore W. Frederick*. Frederick had been employed by respondent about seven and one half years. He was a working foreman on the day shift at respondent's garage. He is Recording Secretary of Local No. 1079. Frederick was discharged on March 5, 1936. At 5:50 P. M., March 5, 1936, Wilsey told him, "Frederick, I hate to give you this, because you have got to go." Frederick asked Wilsey, "Was it because of the union?" Wilsey replied, "No, it is because of the underhanded way you went about it." Wilsey also stated that he had been a member of a labor organization for eight years and it had not done anything for him, and told Frederick that he should have talked it over with him before becoming affiliated with Local No. 1079.

(14) *George Beall*. Beall had been employed about three months as a mechanic on the day shift at respondent's garage. He is a member of Local No. 1079. He was discharged by Wilsey on March 5, 1936. Beall testified that he asked Wilsey if he was being discharged because of the union, and that Wilsey replied, "Yes"; that Wilsey asked him why he had joined the union without saying anything about it to him; and that Wilsey said he didn't see any sense in the union and furthermore the "Old Man" would not recognize a union.

(15) *Lawrence J. Chase, Jr.* Chase was employed as a painter's helper for approximately one year at respondent's garage. He was employed on the day shift. He is a member of Local No. 1079. He was discharged on March 5, 1936. After lunch on March 5, 1936, Wilsey told Chase to get his money. Chase received his wages from England. He was given no explanation concerning the reason for terminating his employment.

(16) *George Louis Birch*. Birch had been employed about seven and one half years as a mechanic at respondent's garage. He was employed on the day shift. He is a member of Local No. 1079. Birch was discharged on March 5, 1936. At about 6:50 P. M. on March 5, 1936, Wilsey said to Birch, "There is a letter in the office for you." Birch went to respondent's office and England said to him, "Birch, sign this, and see if your money is all right. . . . What does your wife think of this mess, and your losing your job?" Birch was not told why he was being discharged.

(17) *Philmore W. Frederick.* Frederick had been employed more than five years as a mechanic's helper at respondent's garage. He was employed on the day shift. He is a member of Local No. 1079. Frederick testified that on the morning of March 5, 1936, he was showing a union application blank to Kaylor and that England told him to put the application blank back in his pocket because he didn't have any business with a union application. Frederick further testified that he was discharged by Wilsey on March 5, 1936, at which time Wilsey told him he was being discharged because he had "one of those union applications in the office."

(18) *Joseph McDonough.* McDonough had been employed about one year as a body man at respondent's garage. He was employed on the day shift. He is a member of Local No. 1079. McDonough was discharged by Wilsey on March 5, 1936. After lunch on March 5, 1936, Wilsey told McDonough, "Go up in the office and get it. Your services are through." McDonough received his money from England. He was not told why his services were being terminated.

#### IV. CONCLUSIONS RESPECTING THE UNFAIR LABOR PRACTICES

12. The 18 discharged employees are all members of Local No. 1079, and include West, Financial Secretary, and Theodore W. Frederick, Recording Secretary. The fact that only employees of respondent who were members of Local No. 1079 were discharged indicates that respondent was attempting to weed out its employees who were active in union affairs.

The record clearly indicates that respondent has displayed a hostile attitude toward Local No. 1079. Leon Arnold, President of respondent, testified that a mechanic by the name of Griffin was given employment in September, 1935, and that "Mr. Griffin was the one that sowed the seeds there first, with the day foreman and night foreman." Upon being asked what he meant by the phrase "sowed the seeds," Arnold replied, "Selling them the idea of the union." The record does not disclose the identity of Griffin; however, it is indicated that he was an organizer for the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America.

Respondent's attitude toward Local No. 1079 is further exposed through the statements of England and Wilsey at the time certain of respondent's employees were discharged; and the fact that Leon Arnold, on one occasion related to Magaha, Crissman and four other bus operators, certain unpleasant experiences he had had with a labor organization and attempted to dissuade them in their efforts to organize a union.

There is no question that respondent knew which of its employees were members of Local No. 1079. The employees freely discussed

their membership both among themselves and with respondent's supervisors and officials. It has been brought out that Joseph Arnold appeared at the meeting of Local No. 1079 on March 3, 1936, the day before respondent began to discharge the members of Local No. 1079, wearing a bus operator's cap. Respondent was thus given an opportunity to observe the activities of its employees at close range. It is true that Joseph Arnold was well known to most of respondent's employees. However, Clark, 4th International Vice-President, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, was not acquainted with him. In view of respondent's attitude toward Local No. 1079, we are convinced that Joseph Arnold appeared at this meeting on March 3, 1936, in order to obtain information concerning the activities of respondent's employees in connection with the organization of Local No. 1079, and that his appearance in a bus operator's cap was a deliberate attempt to conceal his identity. Thus, respondent, possessing a knowledge of membership in Local No. 1079, was enabled to deliver a well-directed blow at Local No. 1079 at the very outset.

Respondent contends that the timely appearance of the notice in a local newspaper for help wanted and the personal message from Leon Arnold was a "coincidence"; however, we are convinced that this was part of a plan carefully arranged and carried into effect by respondent. The general tenor of the message and its discussion of a "clique", leaves little doubt that respondent selected this particular message as being especially applicable to the situation then existing among its employees. It appears that respondent chose this method of discouraging membership in Local No. 1079, and advertised for help wanted with a view to getting rid of certain of its employees active in union affairs in order that it could thus permanently cripple Local No. 1079.

Respondent contends that the reports made by Mason in November and early in December, 1935, were unfavorable as concerned the four bus operators, and because of these reports and certain complaints it had received it discharged them. No evidence was offered concerning the nature of the complaints, who had made them or when they had been made, except in the case of Crissman. Joy testified concerning a complaint he had made to England concerning Crissman. This complaint was made in June, 1935, more than eight months before Crissman was discharged. The reports made by Mason disclosed that on one or two occasions, approximately three months before their discharge, West, Magaha, and Crissman had failed to collect fares from passengers, amounting to 5¢ or 10¢. The record clearly indicates that the buses are often crowded to capacity, and at such times conditions make it physically impossible for the

operator to remember the exact amount deposited in the fare box by each passenger, and request an additional fare upon entering another fare zone.

England testified that he had no record of accidents in which West or Hall had been involved, and Crissman testified that he had not been involved in an accident for more than two years. Magaha was involved in 11 accidents in 1935, and one in February, 1936. Reports submitted by respondent to the United States Fidelity and Guaranty Company in connection with each of these accidents show that Gagaha could not have avoided any of them.

Magaha and Crissman testified that on or about February 28, 1936, Leon Arnold, Joseph Arnold and England talked with them and four other bus operators at respondent's office and asked each of the bus operators if they had joined Local No. 1079; that they and three of the other operators replied they were members of Local No. 1079; and that Leon Arnold related certain unpleasant experiences he had had with a union, and requested each to consider whether or not he would remain a member of the union, and inform respondent of his decision the next morning. The record does not reveal the identity of the other four bus operators. Magaha and Crissman did not comply with the request. Crissman testified that subsequently Leon Arnold asked him if he wanted to change his mind, and that he had time to reconsider, but that he replied in the negative. Leon Arnold did not deny making these statements.

Respondent contends that the 14 employees at its garage were inefficient and incompetent. England testified that the buses were not cleaned properly and that passengers had complained about the dirty condition of the buses, and that on several occasions passengers' clothes had been soiled. Garrison, Moore and Dove were employed as bus washers on the night shift, and Harmon was their working foreman. Respondent contends that they were responsible for the condition of the buses. However, the evidence shows that the unclean condition of the buses existed during bad weather in the winter months when it was necessary for Garrison, Moore and Dove to assist in the placing of tire chains on buses, and that they had no time to clean the buses.

Smith, Atwell and McCaulley were also employed on the night shift. Wilsey testified that Smith serviced the buses, i. e. filled the buses with gasoline and oil before they left the garage, and that buses had run out of gasoline on several occasions. Smith testified that only one such complaint had been made to him, about six months before his discharge. Wilsey testified that Atwell, who greased the buses, had a bad grease record for the past six and one-half years. Wilsey's only explanation of this statement was that some bearings

in the buses had been burned because of lack of grease, presumably months before Atwell's discharge. Wilsey further testified that he was told by the night foreman that McCaulley was a poor mechanic. Respondent has introduced no evidence tending to show the caliber of McCaulley's work or wherein he was inefficient.

Theodore W. Frederick was employed as a working foreman at respondent's garage. He was Recording Secretary of Local No. 1079, and it was at his house that meetings of Local No. 1079 were held. Respondent has offered no evidence to show that Theodore W. Frederick was incompetent or inefficient. On the contrary the record indicates that Theodore W. Frederick was a conscientious and diligent worker during the seven and one half years he was employed by respondent. At the time of his discharge respondent was paying him the next to the highest wages paid to any mechanic in its garage. Philmore W. Frederick, brother of Theodore W. Frederick, was employed as a mechanic's helper. Wilsey testified that Philmore W. Frederick became "dominant" during the two or three months previous to his discharge. However, no instances of insubordination were shown.

Miller was employed as a mechanic on the day shift at the time he was discharged, having been transferred from the night shift several days before. Wilsey testified that Harmon, the working foreman on the night shift, had told him that Miller was not competent and that he wanted a better man. However, Harmon testified that he could not recall making such a statement to Wilsey, but that he did tell him he wanted more help for the night shift. Wilsey further testified that Miller was inefficient, and, citing an instance of his inefficiency, stated that on February 20, 1936, Miller was given a job relining the rear wheel brakes of a bus, and that he failed to insert the oil seals and installed the cams incorrectly. However, Harmon testified that during the eight and one-half years he had worked for respondent, Miller was as good a mechanic as he had ever had. Harmon further testified that Miller did not finish the job assigned to him on February 20, 1936, because the necessary parts were not available, and that Miller had not failed to insert the oil seals and had not installed the cams incorrectly. It is shown that respondent had confidence in Miller's ability, in that when Harmon was off, one night every two weeks, Miller acted as working foreman, a position of responsibility.

Beall and Birch were also employed as mechanics on the day shift. Wilsey testified that Beall had little experience and was a slow worker, and that "Birch was coming along pretty good . . . and he had just got to a position the last two or three months . . . we had to watch him very closely, and he would destroy almost as much as he would make." Nevertheless, neither Beall nor Birch were ever

reprimanded or have ever received any complaints concerning their work during the entire course of their employment.

Respondent has offered no evidence to show that Chase or McDonough were incompetent or inefficient.

The record clearly does not sustain respondent's contention that the 18 employees were discharged because of incompetency and inefficiency. On the contrary respondent's apparent hostility toward Local No. 1079, and its conduct in attempting to discourage membership in Local No. 1079; the fact that none of the 18 employees were told that they were being discharged because of incompetency or inefficiency; and the fact that all of them were discharged over a period of two days immediately following the organization of Local No. 1079, and at once replaced by new employees, convinces us that respondent looked only toward their union membership and activity in terminating their employment.

We find that respondent has discriminated in regard to the hire and tenure of employment of William H. West, Herbert M. Hall, Charles O. Magaha, W. A. Crissman, Joseph R. Harmon, Joseph A. Garrison, Everett Moore, John Henry Dove, Robert I. Smith, Clyde J. McCaulley, James L. Atwell, Roy Miller, Theodore W. Frederick, George Beall, Lawrence J. Chase, Jr., George Louis Birch, Philmore W. Frederick and Joseph McDonough, for the purpose of discouraging membership in the union, and that by such acts, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### V. EFFECT OF UNFAIR LABOR PRACTICES ON COMMERCE

13. Respondent is engaged in the operation of an interstate bus transportation system. Its bus operators are actively engaged in the operation of instrumentalities of interstate transportation. The operations conducted at respondent's garage are an integral part of the operation of this interstate transportation system. Buses carrying passengers and property in interstate transportation are serviced and made ready for their scheduled runs at respondent's garage. Such servicing is essential to the safe and regular functioning of the system. Thus respondent's garage is an integral part of the operation of instrumentalities of interstate commerce and respondent's employees, employed at its garage, are actively working upon instrumentalities of interstate transportation and are engaged in operations in the course and conduct of interstate transportation. Therefore, respondent's conduct as set forth in the findings of fact above, and each item of such conduct, occurred in the course and conduct of the operations of instrumentalities of interstate transportation and affected not only employees engaged in the operation

of instrumentalities of interstate transportation, but also employees engaged in operations in the course and conduct of interstate transportation and on instrumentalities of interstate transportation, and hence occurred in the course and current of transportation within the District of Columbia and between the District of Columbia and the States of Virginia and Maryland.

As we said *In the Matter of Pennsylvania Greyhound Lines, Inc., Case No. C-1*,

“Interference with the activities of employees in forming or joining labor organizations results in strikes and other forms of industrial unrest which in the field of transportation have the effect of impairing the safety and efficiency of the instrumentalities of such transportation. About 50% of the strikes and lock-outs that occurred in the motor transportation industry from January, 1935 to July, 1935, inclusive, involving 32,732 employees and 162,721 man-days of idleness, arose over the issue of employee organization. It is a common knowledge that in the industrial scene numerous and prolonged strikes have resulted from denial by employers of the rights now guaranteed by Section 7 and from their interference with employees attempting to exercise such rights ((1934) 39 Monthly Labor Review No. 1, p. 75, Table 9). The Board cannot be blind to such knowledge or fail to realize the disruption of commerce that results from such strikes and unrest. The motor transportation industry has achieved an important place in the transportation systems of this country and it is the desire of Congress to prevent the interference with transportation and the impairment of the safe and efficient operations of its instrumentalities that results from such strikes and unrest. It is significant that, unlike the parallel legislation in the railway field, there are no provisions for collective bargaining and employee freedom of organization and representation in the recent Motor Carrier Act of 1935, imposing federal regulation of interstate motor transportation. The omission was succinctly explained on the floor of the Senate by Senator Wheeler, Chairman of the Committee on Interstate Commerce, on the ground that the Wagner Act then before Congress would cover the field of motor transportation and that therefore such provisions need not be incorporated in the Motor Carrier Act (Cong. Record, 74th Congress, 1st Session, Vol. 79, p. 5887).”

14. We therefore conclude on the basis of findings of fact 1 to 5, inclusive, and finding of fact 13, that: (a) the operations of respondent occur in the course and current of transportation within the District of Columbia and between the District of Columbia and the

States of Virginia and Maryland, and are an integral part of the operations of the instrumentalities of such transportation; and (b) on the basis of experience in the motor bus transportation and other industries, respondent's conduct, and each item of such conduct, burdens and obstructs commerce and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, by impairing the efficiency, safety, and operation of instrumentalities of commerce.

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law.

1. Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division No. 1079, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. By its discharge and refusal to reinstate William H. West, Herbert M. Hall, Charles O. Magaha, W. A. Crissman, Joseph R. Harmon, Joseph A. Garrison, Everett Moore, John Henry Dove, Robert I. Smith, Clyde J. McCaulley, James L. Atwell, Roy Miller, Theodore W. Frederick, George Beall, Lawrence J. Chase, Jr., George Louis Birch, Philmore W. Frederick and Joseph McDonough, and each of them, for the reason that they and each of them joined and assisted Local No. 1079, respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

3. By its discharge and refusal to reinstate the persons aforesaid, as set forth in paragraph 2 hereof, and each of them, respondent did discriminate and is discriminating in regard to hire and tenure of employment of said persons and each of them, and did thus discourage and is thus discouraging membership in Local No. 1079, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

4. The unfair labor practices in which respondent has engaged and is engaging are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

#### ORDER

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that respondent, Washington, Virginia and Maryland Coach Company:

1. Cease and desist from discouraging membership in Local No. 1079 or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment;

2. Cease and desist from 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 National Labor Relations Act;

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

(a) Offer to William H. West, Herbert M. Hall, Charles O. Magaha, W. A. Crissman, Joseph R. Harmon, Joseph A. Garrison, Everett Moore, John Henry Dove, Robert I. Smith, Clyde J. McCaulley, James L. Atwell, Roy Miller, Theodore W. Frederick, George Beall, Lawrence J. Chase, Jr., George Louis Birch, Philmore W. Frederick and Joseph McDonough, employment in the respective positions formerly held by them with all rights and privileges previously enjoyed; and

(b) Make whole said William H. West, Herbert M. Hall, Charles O. Magaha, W. A. Crissman, Joseph R. Harmon, Joseph A. Garrison, Everett Moore, John Henry Dove, Robert I. Smith, Clyde J. McCaulley, James L. Atwell, Roy Miller, Theodore W. Frederick, George Beall, Lawrence J. Chase, Jr., George Louis Birch, Philmore W. Frederick and Joseph McDonough, for any losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum equal to that which each would normally have earned as wages, at the rate set out in the Appendix I (attached hereto and made a part hereof), during the period from the date of his discharge to the date of offer of employment as ordered hereunder, less amounts earned by each during such period.

## APPENDIX I

Name	Date of discharge	Average weekly salary, with one day off every 13 days	Name	Date of discharge	Average weekly salary, with one day off every 13 days
William H. West.....	Mar 4, 1936	\$28 00	Clyde J. McCaulley....	Mar 5, 1936	\$25 00
Herbert M. Hall.....	Mar 4, 1936	28 00	James L. Atwell.....	Mar 6, 1936	20 00
Charles O. Magaha.....	Mar 4, 1936	28 00	Roy Miller.....	Mar 5, 1936	30 00
W. A. Crissman.....	Mar 4, 1936	28 00	Theodore W. Frederick..	Mar 5, 1936	35 00
Joseph R. Harmon.....	Mar 6, 1936	35 00	George Beall.....	Mar 5, 1936	25 00
Joseph A. Garrison.....	Mar 6, 1936	15 00	Lawrence J. Chase, Jr....	Mar 5, 1936	12 00
Everett Moore.....	Mar 6, 1936	15 00	George Louis Birch.....	Mar 5, 1936	27 50
John Henry Dove.....	Mar 6, 1936	15 00	Philmore W. Frederick..	Mar. 5, 1936	18 00
Robert I. Smith.....	Mar 6, 1936	18 00	Joseph McDonough.....	Mar. 5, 1936	25 00