

(a) Bargain collectively with the above-named labor organization concerning rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, embody said understanding in a signed agreement.

(b) Post at its place of business, copies of the notice attached hereto marked "Appendix."<sup>5</sup> Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by an official representative of the Respondent, be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Fourth Region, in writing, within 10 days from the date of this Recommended Order, what steps have been taken to comply herewith.<sup>6</sup>

<sup>5</sup> In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

<sup>6</sup> In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

## APPENDIX

### NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

**WE WILL NOT** refuse to recognize Upholsterers' International Union of North America, AFL-CIO, as the representative of our employees in the unit described below. The bargaining unit is:

All production and maintenance employees employed at our Slatington, Pennsylvania, plant, exclusive of casual part-time employees and all supervisors as defined in Section 2(11) of the Act.

**WE WILL**, upon request, bargain collectively with the above-named labor organization concerning rates of pay, wages, hours of employment, or other conditions of employment, and, if an understanding is reached, we will embody said understanding in a signed agreement.

**WE WILL NOT** refuse to bargain with said labor organization as the representative of our employees in said unit or interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent permitted under Section 8(a)(3) of the Act.

NATIONAL SCHOOL SLATE COMPANY,  
Employer.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

**Morrison Motor Freight, Inc. and William C. Paul**

**Morrison Motor Freight, Inc. and Robert C. Gray.** Cases Nos.  
25-CA-1413-1 and 25-CA-1413-2. June 27, 1962

## DECISION AND ORDER

On March 28, 1962, Trial Examiner Sidney D. Goldberg issued his Intermediate Report in the above-entitled proceeding, finding that  
137 NLRB No. 108.

the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter the Respondent and General Counsel filed exceptions to the Intermediate Report and supporting briefs.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Rodgers, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.<sup>1</sup> The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings,<sup>2</sup> conclusions,<sup>3</sup> and recommendations of the Trial Examiner as amended herein.<sup>4</sup>

## ORDER

The Board adopts the Recommended Order of the Trial Examiner.

<sup>1</sup> In its exceptions the Respondent Employer requests a new hearing, contending that the Trial Examiner's credibility resolutions exhibit a prejudice or bias in favor of the Charging Parties. Upon careful analysis of the entire record, we find nothing in support of this contention and deny the motion for a new hearing. *Peter Kiewit Sons' Co*, 136 NLRB 119.

<sup>2</sup> In evaluating the evidence in this case, we have considered the uncontradicted testimony of Respondent's treasurer, Duncan, with respect to Morrison's economic condition prior to the discharge of Paul and Gray. As we find that this testimony, even if wholly credited, would not, in view of the other evidence in the case, support a finding that the discharges were economically, rather than discriminatorily, motivated, we shall deny the Respondent's motion to reopen the record to introduce documentary evidence to corroborate Duncan's oral testimony.

<sup>3</sup> The General Counsel has excepted to the failure of the Trial Examiner to find that Supervisor Sands' interrogation of Paul as to whether he and Gray had joined the Union, and Sands' statement to Paul, "Why did you boys do that . . . I was getting ready to ask for more money for you boys . . . well, I'm sorry that you did that . . ." each constituted an independent violation of Section 8(a) (1) of the Act. We find merit in these exceptions, and so find *Charlotte Union Bus Station, Inc*, et al, 135 NLRB 228.

<sup>4</sup> In order that the Recommended Order shall reflect the additional 8(a) (1) findings made herein, paragraph 1(b) is renumbered 1(c) and we shall insert, as paragraph 1(b) of said Order, the following:

Interrogating its employees concerning their union membership in a manner constituting interference, restraint, or coercion within the meaning of Section 8(a) (1) of the Act, or threatening to withhold economic benefits because of their activities on behalf of Teamster Local Union No. 135, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

We shall also amend the notice by inserting therein the following:

WE WILL NOT interrogate our employees concerning their union membership in a manner constituting interference, restraint, or coercion within the meaning of Section 8(a) (1) of the Act, or threaten them with the withholding of economic benefits because of their activities on behalf of Teamster Local Union No. 135, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

## INTERMEDIATE REPORT

### STATEMENT OF THE CASE

Upon charges of unfair labor practices filed July 24, 1961, by William C. Paul and Robert C. Gray against Morrison Motor Freight, Inc. (herein called Morrison

or the Company), the General Counsel of the National Labor Relations Board, by the Regional Director of the Twenty-fifth Region, issued a consolidated complaint dated September 7, 1961, alleging that Morrison, by interrogating and threatening the Charging Parties, had restrained and coerced its employees in violation of Section 8(a)(1) of the National Labor Relations Act (herein called the Act) and, by discharging them for their union activity, had discriminated against them in violation of Section 8(a)(1) and (3) thereof.

Respondent answered denying all allegations of the complaint. By written stipulation this answer was, in effect, amended to admit that Respondent was an employer engaged in commerce and that two of the three officials of Morrison named in the complaint held supervisory positions as alleged. A hearing was held before Trial Examiner Sidney D. Goldberg at Anderson, Indiana, on October 23 and 24 and on November 14, 1961, during which it appeared that Respondent's defenses were that Messrs. Paul and Gray, during their employment by Morrison, had been supervisors, not employees within the meaning of the Act, and that their employment was terminated for economic, not discriminatory, reasons. The General Counsel and counsel for Morrison have filed briefs.

From my consideration of the entire record, including the briefs of counsel, and for the reasons set forth below, I conclude that Paul and Gray were not supervisors but were employees within the meaning of the Act, and that Morrison terminated their employment because of their union activity and thereby violated Section 8(a)(1) and (3) of the Act.

Upon the entire record,<sup>1</sup> and from my observation of the witnesses, I make the following:

#### FINDINGS OF FACT

##### I. RESPONDENT'S BUSINESS

Morrison is an Indiana corporation engaged as an interstate motor carrier of property with terminals at Akron, Cleveland, Mansfield, and Warren, Ohio, in the East and St. Louis and Kansas City, Missouri, in the West. It operates pursuant to certificates issued by the Interstate Commerce Commission and it received, during the past 12 months, more than \$50,000 for transporting goods from points within the State of Ohio to points outside that State. It is conceded, and I find, that Morrison is an employer engaged in commerce within the meaning of Section 2(6) of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

Teamster Local Union No. 135, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

###### A. Background

Daleville, Indiana, just outside the city of Anderson, is approximately half the distance between the Cleveland-Akron area and St. Louis and about 8 hours' driving time from each end of the run. For some time Morrison's drivers had been stopping to sleep at Travelers' Rest Motel in Daleville. There were, apparently, financial disadvantages to Morrison in this arrangement and in an effort to diminish them the Company, in June 1960, established Daleville as a "relay station" and set up an office a few feet from the motel. As part of the new establishment certain drivers of Morrison were "domiciled" at Daleville: that is, they physically resided in the area and regarded it as their home station. The Daleville drivers usually drove between Daleville and St. Louis.

To manage the new installation, Morrison transferred Henry Sands from its head office in Akron. About a week later Sands reported to Mrs. Elsie B. Duncan, vice president and treasurer of Morrison, that he needed assistance in running the terminal and the Company authorized him to hire a man. On June 21, 1960, he employed William Paul as a "dispatcher." At first Paul worked 44 hours per week, weekdays from 8 a. m. until 5 p. m. and Sands worked with him. Paul had office experience but not with motor carriers, and required training. In addition to the clerical work performed at Daleville and its function with respect to operating personnel, arrange-

<sup>1</sup> The General Counsel's motion to correct the record at pages 49 and 155 was not opposed and is granted. Additional corrections of the record, on the Trial Examiner's motion, have been made.

ments were made through the Daleville terminal with a local mechanic to perform minor and emergency repairs to the equipment.

Two weeks after Paul began working, Sands became ill and was hospitalized in Muncie. With the assistance of personnel at the Akron and St. Louis terminals, connected with Daleville by leased telephone lines, Paul managed to operate the terminal, working 85 hours the first week. The following week Sands was at home and kept in communication with Paul but Paul again worked 85 hours. After his week at home Sands suffered a relapse and was hospitalized in Anderson. Paul asked the home office at Akron for assistance and was authorized to find a helper. He submitted the name of Robert C. Gray, a longtime friend who was a police officer in Muncie. After a telephone interview with Mrs. Duncan and the approval of the Muncie police chief, Gray was hired on July 24, Mrs. Duncan remarking that there had been trouble with drinking drivers and that Gray's police experience would prove valuable in that area.

During the first week of Gray's employment Sands was still in the hospital and Paul and Gray covered the terminal as well as they could. The following week Sands was out of the hospital and, on his instructions, Paul opened the office at 9 a. m. and remained until his work was completed about midnight while Gray reported at midnight and worked until 6 a. m. Sands was in and out of the office during that week.

Thereafter, beginning about August 1, 1960, the terminal was operated by these three men around the clock. Sands assigned to himself the hours from 7 a. m. until 3:30 p. m.; to Paul the hours from 3:30 p. m. until 12:30 a. m.; and to Gray the hours from 12:30 a. m. until 6:30 a. m. This schedule was in effect until Paul and Gray were discharged on May 12, 1961.

#### *B. Status of Sands, Paul, and Gray as supervisors*

One of Respondent's defenses, as stated above, is that Paul and Gray were supervisors and, therefore, not "employees" within the meaning of the Act. Respondent, furthermore, refused to concede that Sands' position was supervisory. Since Respondent's terminal at Daleville was manned only by Sands, Paul, and Gray and their duties interlocked, it will be practical to consider their several functions together.

On or about August 3, 1960, which was after Sands had returned from his second hospital stay, after Gray had been hired, and after the Daleville terminal had settled into the routine it was to retain until May 12, 1961, Business Agent William E. Zion of Local 135 made an official call at the terminal in connection with the transfer to Local 135 of the Morrison drivers redomiciled at Daleville. Zion introduced himself to the two men who appeared to be in charge of the terminal and they introduced themselves as James Carroll, director of operations for the Morrison system, and Henry Sands, manager of the Daleville terminal.<sup>2</sup>

Carroll informed Zion that Sands was in complete charge of the terminal, with control over hiring and firing and having sole authority to deal with the Union's representatives on grievances.<sup>3</sup> Thereafter Sands, and only Sands, represented Morrison at the terminal level in connection with grievances involving drivers arising out of Daleville operations.

Within a few days after Zion's first visit, the Daleville drivers (who had transferred into Local 135) and Morrison agreed upon a dispatch procedure for that terminal which was embodied in a notice signed by Sands for the Company and which was (and still is) posted on the bulletin board. For the first 4 or 5 months of the operation at Daleville, Sands signed disciplinary letters for the Company at Daleville until that function was taken over by R. C. Taylor, Morrison's labor relations director.

Whenever problems arose during the shifts of Paul and Gray that could not be resolved by following established company practices or by agreement between the persons involved, they called Sands at his home and he made the required decisions. It was also to Sands that Paul and Gray made their requests for salary increases. On the one occasion when Gray found that two drivers had reported for duty under the influence of liquor, he telephoned Sands at his home: Sands, after talking to the drivers, told Gray to send them back to bed and he came to the terminal and discharged them.

On the foregoing facts, I find that Sands represented the Morrison management in the operation of the Daleville terminal and was a supervisor within the meaning of Section 2(11) of the Act.

<sup>2</sup> Respondent did not controvert this evidence.

<sup>3</sup> Sands introduced Zion to Paul and, when Zion asked whether Paul had any authority to speak for the Company on labor problems, Carroll said that only Sands had such authority.

The work of Paul and Gray as "dispatchers" consisted principally of preparing documents and dispatch sheets for outbound equipment and freight from data supplied to them on equipment and freight arriving at Daleville either from east or west and scheduled to proceed to destinations beyond Daleville. Certain advance information concerning freight westbound from Akron would reach Daleville from the Akron terminal between 9 p.m. and 11 p.m. and the trucks involved would arrive the following day. Similar advance information concerning freight eastbound from St. Louis would arrive from the St. Louis terminal between 7 and 8 in the evening and those trucks would arrive at Daleville during the night and early morning. The balance of the information necessary to complete the dispatch sheets and outgoing documents would be handed to the dispatcher by the driver on his arrival at Daleville.

The assignment of drivers to take these loads out of Daleville was fixed, as set forth in the posted "Method of Operation," by seniority among the employees having "available ICC hours" <sup>4</sup> to reach the destinations of the loads. Assignment of drivers by Paul and Gray, therefore, required only that they figure the "available" hours remaining for each of the men, consult the seniority list, and notify the proper driver in time for him to report for duty. Cases of doubt or dispute were either settled by the drivers involved or referred to Sands for determination.

Since the stop at Daleville was to enable drivers to sleep after an 8-hour run, an important part of the dispatcher's work at the "relay station" was to awaken them in time for their next trip. During the period when Paul and Gray were employed by Morrison, there were no telephones or signaling devices in the sleeping rooms and it was part of the dispatchers' work to go from the terminal office to the motel (about 250 feet) to awaken each driver.

In addition to the foregoing duties, Paul and Gray received reports of equipment breakdowns and relayed the information to the local mechanic with whom Morrison had an arrangement covering minor repairs; they initialed tickets for fuel supplied by the gas station near the terminal; and certified the performance of miscellaneous tasks by driving personnel. In these areas also, doubtful questions or disputes were referred to Sands.

On several occasions when extra drivers were needed, Sands instructed Paul or Gray to call one of the men whose applications for permanent employment with Morrison had been accepted by Sands and in each of these instances Sands talked with the extra driver before he began work.

Vice President Duncan, who appears to have had the final say in hiring and firing, conceded that neither Paul nor Gray had any authority to hire or discharge employees. There is no credible evidence that either of them made any recommendations with respect to the hiring, transfer, promotion, or disciplining of any employee or that they had any authority responsibly to direct the work of any other employee.<sup>5</sup> This authority for the Daleville installation appears to have been in Terminal Manager Sands, subject to whatever rights of supervision were retained by the head office in Akron.

Labor Relations Director Taylor, when informed by Local 135 on May 3, 1961, that it represented Paul and Gray, made no reference to their being "supervisors" but asked the Union to send him a copy of the standard contract for office employees as well as the union schedule of wage rates, dues, and fringe benefit payments. It was not until some time in June, long after the discharge of Paul and Gray and at a conference with Local 135 concerning their reinstatement, that Taylor first advanced the theory that they had been supervisors.

On the evidence in this record, I find that Paul and Gray were not "supervisors" of Morrison but were employees within the meaning of the Act.<sup>6</sup>

<sup>4</sup> Official notice may be taken of the existence of statutes and regulations affecting certificated motor carriers which are administered by the Interstate Commerce Commission (49 U.S.C. 304; 49 CFR 195). These regulations limit the length of time a driver may remain on duty and require the keeping of records concerning each driver's hours of duty and rest.

<sup>5</sup> Insofar as any testimony by Sands contradicts the foregoing, it is not credited. Based upon his demeanor on the witness stand, the inconsistencies in his own testimony, and the conflicts between his testimony and that of other officials of Morrison, I do not consider him a credible witness.

<sup>6</sup> *Zone Oil Trucking Corp.*, 91 NLRB 541; *Auto Transports, Inc.*, 100 NLRB 272; *Gulf Oil Corporation*, 100 NLRB 1007, 1010; *Yellow Cab, Inc.*, 131 NLRB 239; cf. *Webb Fuel Company*, 135 NLRB 309. In each of the cases cited by Respondent on this point there is an extra element of power or responsibility not present here.

*C. The discharges*

The facts attending and immediately preceding the discharges of Paul and Gray are substantially undisputed:

Paul started to work full time (44 hours) for Morrison for \$70 per week and subsequently was raised to \$85 per week. Gray worked "part time" (6 hours per day, 36 hours per week) for \$60. Both men asked Sands several times for pay increases: each time Sands undertook to discuss the matter with the Akron office and each time he reported that the head office had refused the requests.

On or about April 19, 1961, both Paul and Gray executed applications for membership in Local 135 and authorized the Union to represent them for collective-bargaining purposes with Morrison. These authorization were referred by the union president to one of its business agents, Byron Trefts.

On May 3, Trefts telephoned Labor Relations Director Taylor at the Morrison office in Akron, stated that Local 135 represented the office employees of Morrison at the Daleville terminal, and requested a meeting with him as soon as possible to negotiate a contract. Taylor asked whether he could have a copy of the Union's proposed contract and the wage rates and fringe benefits for these employees<sup>7</sup> and Trefts agreed to send it to him. Taylor said nothing at this time about Paul and Gray being supervisors or that the Company was considering laying them off to cut costs. On May 8, Trefts sent the copy of the proposed contract to Taylor at Akron and in the letter of transmittal directed his attention to the schedule of wage rates applicable to Morrison's employees.

In the morning on May 8, Sands, while still at home, called Paul at the terminal, saying that he had heard that Paul and Gray had joined the Union and asking why they had done so. When Paul said that he and Gray felt they had to have some protection against "a man like Ted Robbins," president of Morrison, Sands said he was sorry they had done so because he was in the process of asking for more money for them.<sup>8</sup>

None of the office employees of Morrison, at any of its terminals, are represented by a union.

On May 12, President Robbins of Morrison came to the Daleville terminal and handed Paul a sealed envelope. Paul read the letter enclosed which was signed by Labor Relations and Personnel Director Taylor and asked Robbins whether it was merely a layoff, as the heading indicated, or a termination of his employment. Robbins replied that it was a termination.

At the same time Robbins left with Terminal Manager Sands a similar letter addressed to Gray and Sands called Gray where he was on duty to tell him about it.

Sands had no prior notice that the dispatchers were to be discharged.

When Paul came back the following day to pick up his personal belongings, Terminal Manager Sands, admittedly upset by the termination of Paul and Gray, said something to the effect that he did not know whether he could operate the terminal without the two dispatchers. Paul credibly testified that he said: "Don't worry, Pat, I'll be back in a few days," and that Sands replied: "Well, I don't know, you know the company will close this office and move it before they'll ever sign union."<sup>9</sup>

On June 7 Paul's wife telephoned Mrs. Duncan at her home near Akron and asked whether her husband's layoff was permanent. Mrs. Duncan said that it was. Mrs. Paul also testified that Mrs. Duncan told her that the Company had been considering cutting expenses and, on learning that Paul and Gray had joined the Union, decided to start cutting by terminating the two men at Daleville. When Mrs. Paul asked why the men had not been notified in advance that they were to be terminated, Mrs. Duncan replied that the men had not notified the Company in advance that they were thinking about joining the Union.<sup>10</sup>

Since Paul and Gray were discharged the Daleville terminal has been operated by Sands alone. He works a split shift and various duties previously performed by the dispatchers, including Sands, have been shifted to the drivers themselves, to the operator of the gas station adjacent to the terminal, and to other personnel of Morrison.

<sup>7</sup> Taylor confirmed this request by letter the same day.

<sup>8</sup> Sands denied making this statement but, for the reasons heretofore set forth, his denial is not credited.

<sup>9</sup> Sands was not interrogated concerning this conversation, although he testified more than 3 weeks after Paul, and this statement stands uncontradicted on the record.

<sup>10</sup> Mrs. Duncan admitted having had a telephone conversation with Mrs. Paul but denied that these words had been exchanged. I credit Mrs. Paul's statement that this latter statement was made. The other statement, that the Company decided to start cutting expenses by discharging Paul and Gray when it learned that they had joined the Union, is dealt with in section III, E, below.

The telephone signal system, hereafter discussed, has also been utilized in the operation of the terminal.

#### D. Respondent's defense

Respondent contends that its discharge of Paul and Gray was dictated solely by the economic condition of the Company; that it was losing money and the reduction of the force at Daleville was part of its effort to reduce expenses.

In support of this defense, Mrs. Duncan testified that for the calendar year 1960 Morrison lost \$139,000 "before depreciation"; that by the end of February 1961 "we still showed a loss of over six thousand dollars." She claimed that at a meeting of the Company's board of directors in March 1961 it was decided that expenses would have to be cut and that shortly thereafter she told Terminal Manager Sands that it would be necessary for him "to cut costs."

The letters notifying Paul and Gray of their discharge refer to "lengthy study and deliberation on operational changes throughout our system in an effort to reduce our overhead expenses."

#### E. Discussion

The determination necessary to be made in this case is whether Respondent's real reason for the discharge of Paul and Gray was to interfere with employee rights under the Act and to discourage membership in the Union as charged by the General Counsel, or was dictated by "economic necessity" as claimed by Respondent.<sup>11</sup> It is obvious that reliable evidence of Respondent's real reason is more likely to be found in its deeds and spontaneous statements than in its formal expressions after the fact. It is also a truism that evidence of a discriminatory reason is more likely to be circumstantial than direct.

As stated above, the evidence of the Company's financial condition consists of the self-serving and generalized testimony of Mrs. Duncan, its vice president and treasurer, that for the year 1960 and for the first 2 months of 1961, it suffered operating losses. While the General Counsel did not controvert this testimony, Respondent did not support it with a detailed financial statement such as would be expected to exist in connection with this substantial business enterprise.<sup>12</sup> Such detailed statement, with the explanatory notes usually attached, would have been much more illuminating than this witness' conclusions. For example, Mrs. Duncan testified that the Company did not lose money in 1959; she also testified that the 75 new trucks contracted for in October 1959 were delivered during the 2 years between that date and October 1961, the date of the hearing herein. It follows, therefore, that a substantial amount of new equipment was delivered during 1960 and a detailed financial statement might have disclosed a relationship between the operating loss and possible initial payments on this equipment.<sup>13</sup>

Mrs. Duncan also testified that, although the Company showed a profit in January 1961, it showed, for the months of January and February, a loss of \$6,000.<sup>14</sup> This loss is at the rate of \$36,000 per year, only one-third of the alleged loss in 1960. She admitted that there were profits for "three of four months" in 1961 prior to the hearing, but insisted that the Company also showed losses. It is to be noted that there had been a reduction in the force of mechanics at Akron from 26 to 19 (made

<sup>11</sup> The cases cited by Respondent represent this proposition but all reach the conclusion that the employer's real reason was one *not* violative of the Act. Other court cases illustrate the same rule but sustain Board findings that the employer's real reason was discriminatory and unlawful. See, for example, *NLRB v. Ellis and Watts Products, Inc.*, 297 F. 2d 576 (C.A. 6); *NLRB v. Brown-Dunkin Company, Inc.*, 287 F. 2d 17 (C.A. 10); *NLRB v. L. C. Ferguson, and E. F. Von Seggern d/b/a Shovel Supply Company*, 257 F. 2d 88 (C.A. 5); *NLRB v. Jones Sausage Co. & James Abattoir Co.*, 257 F. 2d 878 (C.A. 4); *NLRB v. C. & J. Camp, Inc., et al. d/b/a Kibler-Camp Phosphate Enterprise*, 216 F. 2d 113 (C.A. 5).

<sup>12</sup> Respondent stipulated that it operates under Interstate Commerce Commission certificates and regulations. Sections 205.1, 205.1a, and 205.3 of the regulations of that Commission (49 CFR Part 205) require the filing of annual reports in its Bureau of Transport Economics and Statistics by all certificated motor carriers of property not later than April 30 following the year of operations. Mrs. Duncan's testimony concerning the year 1960 was given in October 1961, long after the report pursuant to these regulations was required to be filed.

<sup>13</sup> Respondent's failure to produce records in support of Mrs. Duncan's testimony justifies an inference that the records would not do so (*New England Web, Inc., et al.*, 135 NLRB 1019; *Tabulating Card Company, Incorporated*, 123 NLRB 62, 73).

<sup>14</sup> On this point, also, Respondent did not produce records to support its position and an inference is justified that they would not do so.

possible by the delivery of new equipment) as well as other reductions in personnel by "attrition" and that Mrs. Duncan did not testify that there had been an overall operating loss for the portion of 1961 prior to the discharges. Since she was Respondent's principal witness on this point, her silence on relevant matters must be given as much weight as her testimony.

Whether Morrison actually had what could be labeled an "operating loss" in 1960 and for the first 2 months of 1961, as Mrs. Duncan testified, is not an issue in this proceeding. Respondent's defense is that "economic necessity" required that Paul and Gray be discharged. These two propositions are not necessarily the same. The Daleville terminal was established to save money on "lay-over time" and "run-around time." This was accomplished, in part by making Daleville the "domicile" of certain drivers and by locating an office at that point where dispatchers could more effectively utilize the drivers temporarily or permanently there. It is apparent that the Company expected that this more efficient use of drivers and the consequent reduction of delays in moving freight and equipment would result in lower costs of operation. It may be that the "round-the-clock" operation of the Daleville terminal kept operating losses for the system lower than they would have otherwise been.

It is also not necessary for me to find, as a fact, that there was no discussion, among the officials of Morrison, of the necessity for saving money wherever possible—indeed, it would be abnormal for operating officers of a business enterprise *not* to discuss this problem. It is notable, however, that despite her testimony that the Company was trying to cut costs,<sup>15</sup> Mrs. Duncan repeatedly testified that, with the possible exception of mechanics at Akron, there were no discharges of personnel throughout the Morrison system. Mrs. Duncan's statement to Sands, therefore, that costs had to be reduced at Daleville might well have referred to more efficient operation of the terminal. Even if the Company did consider, in its search for economies, the possibility of reducing the work force at Daleville, the record is clear that prior to May 3, at least, it had no intention of taking such steps without Sands' assurance that he could handle the terminal alone—an assurance which he never gave.

The evidence in this record falls far short of establishing Respondent's defense that the discharges of Paul and Gray were based upon "economic necessity" and I find that this was not the reason for these discharges.<sup>16</sup>

Although she was positive that the only reason for discharging Paul and Gray was the economic position of the Company, Mrs. Duncan's testimony as to the date when the decision was made to discharge them is both vague and contradictory: it ranged from "back in March" through "a couple of weeks before they were actually laid off" and was finally linked by her with the installation of a telephone signaling system in the motel to call the drivers. In fixing this last date Mrs. Duncan was corroborated by Labor Relations and Personnel Director Taylor, who testified that his determination to lay off Paul and Gray was made as soon as he received word that the telephone signaling system would be installed in the motel.

With respect to the installation of the telephone system, the record contains clear evidence from impartial sources. Stacey, the owner of Travelers' Rest Motel, testified that Sands asked his permission to have a telephone calling system installed in the eight rooms used by Morrison's drivers; that he agreed on condition that Morrison pay the cost of installation and that Sands thereupon asked him to communicate with the telephone company to find out the cost. Stacey stated that on that same day he obtained from the telephone company an estimate of the cost of installing the system and the time needed for the work and that he reported them to Sands.<sup>17</sup> Sands admitted that, when he had been given the approximate cost of installation, he called Mrs. Duncan to tell her. He also admitted calling the telephone company to say that his company was a large one and paid large telephone bills; that he needed the telephones "now" and wanted some service "right now." Later that same day Henderson, the telephone company's service engineer, accompanied by his installation foreman, came to the motel and to the Morrison office, where he spoke with Sands. He explained to Sands what the telephone company could do to solve the problem as he understood it and stated the cost of in-

<sup>15</sup> There was no evidence concerning the "lengthy study and deliberation on operational changes" relied upon in the letters of dismissal.

<sup>16</sup> Cf. *Kelly & Picerne, Inc.*, 131 NLRB 543.

<sup>17</sup> In her statement given to a Board agent in August 1961 (which she adopted on the witness stand), Mrs. Duncan said that "some months" before the discharge of Paul and Gray she discussed the installation of the telephones with Stacey. In his testimony Stacey referred to conversations on the subject of installing telephones only with Sands of the Morrison organization and that those occurred on the day he made his inquiry, reported the result to Sands, and the telephone service engineer visited the motel. I credit Stacey's version and reject that of Mrs. Duncan.

stallation and maintenance. Sands asked how soon the system could be installed and Henderson gave May 16 as the probable date of completion. The official telephone company order for the job, then written up by Henderson, is in evidence: it is dated May 9, 1961,<sup>18</sup> and it shows that the installation was completed on May 12.<sup>19</sup>

Summing up, the record shows that from August 1960 until May 1961 the Morrison terminal at Daleville was manned by Sands, as manager, and Paul and Gray as dispatchers and that it operated without outward sign of company disapproval. On May 3 the union representative notified the Company that it had been designated as bargaining agent by the dispatchers and requested a meeting to discuss a contract. Morrison's labor relations director asked for a copy to the Union's contract proposals and, specifically, for the wage rate. On May 8 the Union sent Morrison a copy of its standard contract for office employees. On May 9 the Company made arrangements with the telephone company to install a system for calling its drivers from the motel and insisted that the work be done as quickly as possible. The installation was completed on May 12 and on that same day Respondent's president, without prior notice to the terminal manager, came to Daleville and personally handed Paul a written notice of discharge, while Sands called Gray to tell him that he, also, was discharged. These facts persuade me that this was something other than an employer's reluctant layoff of two "satisfactory"<sup>20</sup> employees it could no longer afford to keep. In determining what this other "something" was, in addition to the facts set forth above, Sands' comment to Paul the day following the discharge is revealing: while the language of his earlier statement to Paul, when he first learned that they had joined the Union, was based upon his reasonable assumption that his own failure to produce pay raises had impelled the dispatchers to join the Union, after the visit of President Robbins on May 12, Sands expressed confidence that the Company would "close this office and move it before they'll ever sign union." Sands, it has been found, was a supervisory official of the Company and, therefore, capable of making admissions binding upon it. President Robbins' presence at the Daleville terminal the previous day, under the special circumstances set forth herein, convinces me that Sands' statement was an accurate reflection of the Company's antiunion bias.<sup>21</sup>

From the evidence in the record I find as a fact that Respondent discharged William C. Paul and Robert C. Gray because they had applied for membership in Local 135 and had designated it as their bargaining agent; that such discharges were for the purpose of discouraging membership in the Union; and that Respondent thereby restrained and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act. Such conduct violates Section 8(a)(3) and (1) of the Act.

There remain for consideration the allegations of the complaint that Terminal Manager Sands, by his statements to Paul on May 8 and 13, and Vice President Duncan, by her statements through Mrs. Paul on June 7, threatened and coerced employees in violation of Section 8(a)(1) of the Act. Sands' earlier remarks that he was sorry the men had joined the Union because he was about to ask for higher pay for them and Mrs. Duncan's caustic retort that the employees had not forewarned the Company that they were about to join the Union do not, in my opinion, constitute restraint or coercion within the meaning of Section 8(a)(1), and I shall recommend dismissal of the complaint to that extent. Sands' statement to Paul on May 13, however, that Morrison would close and move the Daleville terminal before it would "sign union" was, in addition to an admission of Respondent's antiunion motive in discharging Paul and Gray, a substantial threat by Respondent calculated and reasonably likely to interfere with, coerce, and restrain its employees<sup>22</sup> in the exercise of their rights and it was, therefore, in violation of Section 8(a)(1).<sup>23</sup>

<sup>18</sup> In his affidavit given to a Board agent, Sands stated that he consulted Stacey about installing the telephones "about 2 weeks before William Paul and Bob Gray were terminated, about in the last week in April" which would have placed it prior to the May 3 call by Business Agent Trefts. His testimony "three to five days before" contradicts his affidavit but is in accord with the credible evidence and, on this point, is accepted.

<sup>19</sup> Sands' affidavit states that the installation was completed the morning after Paul and Gray "left," which would have been May 13. I do not credit Sands' statement.

<sup>20</sup> So characterized in the letters of dismissal.

<sup>21</sup> That a substantial interstate motor carrier has recognized the Teamsters as the representative of its over-the-road drivers is, today, of slight weight in determining whether the employer is basically opposed to the exercise of similar rights by other—particularly office—employees.

<sup>22</sup> Although discharged the previous day, since such discharge is herein found to be an unfair labor practice, Paul was still an employee under Section 2(3) of the Act.

<sup>23</sup> *Ewell Engineering & Contracting Co. Inc.*, 134 NLRB 540.

Mrs. Duncan also denied making the first of the two statements attributed to her by Mrs. Paul: that the Company was considering cutting expenses and, on learning that Paul and Gray had joined the Union, decided to start by terminating them. The fact to be determined at this point is not whether such statement—if made—would have been truthful but whether such statement was, in fact, made. On his point the testimony of Mrs. Paul is balanced by the denial of Mrs. Duncan. Although Mrs. Duncan was an interested witness and I have considered all of her testimony in the light of that fact, I have made no general finding as to whether she was or was not a credible witness—not for reasons of chivalry but because I have not found it necessary to do so. Unlike the comment of Sands to Paul the day following the discharges, this telephone conversation occurred almost a month thereafter when, as Taylor's first references to the discharged employees as "supervisors" shows, Respondent had begun to formulate its defense. Not only would this statement by Mrs. Duncan have constituted restraint and coercion in violation of Section 8(a)(1) but it would also have been an admission of the major unfair labor practice found herein. I have the impression that Mrs. Duncan is sufficiently sophisticated in labor relations to have avoided making it and I do not find that it has been proved by a preponderance of the evidence. Accordingly, I recommend that this allegation of the complaint be dismissed.

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

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, 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

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discriminated in regard to the tenure of employment of William C. Paul and Robert C. Gray, I will recommend that the Respondent offer to them immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges,<sup>24</sup> and make them whole for any loss of earnings they may have suffered by reason of the Respondent's discrimination against them by payment to them of a sum of money to be computed in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. For the purpose of such computation, I shall recommend that Respondent preserve and make available to the Board, on request, the records necessary to facilitate the determination of the amount due under this recommended remedy.

Having also found that, by Terminal Manager Sands' May 13 statement to Paul that the Company would close and move the Daleville terminal rather than sign a contract with a union, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and thereby violated Section 8(a)(1) thereof, I shall recommend that it cease and desist therefrom.

In view of the nature of the unfair labor practices herein found, I am convinced that the commission of other unfair labor practices by Respondent reasonably may be anticipated. I will therefore further recommend that Respondent be ordered to cease and desist from interfering in any other manner with the exercise of the rights guaranteed employees by Section 7 of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

#### CONCLUSIONS OF LAW

1. Morrison Motor Freight, Inc., is an employer engaged in commerce within the meaning of Section 2(6) of the Act.

<sup>24</sup> There has been no discontinuance of any function or department of Respondent's activities and the duties performed by the discharged dispatchers (with the exception of the walks to the motel to awaken the drivers) are being performed by others on behalf of Respondent.

2. Teamster Local Union No. 135, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. By discriminating in regard to the tenure of employment of William C. Paul and Robert C. Gray to discourage membership in the said labor organization, Respondent has engaged in unfair labor practices within the meaning of Section 8(a) (3) and (1) of the Act.

4. By threatening to close the Daleville terminal rather than sign a contract with a union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a) (1) of the Act.

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

### RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that the Respondent, Morrison Motor Freight, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Teamster Local Union No. 135, affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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 or tenure of employment, or any term or condition of employment.

(b) Threatening to close its Daleville terminal rather than permit its employees there to become and remain members of Teamster Local Union No. 135, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, or in any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the Union or any other labor organization, 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, or to refrain from any or all such activities.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer to William C. Paul and Robert C. Gray immediate and full reinstatement to their former or substantially equivalent positions and make them whole for any loss of earnings suffered, in the manner set forth herein in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to or convenient for a computation of the amount of backpay due under the terms of this recommendation.

(c) Post at its offices and terminals in Akron, Ohio, and Daleville, Indiana, copies of the notice attached hereto marked "Appendix."<sup>25</sup> Copies of this notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by other material.

(d) Notify said Regional Director, in writing, within 20 days from the date of receipt of this Intermediate Report and Recommended Order, what steps Respondent has taken to comply herewith.<sup>26</sup>

<sup>25</sup> In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

<sup>26</sup> In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

## APPENDIX

## NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL offer to William C. Paul and Robert C. Gray immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay he suffered as a result of the discrimination against them.

WE WILL NOT, by threatening to close any terminal or by discharging any employee, or in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join Teamster Local Union No. 135, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities..

MORRISON MOTOR FREIGHT, INC.,  
Employer.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, Telephone Number, Melrose 2-551, if they have any questions concerning this notice or compliance with its provisions.

**Dewey Portland Cement Company, Division of Martin-Marietta Corporation<sup>1</sup> and United Cement, Lime and Gypsum Workers International Union, AFL-CIO, Petitioner.** *Case No. 16-RC-2899. June 27, 1962*

### SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Paul F. Cleveland, hearing officer.<sup>2</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

<sup>1</sup> The name of the Employer was amended at the hearing on January 24, 1962. This case was originally styled as "Dewey Portland Cement Company, Division of American-Marietta Company."

<sup>2</sup> The initial hearing in this case was held on May 17, 1961. On November 1, 1961, the Board issued a Decision and Direction of Election (not printed in Board volumes), finding, *inter alia*, that laboratory technicians, console room technicians, the instrumentation engineer, and the instrumentation technician were technical employees, or supervisors, and therefore excluding them from the appropriate unit. Thereafter, the Petitioner moved the Board to reconsider this decision, contending that such employees should be included in the appropriate unit. Also, subsequent to the issuance of this decision, the Board handed down its decision in *The Sheffield Corporation*, 134 NLRB 1101. In light of the *Sheffield* decision the Board granted Petitioner's motion for reconsideration, ordered that the hearing be reopened, and that a further hearing be held for the purpose of adducing additional evidence with respect to the job categories in dispute.

The Board's Decision and Direction of Election of November 1, 1961, is hereby vacated