

James V. DeGeorge, d/b/a DeGeorge Transfer & Storage Co. and Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Local Union No. 837, AFL-CIO and The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 17, Party to the Contract. Case No. 27-CA-1231-2. June 26, 1963

DECISION AND ORDER

On February 13, 1963, Trial Examiner Howard Myers issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and the Respondent filed a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom 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. The Board has considered the entire record in this case, including the Intermediate Report, the exceptions, and brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent consistent with this Decision and Order.

1. We agree with the Trial Examiner that the Respondent violated Section 8(a) (1), (2), and (5) of the Act by refusing to bargain with Railway Clerks and by recognizing Teamsters as the collective-bargaining representative of its Acme dock employees. In reaching this conclusion, however, we find it unnecessary to pass upon the Trial Examiner's finding that the Respondent is a successor to Morgan Transfer & Storage Company, herein called Morgan.

The relevant facts are substantially undisputed. On April 30, 1962, the Respondent began unloading and freight-forwarding operations under contract with Acme Fast Freight, Inc., herein called Acme, at a dock in Denver, Colorado, which Acme leases from Union Pacific Railroad. Until October 1960, these operations had been performed by Acme, which had hired the dockworker employees and the dock superintendent, Bradley. At that time, the dockworkers were members of Railway Clerks, and were covered by a collective-bargaining agreement between that Union and Acme. In October 1960, Acme

contracted out this work to Morgan. Morgan then hired the same employees and the same superintendent to perform these operations, using the same equipment, which was owned by Acme.

On October 26, 1960, Railway Clerks filed an election petition with the Board. In its Decision and Direction of Election in that case,¹ the Board rejected the contention of Morgan and of Teamsters, which intervened in the proceeding, that the dockworkers were an accretion to a unit which included Morgan's other employees, as well as employees of other employers, and which was covered by a collective-bargaining contract between Teamsters and Colorado Warehousemen's Association, Inc., of which Morgan was a member.² After the election, Railway Clerks was certified on December 13, 1961, as the representative of Morgan's full-time and regular part-time Acme dock employees. Thereafter, Morgan and Railway Clerks entered into bargaining negotiations, but no agreement was reached.

In March 1962, Acme terminated its contract with Morgan for the dock operations, and executed a contract with the Respondent to perform these services.³ The Respondent, which took over the dock operations on April 30, 1962, hired the same employees and the same dock superintendent, Bradley, and used the same Acme equipment. At that time, employees employed by the Respondent on other operations were covered by the Teamsters-Association contract, which contained a 30-day union-security clause. Although the Respondent admittedly had knowledge of the prior Board proceeding involving Morgan and the Acme dockworkers, and knew that all these dockworkers—five full-time and six part-time employees—were members of Railway Clerks, he informed them, at the time he hired them, that they would be required to join Teamsters within 30 days. Bradley, the superintendent, also told several of the dockworkers that they would not be permitted to engage in any Railway Clerks activities on the dock.

On May 7, 1962, Railway Clerks, in a letter which the Respondent received on May 9, requested recognition as the representative of the dockworkers and the negotiation of a bargaining agreement. The Respondent discharged the six part-time dockworkers on May 11 and, on May 15, assembled the five full-time dockworkers and told them again that they would have to join Teamsters if they wished to continue working for him. On May 22, the Respondent replied to Railway Clerks' request for recognition, by letter, that his employees were covered by a contract with Teamsters.

¹ *Morgan Transfer & Storage Co., Inc.*, 131 NLRB 1434.

² Acme, Morgan, and the Respondent are all engaged in business operations in addition to those involved in this proceeding.

³ The Respondent's contract with Acme was terminable only on 60 days' notice after January 1, 1963, and provided for compensation on a per hundred-weight basis, whereas Morgan's contract had been terminable at any time on 30 days' notice, and was on an hourly rate basis.

The Respondent contends that the dockworkers in question are an accretion to the multiemployer unit covered by the Association-Teamsters contract. This is the same contention made by Morgan with regard to the same employees, and rejected by the Board in the representation proceeding referred to above. As all the relevant circumstances except the identity of the employer remain unchanged since the Board's prior determination of this issue, we find, for the same reasons, that the full-time and regular part-time employees on the Acme dock are not an accretion to the multiemployer unit and, further, that these employees constitute a separate appropriate unit. Accordingly, whether or not it was a successor to Morgan, we find that the Respondent, by refusing to bargain with Railway Clerks which was, to the Respondent's knowledge, the representative of the employees in this unit, violated Section 8(a) (5) and (1) of the Act; we further find that by recognizing Teamsters as the representative of these employees, and by applying the terms of the Association-Teamsters contract to them at a time when Teamsters did not represent a majority in this unit, the Respondent violated Section 8(a) (2) and (1) of the Act.

2. The Trial Examiner found that the Respondent discharged the six part-time dockworkers in violation of Section 8(a) (3) and (1) of the Act. We do not agree that the evidence establishes that these discharges were unlawful.

The Trial Examiner concluded that the discharges were caused by Respondent's application of the unlawful union-security clause in the Association-Teamsters contract. We do not agree. Although, as the Trial Examiner found, Respondent told the discharges that they would have to join the Teamsters within 30 days, we are not satisfied that this was in fact the reason for their termination. Thus, at the time of the discharges the individuals involved had been employed less than 30 days, and there is no evidence that they had refused to join the Teamsters, that the full-time employees who were not discharged did join, or that the replacements were members of that labor organization.

At the hearing, Respondent DeGeorge testified that he had discharged the part-time employees because they had full-time jobs elsewhere and did not need the work, that he wished to replace them with men who "had been working for DeGeorge Transfer . . . off and on for quite a while" on a part-time basis, and "had to have a steady job, as steady as we could give them," and that, as the replacements were men "having no other work," they would be "subject to call any time any day." He further testified that "we did find pretty regular work, steady work" for the replacements. Member Brown in his dissent describes this explanation for the discharges as an afterthought and would find that the discharges were discriminatorily motivated.

We do not believe that the evidence adduced is sufficient to discredit DeGeorge's explanation for the discharges. It is indisputable that the discharges had regular, full-time employment elsewhere and because of this fact were available for work with Respondent only on certain days and during certain hours. There is not the slightest evidence to challenge DeGeorge's explanation for making the replacements. On the contrary, the work history of the replacements from the time of their employment by Respondent supports this explanation at a crucial point, for it shows that over a considerable period of time the replacements averaged between 3½ and 5 days' work a week with the workday averaging between 7 and 9 hours. In view of the sporadic nature of the work involved, this employment may with greater justification be characterized as "steady," the term used by Respondent, than as "part-time," the description used in the dissent.

The burden rests on the General Counsel to prove the fact of discrimination. Except for the timing of the discharges only 2 days after the Railway Clerks demanded recognition, there is no evidence to support an inference of discriminatory motivation. Under all the circumstances, we find that the General Counsel has failed to establish by a preponderance of the evidence that the discharges were discriminatory. Accordingly, we shall dismiss this allegation of the complaint.

3. We find, in agreement with the Trial Examiner, that the Respondent violated Section 8(a) (1) and (2) of the Act when he and Bradley, his superintendent, told the dockworkers that they must become members of Teamsters if they wished to remain in the Respondent's employ, and when Bradley informed several dockworkers that they must not engage in any Railway Clerks activities on the dock.

ORDER

The Board adopts as its Order the Recommended Order of the Trial Examiner ⁴ with the following modifications: ⁵

⁴ Although we are dismissing the allegation that the Respondent violated Section 8(a) (3) of the Act, we shall, in view of the character and scope of the violations of Section 8(a) (1), (2), and (5) found herein, adopt the Trial Examiner's recommendation that the Respondent be ordered to cease and desist from the violations found and from violating the Act in any other manner.

⁵ The notice is hereby amended as follows: (1) Delete the first and fourth indented paragraphs thereof, and add the following:

I WILL NOT recognize The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 17, as the representative of my employees in the appropriate unit described below until I have bargained with Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Local Union No. 837, AFL-CIO, as the representative of such employees, and unless and until said Teamsters Local No. 17 shall be certified as such representative by the Board.

(2) Delete "as amended," at the end of the second indented paragraph and add "as modified by the Labor-Management Reporting and Disclosure Act of 1959." (3) Delete the paragraph beginning "Note" below the signature line.

1. Delete provision 1(a) and 1(d) and add the following:

(a) Recognizing The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 17, as the representative of its employees in the appropriate unit of all full-time and all regular part-time Acme dock employees, for the purpose of dealing with said labor organization concerning wages, hours, or other conditions of employment until it has complied with the provisions of this Order requiring it to bargain with Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Local Union No. 837, AFL-CIO, as the representative of such employees and unless and until said Teamsters Local No. 17 shall be certified as such representative by the Board.

2. Delete provision 2(b) and 2(c) and add the following:

(b) Withdraw and withhold recognition from The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 17, as the representative of the employees in the above-described appropriate unit, for the purpose of dealing with the Respondent with respect to wages, hours, or other conditions of employment until it has complied with this Order requiring it to bargain with Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Local Union No. 837, AFL-CIO, as the representative of such employees, and unless and until said Teamsters Local No. 17 shall be certified as such representative by the Board.

3. Add the following paragraph:

It is further ordered that the complaint, insofar as it alleges that the Respondent violated the Act by unlawfully discriminating against its six part-time Acme dock employees, be, and it hereby is, dismissed.

MEMBER BROWN, dissenting in part:

I would find, in agreement with the Trial Examiner, that by discharging the six part-time dock employees the Respondent violated Section 8(a) (3) of the Act, but for the following reasons:

These discharges, which eliminated over half of the employees in the unit for which the Railway Clerks had been designated the bargaining representative, occurred after that union demanded a bargaining conference and before Respondent in reply to that demand asserted that these dock employees were covered by its current contract with the Teamsters.

It was at the hearing that the Respondent, for the first time, advanced its claim that the part-time employees were terminated because they had full-time employment elsewhere and that Respondent

wished to replace them on a full-time basis with individuals presently employed part-time by him at other projects. There is no showing that these part-time employees were available for work with Respondent only on certain days and during certain hours. Indeed, the evidence establishes that Houghton, when requested, agreed to and did work a full 8 hours each day for approximately 2 weeks before his discharge. Moreover, the record discloses that Respondent did not replace these part-time employees with full-time employees, nor, except for one, did he fill their jobs with transferees. Instead, the replacements worked those jobs on a part-time basis.⁶ Further, there is no showing that the replacements, who presumably were members of the Teamsters since they had previously worked for Respondent, did not have full-time work elsewhere. The evidence would therefore indicate that the reason given at the hearing for the discharge of the six part-time employees was an afterthought.

In view of the foregoing, including the fact that Respondent was attempting illegally to apply its Teamsters contract to the dock employees, I conclude that the six part-time employees were discharged for discriminatory reasons.

⁶ Three part-time replacements worked an average of 3½ days a week; four averaged slightly over 4 days, and only one averaged as much as 5 days

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

Upon a charge and an amended charge duly filed on June 5 and on August 24, 1962, respectively, by Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Local Union No. 837, AFL-CIO, herein called the Railway Clerks, the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel¹ and the Board, through the Regional Director for the Twenty-seventh Region (Denver, Colorado), issued an amended complaint, dated November 1, 1962, against James V. DeGeorge, d/b/a DeGeorge Transfer & Storage Co., herein called Respondent or DeGeorge, alleging that Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (2), (3), and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended from time to time, 61 Stat. 136, herein called the Act.

Copies of the charges and amended complaint, together with notice of hearing thereon, were duly served upon Respondent, and copies of the amended complaint and notice of hearing were duly served upon the Railway Clerks.² In addition, copies of the amended complaint and notice of hearing were duly served upon The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 17, herein called the Teamsters, a party to a certain collective-bargaining contract between it and Respondent.

Specifically, the amended complaint alleges that: (1) on or about October 3, 1960, Morgan Transfer & Storage Company, herein called Morgan, entered into contractual relationship with Acme Fast Freight, Inc., herein called Acme, whereby Morgan was to perform certain platform work for Acme at the latter's Denver, Colorado, Union Pacific Railroad dock; (2) on or about April 30, 1962, Respondent entered into contractual relationship with Acme, whereby Respondent was to perform the platform work at the aforesaid dock of Acme which work Morgan had been previously performing for Acme; (3) since on or about April 30, 1962, Morgan ceased opera-

¹ This term specifically includes counsel for the General Counsel appearing at the hearing.

² Copies of the original complaint, alleging violation of Section 8(a)(1) and (5), were duly served upon Respondent and upon the Railway Clerks on August 23, 1962.

tions at the aforesaid Acme dock and since that time, Respondent had operated said platform facilities and has performed substantially the same operations formerly performed thereat by Morgan; (4) Respondent, in the course of its operations at the Acme dock, has employed substantially the same employees and supervisors as had been employed thereat by Morgan; (5) on or about July 25, 1961, the Board conducted an election among Morgan's full-time and regular part-time workers then employed at its Acme dock operation, excluding all other Morgan employees and supervisors as defined in the Act, which full-time and regular part-time employees the Board found in said proceedings to constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act; (6) at the aforementioned Board-conducted election a majority of the employees in the appropriate unit selected and designated the Railway Clerks as their collective-bargaining representative; (7) on or about December 13, 1961, the Regional Director for the Twenty-seventh Region, for and on behalf of the Board, certified the Railway Clerks as the exclusive collective-bargaining representative of all the employees in the unit found appropriate; (8) at all times since said certification Railway Clerks has been, by virtue of Section 9(a) of the Act, the statutory representative of the persons herein involved; (9) since on or before April 30, 1962, Respondent through certain named officers and/or agents, has interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed in Section 7 of the Act; (10) since on or about April 30, 1962, Respondent, by certain stated acts and conduct has rendered unlawful aid, assistance, and support to the Teamsters; (11) on or about May 11, 1962, Respondent unlawfully discharged six named employees, thereby encouraging membership in the Teamsters and discouraging membership in Railway Clerks; and (12) since on or about May 11, 1962, Respondent has refused, although requested to do so by the Railway Clerks, to bargain collectively with said labor organization as the exclusive collective-bargaining representative of all the employees in the aforementioned appropriate unit.

On November 8, 1962, Respondent duly filed an answer denying the commission of the unfair labor practices alleged. By way of an affirmative defense, the answer avers, among other things, that Respondent is not, nor ever was, a successor to Morgan.

Pursuant to due notice, a hearing was held at Denver, Colorado, on December 4, 5, 6, and 7, 1962, before Trial Examiner Howard Myers. Each party was represented by counsel and participated in the hearing. Full and complete opportunity was afforded the parties to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally on the record at the conclusion of the taking of the evidence, and to file briefs on or before January 4, 1963. Briefs have been received from the General Counsel and from Respondent's counsel which have been carefully considered.³

Upon the record as a whole and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. RESPONDENT'S BUSINESS OPERATIONS

Since 1941, James V. DeGeorge, the Respondent, has been operating, by virtue of a permit issued by the Interstate Commerce Commission, a storage and transportation business under the firm name of DeGeorge Storage & Transportation Co., at Denver, Colorado.

Some of Respondent's customers are Union Pacific Railway; Chicago, Burlington & Quincy Railroad; Atchison, Topeka & Santa Fe Railroad; and Interstate Motor Freight Lines.

At its furniture warehouse, located at 206 Wazee Market, Denver, Colorado, Respondent receives furniture shipped by rail from the States of Tennessee and Georgia. Said furniture is subsequently delivered in Respondent's trucks to various named Denver consignees.

On April 30, 1962, Respondent, under a written agreement with Acme,⁴ commenced operations at Acme's dock located at 19th and Wynkoop Streets, Denver,

³ Under date of December 28, 1962, Respondent's counsel wrote the Trial Examiner requesting that the words "90 days" appearing on line 3 of page 26 of the stenographic report of the hearing be changed to read "9 days." The request is hereby granted and the aforesaid letter is received in evidence and marked "Trial Examiner's Exhibit No. 1."

⁴ Acme operates, and at all times operated, a freight-forwarding business under Permit No. 72 of the Interstate Commerce Commission and maintains freight terminals located throughout the United States.

Colorado. At this dock, which immediately prior to April 30, 1962, was operated by Morgan under written agreements between Morgan and Acme for the account of Acme, Respondent unloads Acme's cargo from railroad freight cars and from over-the-road trailers and delivers said cargo in Respondent's trucks to various named Denver area consignees.

On a projected basis during the first year of its Acme dock operation, Respondent will derive a gross income in excess of \$50,000 from said freight enterprises.

Upon the basis of the foregoing facts, the Trial Examiner finds, in line with established Board authority, that Respondent is engaging in, and during all times material was engaged in, business affecting commerce within the meaning of Section 2(6) and (7) of the Act and that his business operations meet the standards fixed by the Board for the assertion of jurisdiction.

II. THE LABOR ORGANIZATION INVOLVED

The Railway Clerks and the Teamsters are labor organizations admitting to membership employees of Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The pertinent facts*

Some 40 years ago, Acme, which was then, and still is, engaged in forwarding "less-than-carload" freight from the east coast to the Denver, Colorado, area, via railroad boxcar or by motor carrier, leased from the Union Pacific Railroad a portion of the latter's Denver, Colorado, platform.⁵ In the performance of its operations at this leased dock, Acme used its own "Mercuries," two-wheel hand equipment, dollies, gin poles, and other such loading and unloading equipment.

Prior to October 1, 1960, Acme's employees, who were members of the Railway Clerks,⁶ would unload the freight from the boxcars as, or shortly after, the cars arrived at said dock, check the freight, place the freight upon the floor of the dock, and sort the freight according to the Denver area to which the merchandise was to be delivered. Acme employees, assisted by truckdrivers who were employees of DeGeorge and/or Hoffman Transfer and Storage Company and members of the Teamsters, would then wheel the freight from the floor to the city delivery trucks of DeGeorge and/or Hoffman. The freight was then loaded onto the trucks by the employees of the owners thereof.⁷

By a written contract, dated October 3, 1960, Morgan, for certain stipulated sums, agreed, among other things, "to provide pickup and delivery of [Acme's] freight between [Acme's] stations or warehouses and consignor's or consignee's premises within Denver, Colo., as defined in [Acme's] tariffs lawfully on file with the Interstate Commerce Commission or as otherwise determined in accordance with applicable laws, rules or regulations.

About September 30 or October 1, 1960, in anticipation of the change in operations at the aforesaid dock, Acme terminated its full-time and regular part-time dock employees. At approximately the same time, these employees made application for employment with Morgan.

Pursuant to the aforementioned written contract with Acme, Morgan, on October 3, 1960, commenced operations at the Acme's Denver dock, employing the same dock supervisor, H. A. Bradley, Sr., herein called Bradley, and all the dock employees previously employed by Acme at the aforementioned dock,⁸ and "attempted to operate it as a Teamsters dock, with the same equipment owned and previously used by Acme in the conduct of the operations at its Denver dock.

⁵ This leased facility is referred to in the record as the Acme dock.

⁶ Acme then had a collective-bargaining contract with the Railway Clerks covering not only the persons employed by Acme at the aforesaid dock but also certain dock office employees.

⁷ At some undisclosed date prior to October 1, 1960, the Railway Clerks painted a 4- or 5-inch white line across the Acme dock at about 5 feet from the edge thereof. Teamsters members were not permitted to perform any work inside said line nor were the Railway Clerk members permitted to perform any work outside of it. In short, the dockwork was performed by members of the Railway Clerks and the truck loading and the freight delivery were performed by Teamsters members.

⁸ At the time Morgan took over the Acme dock operations, Morgan knew that "there was some labor troubles going on between Acme Fast Freight and the" Railway Clerks.

On October 26, 1960, the Railway Clerks filed a petition with the Board,⁹ seeking to be certified as the collective-bargaining representative for all "regular full-time platform workers of [Morgan] at its Denver Union Pacific dock operation. As an alternative the Railway Clerks sought to include in the unit all regular part-time platform workers at the Acme dock.

It was the contention of Morgan and the Teamsters in the aforementioned representation proceeding that the "full-time employees in question are properly included under an existing contract between the [Teamsters] and Colorado Transfer and Warehousemen's Association, Inc. (herein called the Association) of which [Morgan] is a member.¹⁰ More specifically they [were] contending that the petition should be dismissed on the ground that the unit sought is an accretion to the multiemployer unit and on the further ground that the existing contract between the Association and the [Teamsters] constitutes a bar to the proceeding.

On June 29, 1961, the Board issued its Decision and Direction of Election in the representation case referred to immediately above, directing therein, among other things:

. . . As noted above, however, the employees at the Acme dock are newly hired by the Employer, are separately supervised, and the Acme operation of the Employer is largely autonomous. Furthermore, in such circumstances, the Board normally permits employees of a new operation to indicate their desires as to representation. Accordingly, we are of the opinion that, for the purposes of collective bargaining, the employees at Acme may constitute a separate appropriate unit, or, in view of the bargaining history on a multi-employer basis, may appropriately be included in the multiemployer unit currently represented by the Intervenor. He shall, therefore, make no unit determination with respect to the employees at the Acme operation of the Employer at this time, but shall first ascertain the desires of these employees as expressed in the election directed herein.

We shall direct an election among the following employees: All full-time and regular part-time platform workers of the Employer at its Denver Union Pacific dock operation, excluding all other employees and supervisors as defined in the Act.

If the majority of the employees in the above-described voting group cast their ballots for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit and the Regional Director is instructed to issue a certification of representatives to the Petitioner for such unit, which the Board, under the circumstances, finds to be appropriate for purposes of collective bargaining. If the majority of the employees in the voting group cast their ballots for the Intervenor, they will be taken to have indicated their desire to be included in the existing unit currently represented by the Intervenor and the Regional Director will issue a certification of results of election to that effect. If the majority of the employees in the voting group cast their ballots for neither labor organization, they will be taken to have indicated their desire to be unrepresented by any labor organization appearing on the ballot and the Regional Director will issue a certification of results of election to that effect.

At the conclusion of the secret ballot election held on July 25, 1961, in the above-referred-to representation proceedings, "the parties were furnished a tally of ballots which showed that, of approximately 49 eligible voters, no valid votes were cast either for or against the participating labor organizations, but there were 45 challenged ballots. No objections were filed to conduct affecting the results."

On August 18, 1961, after the aforementioned Regional Director conducted an investigation of the challenges, he "issued and served upon the parties his report on challenged ballots, in which he recommended that 31 challenges be sustained and 14 overruled." Thereafter, Morgan filed timely exceptions to the Regional Director's report. Upon review of the aforesaid Regional Director's report, the Board, on November 24, 1961, issued a Supplemental Decision and Direction wherein it adopted the said Regional Director's findings and recommendations, and overruled the challenges to the 14 challenged ballots and directed that said ballots be opened and counted.

⁹ Case No. 27-RC-1951, 131 NLRB 1434. The Teamsters local here involved was permitted to intervene in said proceeding and it actively participated therein.

¹⁰ By its terms, the said contract became effective on May 1, 1958, and was to expire on January 19, 1962.

On December 4, 1961, the aforementioned Regional Director issued a revised tally of ballots which disclosed that the 14 challenged ballots had been cast for the Railway Clerks.

On December 13, 1961, the aforementioned Regional Director, for and on behalf of the Board, certified the Railway Clerks as the statutory collective-bargaining representative of all Morgan's Acme dock full-time and regular part-time employees, excluding all other employees and supervisors as defined in the Act.

Following the December 13, 1961, Board certification of the Railway Clerks as the statutory representative of the employees herein involved, the said labor organization and Morgan entered into contract negotiations, reached substantial agreement as to certain contract terms, but never executed an agreement with respect thereto.

Under date of September 26, 1961, Acme wrote Morgan requesting that the work the latter was then performing for the former at the Acme dock be computed on "a per hundred weight cost" instead of the then existing hourly rate basis.

The next day, September 27, Morgan wrote Acme that it was unable to handle the Acme dock operations on the terms proposed by Acme in its September 26 letter.

Under date of February 6, 1962, Acme wrote Morgan as follows:

It is my understanding the National Labor Relations Board in Case No. 27-RC-1951 has certified the Brotherhood of Railway Clerks as the Collective Bargaining Representative in this case.

Since this case has now been given a final decision, it is our desire that the unloading and delivery of Acme Freight be placed on a per hundred weight basis for unloading and delivery taking into consideration any change in your labor agreements.

We would appreciate your advising the cost per cwt. for unloading and delivery of our freight as quickly as possible as it will be necessary that arrangements be made to start on the basis of the new rates effective March 1, 1962.

The next day, February 7, Morgan wrote Acme as follows:

It is true that the National Labor Relations Board has certified the Brotherhood of Railway Clerks as the collective bargaining representative on the Union Pacific Dock, however, we have had no negotiations as yet.

In regard to unloading and delivery of your freight on a per cwt. basis we do not feel we would be interested.

We do feel that our service in the Metropolitan Areas would be of a benefit to you and it is our desire to continue this service for you if possible.

Under date of March 2, 1962, Acme wrote Morgan as follows:

As you know it has been our desire to place our drayage contract with your company on a per hundred weight basis as originally discussed which would at the present time be only a few cents higher as a result of the recent increase granted in your labor contract with the Teamster organization.

As a result of our failure to establish an adequate economical per hundred weight contract, please accept this letter as notice of cancellation of the Pick-Up and Delivery contract between your company and Acme Fast Freight, Inc. to become effective with the beginning of business 2 April 1962.

I am sincerely sorry this letter of cancellation must be written as the relationship between your company and Acme has been excellent in the past, and I want you to know I certainly appreciate your work and assistance in the past.

Under date of March 26, 1962, Acme wrote Morgan as follows:

Please refer to my letter of 2 March 1962 which reads in part as follows:

"As a result of our failure to establish an adequate economical per hundred weight contract, please accept this letter as notice of cancellation of the Pick-Up and delivery contract between your company and Acme Fast Freight, Inc. to become effective with the beginning of business 2 April 1962.

We would appreciate your advancing this cancellation date to Monday, April 30, 1962.

Kindly advise if this advance in date meets with your approval.

On March 27, 1962, Morgan replied to Acme's letter referred to immediately above as follows:

We shall be glad to advance the cancellation date of April 2nd, to Monday, April 30, 1962 as requested in your letter of March 26, 1962.

For your information we offered our proposal to Mr. Donlan, representing the Brotherhood of Railway Clerks, on March 7th, 1962, but have not received notice of acceptance or request for further meeting since.

We are still hopeful we may conclude our negotiations and be able to offer you a per hundred weight rate at an early date.

Under date of April 20, 1962, Morgan wrote Acme as follows:

We have just completed a meeting with the representative of the Brotherhood of Railway Clerks, reviewing the Union's proposed Labor Agreement and our counter proposal. There are several items in the Labor Agreement which will bear further consideration; however, with regard to wages, we have tentatively agreed to put the wage rates proposed by us into effect May 1, 1962. The Union, of course, still is insisting that these rates should be effective January 19, 1962, which is the same date the increase for employees represented by Teamsters Local No. 17 went into effect.

In view of the fact that we will increase our hourly rates effective May 1, 1962, this will necessitate increased costs which will be incurred by us which we feel must be taken into consideration by your company in paying Morgan Transfer and Storage for the handling of the Acme Freight from that date on.

It is quite possible that we will have additional costs in the event we are compelled to put these rates into effect January 19, 1962. This matter will be discussed with you at a later date should we reach a final agreement with the Brotherhood of Railway Clerks Union.

At quitting time on Friday, April 27, 1962, Morgan, knowing that its agreement with Acme was to be terminated the following Monday, discharged all its Acme dock employees, including Bradley, its Acme dock supervisor.

The same afternoon, April 27, William Vagher, who worked on the Acme dock under Acme and Morgan, and during all times material was and now is, local chairman of the Railway Clerks, asked Bradley if DeGeorge would hire him. Bradley replied that he had an appointment with DeGeorge that afternoon to ascertain whether he, himself, would be hired by DeGeorge, and that he would advise Vagher about employment with DeGeorge.

On Saturday, April 28, Bradley telephoned Vagher and said to quote from Vagher's credited testimony, "he¹¹ . . . was going to put his own men on and he didn't want to have nothing to do with the Brotherhood of Railway Clerks." About 2 hours later, Bradley again telephoned Vagher and said, to again quote from Vagher's credited testimony, "We will put you to work on one condition and that is there won't be any Brotherhood activities on the dock." Thereupon Vagher replied, "Yes, sir, I will not have any Brotherhood activities on the dock because I need the job."

DeGeorge commenced operations at the Acme dock on April 30, 1962, and ever since has been using the loading and unloading equipment owned by Acme and used by Acme and Morgan when these concerns were operating said dock.

Vagher testified further, and the Trial Examiner finds, that on May 15, 1962, DeGeorge assembled all his Acme dockworkers and all his truckdrivers at one of his main Denver buildings, located at 801 Walnut Street, and stated to them, among other things, that they would have to join the Teamsters within 30 days.¹²

George Sanders testified, and the Trial Examiner finds, that: he was employed by Acme from March 7, 1951, until October 1960 as an Acme dock freight handler; while so employed, Bradley was dock superintendent and his immediate supervisor; since his employment with Acme he has been a Railway Clerks member; he went to work for Morgan on the very day Morgan took over the Acme dock operations; he did the same jobs for Morgan as he had performed for Acme, with Bradley being his immediate supervisor; he was discharged by Morgan on April 27, 1962, because DeGeorge was about to take over the Acme dock operations; on April 28, 1962, he telephoned Bradley inquiring about a job and Bradley referred him to DeGeorge; he thereupon telephoned DeGeorge and asked for a job; DeGeorge said that he thought "it would be all right" but he should contact Bradley; when he telephoned Bradley the second time, Bradley told him to report for work the following Monday, April 30, adding that he would have to join the Teamsters within 30 days and could not engage in any Railway Clerks activities on the Acme dock; he performed the same duties for DeGeorge as he previously performed for Acme and Morgan; and at a meeting of all DeGeorge employees held at the DeGeorge Walnut Street premises on May 15, 1962, DeGeorge said, among other things, that all new employees had 30 days in which to join the Teamsters.

¹¹ Apparently meaning DeGeorge. At the time of this telephone conversation, Bradley had already been hired by DeGeorge as the latter's Acme dock supervisor.

¹² DeGeorge testified, and the Trial Examiner finds, that at this meeting he told his Acme dock employees that they would have to join the Teamsters within 30 days.

Donald Ferrill, John W. Parke, and Felix Paiko testified, and the Trial Examiner finds, that: they were employed as Acme dockhands by Acme prior to October 1960; since their Acme employment they have been members of the Railway Clerks; during their Acme employment Bradley was dock superintendent or supervisor and their immediate supervisor; when Morgan took over the Acme dock, they became Morgan's employees doing the same jobs which they had performed for Acme and Bradley was their immediate supervisor; they were discharged by Morgan on or about April 27, 1962, because of the Acme-Morgan lease termination; when they were hired by Bradley when DeGeorge took over the Acme dock operations, he told them that they would have to join the Teamsters within 30 days and would not be permitted to engage in any Railway Clerks activities on the Acme dock; they performed substantially the same duties for DeGeorge at the Acme dock as they did for Acme and Morgan when they operated said dock; and they attended the May 15, 1962, meeting at which DeGeorge stated all employees had to join the Teamsters within 30 days.

Raymond D. Anderson was first employed by Acme on a regular part-time basis¹³ in March 1956 as freight handler and checker¹⁴ and Bradley, who actually hired him for Acme, was his immediate supervisor. Since Anderson's Acme employment he has been a Railway Clerks member. When Morgan took over the Acme dock operation in October 1960, Bradley hired Anderson on behalf of Morgan and Anderson performed the same duties under Bradley's supervision for Morgan as he had performed for Acme. When in Morgan's employ Anderson worked only on Mondays. When DeGeorge took over the Acme dock operations on April 30, 1962, Bradley hired Anderson. The only day Anderson worked for DeGeorge was that Monday, April 30. When Anderson went to the Acme dock on May 11, 1962, to pick up his paycheck, Bradley told him, to quote from Anderson's credited testimony, "there would be no further employment there on the Acme dock under DeGeorge, that DeGeorge had his own employees to come in there and that the part-time employees wouldn't have no [sic] further work The ones that worked under Morgan didn't come in under DeGeorge. He said he would keep us in mind, if he did call us we would have to join the Teamsters within 30 days." About 3 months prior to December 5, 1962,¹⁵ Anderson telephoned Bradley inquiring about employment and the latter said "there wasn't anything."

Leon Prior, Antonio Delgado, John Homyak, H. R. Houghton, and John Vessa were regular part-time employees working at the Acme dock when it was being operated by Acme and also when it was being operated by Morgan;¹⁶ each, under Bradley's immediate supervision, unloaded boxcars, checked the freight, and assisted in loading the freight onto the trucks; each, since at least their Acme employment, has been a Railway Clerks member; when Morgan took over the Acme dock operations in October 1960, each was hired by Bradley as a Morgan employee; the duties of each at the Acme dock while in Morgan's employ were supervised by Bradley and were substantially the same as when each had worked for Acme; each was discharged by Morgan on or about April 27, 1962.

Prior was hired by Bradley, on behalf of DeGeorge, on April 30, 1962, with the understanding that he would be required to join the Teamsters within 30 days. Prior's duties at the Acme dock, while in DeGeorge's employ, which were supervised by Bradley, were substantially the same when he worked thereat for Acme and for Morgan.

Under date of May 7, 1962, the Railway Clerks wrote DeGeorge as follows:¹⁷

It is my understanding that your company has by agreement with Acme Fast Freight, Inc., taken over the handling of the platform work for Acme Fast Freight, Inc., at their "Denver Union Pacific Dock operation."

Prior to May 1, 1962 the work was performed by employees of Morgan Transfer Company at the same location.

Our organization was duly certified by the National Labor Relations Board under date of December 13, 1961, Case 27-RC-1951, as the exclusive representative of all full and regular part-time platform employees at the Denver

¹³ When Anderson first went to work for Acme, he worked only Mondays and Tuesdays. Later, he worked only Sundays and Mondays. Finally, he worked but 1 day per week.

¹⁴ Actually, Anderson's job was to unload boxcars, check freight, and assist in loading the freight into the trucks

¹⁵ The day Anderson testified.

¹⁶ Prior's employment by Acme commenced on September 25, 1960; Delgado's, in September 1957; Vessa's, in the spring of 1958; Homyak's, on or about April 30, 1955; and Houghton's, in May 1960.

¹⁷ DeGeorge received this letter on or about May 9, 1962.

Union Pacific Dock operation, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

As the change in companies from Morgan Transfer & Storage Company, Inc., to the DeGeorge Transfer Company, by action of Acme Fast Freight, Inc., involves no significant change in the composition of the work force, the location where the work is performed, or the work to be performed, we request that your Company recognize this organization as the collective bargaining representative of the employees in the aforesaid appropriate unit.

We therefore request that, for the purpose of consummating [sic] an agreement covering rates of pay, wages, hours of employment, and other conditions of employment that you advise a time, date and place for conference, or advise that you are agreeable to applying the Acme Fast Freight, Inc., agreement currently in effect with our organization.

On Friday, May 11, 1962, all the regular part-time Acme dock employees working that day were summoned to the dock's office and there the following, according to the credited testimony of Prior, transpired:

Q. Well, would you tell us who was present?

A. Mr. Bradley and Mr. Muniz,¹⁸ and I am only certain of two other part time employees, Mr. Houghton and Mr. Homyak.

Q. Now, when you were all present at the office at 19th & Wynkoop, would you tell us whether or not there were any conversations there by Mr. Bradley or Mr. Muniz?

A. Yes, sir.

Q. What, if anything, did Mr. Bradley state at that time?

A. Mr. Bradley said, "Well, fellows, I guess this is it. We have to let you go."

Q. Did he say anything further?

A. He said that he didn't know what the setup would be at DeGeorge, they hadn't gotten [the] thing straightened around, or words to that effect.

Q. Now, did Mr. Muniz speak at that time?

A. He did.

Q. What, if anything, did he state?

A. He said, "We have taken this on a hundredweight basis and we don't know how we are going to come out on it and it is necessary to let you fellows go." He said, "if you did remain in our employ, you would have to join the Teamsters Union and it would cost you fifty bucks. Whether you care to do that or not I don't know."

At the conclusion of the meeting referred to above, Prior asked Bradley if he should contact "him from time to time for the possibility of further employment," to which question Bradley replied in the affirmative. During the first 2 or 3 months after his discharge on May 11, 1962, Prior telephoned Bradley about once a week; thereafter, he telephoned Bradley about once a month. On each occasion, Prior inquired about being rehired and each time Bradley replied that there was no work available.

At the time Bradley hired Delgado on May 7, 1962, on behalf of DeGeorge, Bradley informed Delgado he would have to join the Teamsters within 30 days if he wanted to work for DeGeorge.

On Friday, May 11, 1962, Delgado telephoned Bradley, as per the custom of the regular part-time employees here involved, to ascertain whether he should report for work the following Monday.¹⁹ Bradley replied, according to Delgado's credited testimony, "I guess that's all, we won't need you any more. We will let you know if something comes up."

Vessa was hired by Bradley, for the account of DeGeorge, on Monday, May 7, 1962. He worked that day and the following day.²⁰

On May 15, 1962, when Vessa went to the Acme dock to get his paycheck, Bradley told him that his services were no longer needed, that the dock operations had changed hands, that DeGeorge intended to use his own men on the dock job, and that even if the part-time dock employees were retained in DeGeorges employ, they would have to join the Teamsters.

¹⁸ Meaning Fred Muniz, DeGeorge's "manager of all operations" for the past 3½ years.

¹⁹ Delgado regularly worked Mondays and Tuesdays, if there was work available for him on those days.

²⁰ Vessa regularly worked Mondays and Tuesdays, if work was available for him on those days.

On Saturday, April 28, 1962, Homyak telephoned Bradley to ascertain when he should report for work. Bradley replied, in substance, that the Acme dock operations "were going Teamsters and DeGeorge had no further need for casual or part-time employees, and hence Homyak's services were no longer needed.

On the following Wednesday, May 3, 1962, Homyak telephoned Bradley seeking work. The latter told Homyak to report for work the following day. Because of other commitments Homyak could not accept Bradley's offer of employment.

Pursuant to a telephone conversation Homyak had with Bradley on Thursday, May 3, 1962, Homyak went to work at the Acme dock the following day. Homyak worked for DeGeorge at the Acme dock on May 4, 7, 8, 9, and 11, 1962.

On Friday, May 11, 1962, Homyak and the other regular part-time Acme dock employees working that day were assembled in the dock office and were told by Bradley and Muniz that their services were no longer needed.

On Sunday, April 29, 1962, Houghton telephoned Bradley to find out if DeGeorge would hire him. Bradley told Houghton to report for work the following morning providing Houghton was willing to work a full 8 hours each day. Houghton replied that the 8-hour stipulation was acceptable to him. Houghton worked five 8-hour days the week beginning April 30, 1962. During the week beginning May 7, 1962, Houghton worked 8 hours each day except for one day except for one day when he worked but 6 hours and on another day (the last day of his employment with DeGeorge), he worked but 4 hours.

After the dock employees had worked 4 hours on Friday, May 11, Bradley assembled all the regular part-time Acme dock employees working that day in the dock office and there Muniz and Bradley announced that DeGeorge could not use the regular part-time dock employees any longer.

As found above, on May 15, 1962, DeGeorge assembled all his employees, including those then working on the Acme dock, and announced among other things not here pertinent, that if they wanted to remain in his employ they would have to become members of the Teamsters.

Under date of May 22, 1962, DeGeorge wrote the Railway Clerks as follows:

In reply to your letter of May 7, 1962, this is to advise you that we have a contract with the Teamsters Union Local #17 covering our employees.²¹

The credible evidence clearly establishes that both Morgan and DeGeorge used the same Acme-owned loading and unloading equipment which Acme had used when it operated the dock; Morgan throughout its operations at the Acme dock, and DeGeorge, from about April 30 until May 11, 1962, employed the same nonsupervisory personnel which had been in Acme's employ when Morgan started operations at the dock; Bradley, during all times material, was the supervisor in charge of the dock under Acme, Morgan, and DeGeorge; and the regular part-time employees hired by DeGeorge, commencing on or about April 30, 1962, performed the identical work they performed when in Acme's and Morgan's employ.

B. Concluding findings

It is well settled that a Board certification must be honored for a reasonable period of time, normally 1 year, in the absence of unusual circumstances.²² Neither a change in ownership, nor turnover in the composition of the certified unit, are such unusual circumstances as to effect the force of the certification. Where the enterprise remains substantially the same, as here, the obligation of the prior employer to bargain with the certified bargaining representative devolves upon his successor in interest.²³

DeGeorge, in defense of his refusal to bargain with the Railway Clerks, contends, principally, that he is not, and never was, a successor to Morgan but his newly acquired Acme operation was but an accretion to his regular business.²⁴

²¹ Referring to the contract entered into by the Teamsters and the Colorado Transfer and Warehousemen's Association, Inc. (of which Association DeGeorge, at all times material, was, and now is, a member), which, by its terms, became effective January 19, 1962, and will expire on January 19, 1965.

²² *Ray Brooks v. NLRB*, 348 U.S. 96.

²³ *Ugite Gas Incorporated*, 126 NLRB 494; *Firchau Logging Company, Inc.*, 126 NLRB 1215, *NLRB v. Albert Armato*, 199 F.2d 800 (CA 7), *Royal Brand Cutlery Company*, 122 NLRB 901.

²⁴ This contention was advanced by Morgan, and rejected by the Board as being without merit, in the representation case referred above, 27-RC-1951 (131 NLRB 1434).

Under the circumstances of this case, the foregoing contention, and, for that matter, the other various contentions advanced by DeGeorge for his refusal to recognize and bargain with the Railway Clerks as the representative of his Acme dock employees, are without merit. There can be no dispute that the effectiveness of a certification during the 1-year period is not necessarily limited to the particular employer operating the business at the date of its issuance. A certification during its 1-year period runs with the employing industry and the certification is binding upon the person assuming said business. Thus, for example, in *N.L.R.B. v. Blair Quarries, Inc.*, 152 F. 2d 25, the Court of Appeals for the Fourth Circuit, applying the foregoing rule, held that a bona fide lessee of an enterprise who continued to operate the business with a substantial number of the lessor's working force and supervisory personnel was under a duty to honor an otherwise valid certification issued while the lessor had operated the enterprise. The rationale underlying this holding has been stated by the Court of Appeals for the Sixth Circuit in its frequently cited opinion in *N.L.R.B. v. Arthur G. Colten, et al.*, 105 F. 2d 179 (at p. 183), in these words:

. . . It is the employing industry that is sought to be regulated and brought within the corrective and remedial provisions of the Act in the interest of industrial peace. . . . It needs no demonstration that the strife which is sought to be averted is no less an object of legislative solicitude when contract, death, or operation of law brings about a change of ownership in the employing agency.

Accordingly, where the "employing industry," as here, remains essentially the same after a transfer from one employer to another, the certification continues for its normal operative period with undiminished vitality and the successor employer is under an obligation to honor the certification and bargain with the certified labor organization.²⁵ It cannot be said that change in the legal ownership of a business enterprise in itself imports a change in the employees' choice of bargaining representative. These findings are buttressed by the fact that even before DeGeorge assumed the Acme dock operations he had full knowledge that the Railway Clerks was the certified bargaining representative of the Acme dock full-time and regular part-time employees and, nonetheless, he hired all of them.

Upon the basis of the entire record, the Trial Examiner finds that by refusing to bargain with the Railway Clerks on and after May 22, 1962,²⁶ Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act. The Trial Examiner further finds that by such acts and conduct, Respondent has interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed by Section 7 of the Act, within the meaning of Section 8(a)(1) thereof.

The credited evidence clearly indicates that Raymond Anderson, Antonio Delgado, John Homyak, H. R. Houghton, Leon Prior, and John Vessa were discharged by DeGeorge on May 11, 1962; that prior to said discharges, DeGeorge had knowledge of their memberships in the Railway Clerks; and that they were discharged only because of DeGeorge's unlawful application of the union-security clause contained in his contract with the Teamsters.²⁷ Upon the record as a whole, the Trial Examiner finds that by discharging the above-named six men Respondent violated Section 8(a)(3) of the Act. The Trial Examiner further finds that by such acts and conduct, Respondent not only encouraged membership in the Teamsters and discouraged membership in the Railway Clerks but also interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed by Section 7 of the Act within the meaning of Section 8(a)(1) thereof.

The record discloses, and the Trial Examiner finds, that on several occasions Bradley, and on one occasion DeGeorge, informed the employees that they had to become Teamsters members if they wanted to remain in DeGeorge's employ. Bradley also informed several of the Acme dock employees that if they wanted to work for DeGeorge, they were not to engage in any Railway Clerks activities on the dock. By engaging in such acts and conduct, Respondent violated not only Section 8(a)(1) but also 8(a)(2) of the Act. Assuming, *arguendo*, that Bradley told the employees,

²⁵ See, for example, *N.L.R.B. v. National Garment Company*, 166 F. 2d 233 (C.A. 8); *N.L.R.B. v. Armato*, *supra*; *N.L.R.B. v. Blair Quarries, Inc.*, *supra*; *N.L.R.B. v. Hoppes Manufacturing Company*, 170 F. 2d 962 (C.A. 6); *N.L.R.B. v. O'Keefe and Merritt Manufacturing Company*, 178 F. 2d 445 (C.A. 9); *Union Drawn Steel Company v N.L.R.B.*, 109 F. 2d 587 (C.A. 3).

²⁶ The date of DeGeorge's aforementioned letter to the Railway Clerks.

²⁷ The 1962-65 Colorado Transfer and Warehousemen's Association-Teamsters' contract.

as he testified he did, that they were not to engage in Railway Clerks activities during working hours, his statement would nevertheless be violative of the Act because Teamsters members were not so warned. In addition, since the union-security provision of the contract which DeGeorge had with the Teamsters was unlawfully applied to his full-time and regular part-time Acme dock employees, Respondent rendered unlawful assistance, aid, and support to the Teamsters. Accordingly, upon the entire record in the case, the Trial Examiner finds that by the above-described acts of aid, assistance, and support to the Teamsters, coupled with his granting exclusive recognition to said labor organization at a time when it did not represent the majority of DeGeorge's Acme dock employees, Respondent violated 8(a)(2) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the business operations of Respondent as described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and, such of them as have been found to constitute unfair labor practices, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices violative of Section 8(a)(1), (2), (3), and (5) of the Act, the Trial Examiner will recommend that he cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has discriminated in regard to the hire and tenure of employment, and the terms and conditions of employment, of Raymond Anderson, Antonio Delgado, John Homyak, H. R. Houghton, Leon Prior, and John Vessa, it will be recommended that Respondent offer each of them immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges. It will also be recommended that Respondent make Anderson, Delgado, Houghton, Homyak, Prior, and Vessa whole for any loss of pay they may have suffered by reason of Respondent's discrimination against them, by payment to them of a sum of money equal to the amount they would have normally earned as wages from May 11, 1962, to the date Respondent offers them full and complete reinstatement, together with interest on said amount at the rate of 6 percent per annum. Backpay and interest to be computed and paid in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289, and in *Isis Plumbing & Heating Co., Inc.*, 138 NLRB 716, less their net earnings during the aforesaid period.

Having found that Respondent has refused to bargain collectively with the Railway Clerks as the exclusive bargaining representative of the employees in the appropriate unit, it will be recommended that Respondent be ordered, upon request, to bargain collectively with the Railway Clerks and, in the event an understanding is reached, embody such understanding in a signed agreement.

Having found that Respondent has unlawfully applied to his full-time and regular part-time Acme dock employees the union-security provision of the contract which he has with the Teamsters, thereby rendering to said labor organization unlawful assistance, aid, and support, it will be recommended that Respondent be ordered to cease and desist therefrom.

The unfair labor practices found to have been engaged in by Respondent are of such a character and scope that, in order to insure Respondent's employees of their full rights guaranteed them by the Act, it will be recommended that Respondent cease and desist from in any manner interfering with, restraining, and coercing his employees in their right to self-organization.

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

CONCLUSIONS OF LAW

1. The Railway Clerks and the Teamsters are labor organizations within the meaning of Section 2(5) of the Act.
2. Respondent, during all material times, was engaged in and now is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
3. By discriminating in regard to the hire and tenure of employment and the terms and conditions of employment of Raymond Anderson, Antonio Delgado, John Homyak, H. R. Houghton, Leon Prior, and John Vessa, thereby encouraging

membership in the Teamsters and discouraging membership in the Railway Clerks, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

4. By unlawfully applying to his full-time and regular part-time Acme dock employees the union-security provision of his contract with the Teamsters, thereby rendering unlawful assistance, aid, and support to the Teamsters, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(2) of the Act.

5. At all times material herein, all Respondent's full-time and regular part-time Acme dock employees, excluding all other employees and supervisors as defined in the Act, constituted, and now constitute, a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

6. By refusing on May 22, 1962, and at all times thereafter, to bargain collectively with the Railway Clerks as the exclusive representative of all the employees in the aforesaid unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By informing his full-time and regular part-time Acme dock employees that they had to become members of the Teamsters as a condition of continuous employment, and by otherwise interfering with, restraining, and coercing his full-time and regular part-time Acme dock employees in the exercise of the rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. 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 Respondent, his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully discouraging membership in the Railway Clerks and unlawfully encouraging membership in the Teamsters, or any other labor organization of his employees, by discriminatorily discharging or refusing to reinstate his employees, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment.

(b) Refusing to bargain collectively with the Railway Clerks as the exclusive representative of his employees in the previously described appropriate unit with respect to grievances, labor disputes, rates of pay, wages, hours of employment, and other terms and conditions of employment.

(c) Rendering unlawful assistance, aid, and support to the Teamsters by informing his Acme dock employees that, as a condition of continuous employment, they have to become Teamsters members.

(d) Unlawfully applying to his Acme dock employees the union-security provision of his contract with the Teamsters.

(e) In any other manner interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the Railway Clerks or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Railway Clerks as the exclusive representative of the employees in the above-described appropriate unit with respect to rates of pay, wages, hours of work, and other terms and conditions of employment, and embody in a signed agreement any understanding reached.

(b) Reinstate Raymond Anderson, Antonio Delgado, John Homyak, H. R. Houghton, Leon Prior, and John Vessa to their former or equivalent positions without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay they may have suffered because of Respondent's discrimina-

tion against them, all in the manner and to the degree set forth in the section entitled "The Remedy."

(c) Preserve and, upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all records necessary for the determination of amounts of backpay due under these recommendations.

(d) Post at its establishment at Denver, Colorado, copies of the attached notice marked "Appendix."²⁸ Copies of said notice, to be furnished by the Regional Director for the Twenty-seventh Region, shall, after being duly signed by Respondent, be posted for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twenty-seventh Region, in writing, within 20 days from the receipt of this Intermediate Report and Recommended Order, what steps Respondent has taken to comply therewith.²⁹

²⁸ 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 Recommended Order 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 "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order."

²⁹ 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, as amended, I hereby notify you that:

I WILL NOT unlawfully discourage membership in Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Local Union No. 837, AFL-CIO, or any other labor organization of our employees, by discriminatorily discharging or refusing to reinstate any of our employees or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment.

I WILL NOT in any other manner interfere, restrain, or coerce employees in the exercise of their right to self-organization, to bargain collectively through representatives of their own choosing, 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, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as amended.

I WILL, upon request, bargain collectively with Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Local Union No. 837, AFL-CIO, as the exclusive bargaining representative of all employees in the following unit with respect to grievances, labor disputes, rates of pay, wages, hours of employment, and other terms and conditions of employment, and if an understanding is reached embody such understanding in a signed agreement. The bargaining unit is:

All my full-time and regular part-time Acme dock employees, but excluding all other employees and supervisors as defined in the Act.

I WILL reinstate Raymond Anderson, Antonio Delgado, John Homyak, H. R. Houghton, Leon Prior, and John Vessa to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay suffered by them because of the discrimination against them all in the manner and to the degree recommended by the Trial Examiner in his Intermediate Report and Recommended Order.

All my employees are free to become, remain, or refrain from becoming or remaining members of any labor organization, except to the extent that this right may be

affected by a lawful agreement requiring membership in a labor organization as a condition of employment.

JAMES V. DEGEORGE, D/B/A DEGEORGE
TRANSFER & STORAGE CO.,

Employer.

Dated _____ By _____
(Representative) (Title)

NOTE.—I will notify any of the above-named employees presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

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

Employees may communicate directly with the Board's Regional Office, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado, 80202, Telephone No. Keystone 4-4151, Extension 513, if they have any question concerning this notice or compliance with its provisions.

**Council Manufacturing Corp. and James N. Lott. Case No. 26-
CA-1417. June 26, 1963**

DECISION AND ORDER

On April 17, 1963, Trial Examiner John P. von Rohr issued his Intermediate Report in the above-entitled proceeding, finding that 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 attached Intermediate Report. He also found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended dismissal of those allegations of the complaint. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

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 [Chairman McCulloch and Members Rodgers and Fanning].

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. The Board has considered the Intermediate Report and the entire record in this case, including the exceptions and brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

ORDER

The Board adopts as its Order the Trial Examiner's Recommended Order.

¹ The Respondent's exceptions to the Intermediate Report and supporting brief are in large part directed to the credibility resolutions of the Trial Examiner. We will not overrule the Trial Examiner's resolutions as to credibility, unless a clear preponderance of all relevant evidence convinces us that they are incorrect. Upon the entire record, such conclusion is not warranted here *Standard Dry Wall Products*, 91 NLRB 544, enfd. 188 F. 2d 362 (C.A. 3).