

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

5. The Respondent did not commit unfair labor practices by discharging Gabriel Saucedo and Galo Mera.

[Recommendations omitted from publication.]

National Furniture Manufacturing Company, Inc. and Local Union No. 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. *Case No. 25-CA-1198. February 24, 1961*

DECISION AND ORDER

On August 16, 1960, 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 copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a brief in support thereof.

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 Leedom and Members Rodgers and Jenkins].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

ORDER

Upon the entire record in this case and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that National Furniture Manufacturing Company, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Local Union No. 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all over-the-road truckdrivers at its Evansville, Indiana, plant, excluding clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(b) Threatening or coercively interrogating its employees concerning their organizational activities, or in any manner offering inducements with respect to withdrawing their support of or affiliation with any labor organization.

(c) In any other manner interfering with, restraining, or coercing its employees, or infringing upon their exercise of the rights guaranteed in Section 7 of the Act.

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

(a) Upon request, bargain collectively with the Local Union No. 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all over-the-road truckdrivers in the aforesaid appropriate unit, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon application, offer immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, to all those employees who went on strike on October 31, 1959, or thereafter, dismissing, if necessary, any person hired by the Respondent on or after that date, and make them whole, in the manner set forth in the section of the Intermediate Report entitled "The Remedy," for any loss of pay which they may suffer by reason of the Respondent's refusal, if any, to reinstate them.

(c) Preserve and, upon request, make available to the Board or its agents, for inspection and reproduction, all payroll records, social security payment records, timecards, personnel files, and all other records necessary to analyze, compute, and determine the amounts of backpay due, if any.

(d) Post at its plant and warehouse in Evansville, Indiana, copies of the notice attached hereto marked "Appendix."¹ Copies of said notice, to be furnished by the Regional Director for the Twenty-fifth Region, shall, after being duly signed by a duly authorized representative of National Furniture Manufacturing Company, Inc., be posted by Respondent immediately upon receipt thereof, and 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 Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twenty-fifth Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply therewith.

¹ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order 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 bargain collectively in good faith with Local Union No. 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the exclusive representative of all employees in the bargaining unit described below with respect to rates of pay, hours of employment, and other conditions of employment, and, if an understanding is reached, we will embody such understanding in a signed contract. The bargaining unit is:

All over-the-road truckdrivers at our Evansville, Indiana, plant, excluding clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

WE WILL, upon application, offer immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, to all those employees who went out on strike on or about October 31, 1959, and make them whole for any loss of pay they may suffer as a result of our refusal, if any, to reinstate upon such applications.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees or otherwise infringe upon their exercise of the right to self-organization, to form, join, or assist Local Union No. 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor 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 as guaranteed in Section 7 of the Act, or to refrain from any or all such activities.

All of our employees are free to become or remain or to refrain from becoming or remaining members of Local Union No. 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

NATIONAL FURNITURE MANUFACTURING
COMPANY, 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.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon a charge and an amended charge duly filed, the General Counsel of the National Labor Relations Board, through the Regional Director for the Twenty-fifth Region (Indianapolis, Indiana), issued a complaint against National Furniture Manufacturing Company, Inc., herein called the Respondent or the Company, alleging that the Respondent had engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended. The Respondent duly filed an answer in which it denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Evansville, Indiana, on April 12 and 13, 1960, before the duly designated Trial Examiner. All parties were represented by counsel and were afforded opportunity to adduce evidence, to examine and cross-examine witnesses, and to file briefs. The parties waived oral argument.

Subsequent to the close of the hearing the Respondent filed a motion to correct the transcript, which motion was signed by all parties of record. The said motion to correct the transcript, which is also in accord with the recollection of the Trial Examiner, is hereby granted.¹

Briefs have been received from the General Counsel, counsel for the Respondent on behalf of the Respondent, and Daniel F. Caldemeyer on behalf of the Respondent, all of which have been carefully considered. Upon the entire record and from my observation of the witnesses, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

The Respondent is an Indiana corporation with its principal office located at Evansville, Indiana, and with plants located at Evansville and Wellington, Kansas, where it is engaged in the manufacture and sale of wood and upholstered furniture. During the most recent 12 months material hereto, Respondent manufactured, sold, and shipped products valued in excess of \$50,000 to customers located outside the State of Indiana. The Respondent admits, and I find, that Respondent is and has been engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local Union No. 215, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Prefatory statement*

The dispute here arises out of the organization of Respondent's over-the-road truckdrivers whose principal function is to drive Respondent's trucks throughout the Middle Western States for the purpose of delivering Respondent's furniture to various dealers. Other than some testimony that the drivers were generally dissatisfied with working conditions, the record does not disclose the background of the organizing campaign. However, on October 24, 1959, 10 of Respondent's 13 over-the-road drivers signed cards authorizing the Union to act as their collective-bargaining representative. The remaining three drivers signed similar authorization cards on October 27 and 28 and November 8, 1959, respectively.²

On or about October 27 or 28, C. K. Arden, president of Local 215, sent a telegram to Daniel F. Caldemeyer, president of the Respondent, which stated as follows:

Notifying you majority your over the road truck drivers Evansville plant made application for membership in our union authorized us to bargain for them relative to wages and working conditions wish to meet negotiate contract please let us know at earliest date.

¹ In accordance with the above ruling, the answer of witness Glenn Wilkinson at page 40, line 25, of the transcript is amended and corrected to read: "A I wouldn't do that. I would never show them to you or Mr. Caldemeyer, knowing you two."

² All dates hereinafter refer to the year 1959 unless otherwise indicated.

By letter dated October 27 (which Respondent stipulated it received on October 28), Arden advised Caldemeyer as follows:

As per our telegram the majority of your over-the-road truck drivers at the Evansville plant made application for membership in our Union and authorized us to bargain for them relative to wages and working conditions.

We would like an appointment with you for the purpose of negotiating in an attempt to reach an agreement.

An early reply will be appreciated.

Also on October 28, 1959, the Union filed a representation petition with the then Subregional Office in Indianapolis, Indiana (Case No. 35-RC-1756), in which the unit was specified as being "All over-the-road truck drivers at the Evansville, Ind., plant, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees."

The Respondent did not reply to either the Union's telegram or its letter.

About 4:30 p.m. on October 31, 1959 (a Saturday), 11 of the Respondent's drivers met at the union hall and voted 9 to 2 in favor of taking strike action. A strike began and a picket line was established at Respondent's plant about 6 p.m. on the same day. The strike remained in progress at the time of the hearing.

The General Counsel contends that between October 28 and 31, the Respondent engaged in various conduct alleged to be in violation of Section 8(a)(1) of the Act in order to gain time to undermine and destroy the Union's bargaining status. Such conduct is also urged as establishing that the Respondent did not have a bona fide doubt as to the Union's majority and that the Respondent, by refusing to recognize the Union, thereby refused to bargain collectively within the meaning of Section 8(a)(5) of the Act. The complaint also alleges that the strike which began on October 31 was caused and prolonged by the Respondent's alleged unfair labor practices. In addition, there are allegations that Respondent engaged in further conduct alleged to be in violation of Section 8(a)(1) and (5) subsequent to the inception of the strike. In substance, the General Counsel contends that the instant case represents a *Joy Silk* situation.³

The Respondent, while denying the commission of any unfair labor practices, particularly contends that at all times it maintained a good-faith doubt as to the Union's majority status and that therefore it was not obligated to recognize or bargain with the Union as the employees' collective-bargaining representative. The Respondent also contends that the unit sought by the Union is inappropriate. These and other of Respondent's defenses are considered hereinafter.

B. Interference, restraint, and coercion

1. Conduct and events before the strike

As has been noted, Respondent became advised of the union activities of its over-the-road drivers on October 28, at which time it received the Union's letter advising that a majority of those employees had authorized the Union to act as their bargaining representative and that recognition was requested.⁴

On October 29, about 1 p.m., Clarence Ottman, Respondent's traffic manager and conceded a supervisor, instructed employees Arthur L. Davis, Clarence C. Sims, and Carvel B. Dillback to report to the office of Respondent's personnel manager, Joe T. Holt.⁵ Davis and Sims arrived somewhat before Dillback and found Daniel Caldemeyer, Respondent's president, present in the office with Holt. The ensuing conversation, as set forth herein, is based upon the uncontroverted, corroborative, and credited testimony of Davis and Sims, with the latter having testified in greater detail. Holt began the conversation by stating that he had just returned from out of town and that he had heard all about this "union stuff." Sims replied that he could not put his hand on any "one certain thing that caused it," whereupon Caldemeyer spoke up and asked, "What seems to be the trouble?" Sims in reply gave an example about not being able to reverse his load. Caldemeyer then picked up the telephone and called Mr. Horseman (not specifically identified

³ *Joy Silk Mills, Inc.*, 85 NLRB 1263; enfd. as mod. 185 F.2d 732 (C.A.D.C.), cert. denied 341 U.S. 914.

⁴ The Union's letter of October 27 referred to the fact that a telegram had been sent. It would seem likely, therefore, that the Respondent would have received the telegram on October 27. However, the Respondent stipulated that it received both the telegram and the letter on October 28, and the General Counsel did not pursue this matter further.

⁵ Davis, Sims, and Dillback are classified as over-the-road truckdrivers. Unless otherwise indicated, all other persons hereinafter identified as employees are also so classified.

in the record, but apparently in the traffic department) and told him, "If these drivers want you to turn these loads around, turn them around if it'll help them." At this point Dillback entered the office. According to Dillback's undenied and credited testimony, Holt told him that he had just returned, that he was "shocked to find the situation as it was when he came back" and that he could not understand why the drivers could not bring their problems to him. When Holt proceeded to ask what the trouble was, Dillback answered by voicing several of the drivers' complaints and the conversation ended. I find that the queries and statements which Holt and Caldemeyer addressed to Davis, Sims, and Dillback, after having called them to Holt's office for the specific purpose of discussing the drivers' organizing activities, are in violation of Section 8(a)(1) of the Act. This is particularly true when the incident just described is viewed, as it must be, in perspective with the totality of Respondent's conduct, further of which is revealed hereinafter.

Davis testified to another incident which took place after dinner (apparently in the early evening) on October 29 in Respondent's garage as he was working on his truck. According to Davis' credited testimony, Caldemeyer entered the garage at that time and called together a group of about 12 maintenance and mechanic employees. Davis was close enough to overhear the conversation and he observed that Caldemeyer kept pointing to him as he talked. Caldemeyer began by telling the employees that the drivers were going on strike and that "when they do they're fired." He further told the employees, according to Davis, "If you have any friends, relatives, or know anybody that can drive a truck, send them to me and I'll talk to them. I've fought this thing before." He proceeded to say further, according to Davis' credited testimony, that he could run an ad in the Evansville paper and he could have a hundred drivers by the next morning; and that he could run an ad in the Alabama-Georgia papers and have a thousand in there by Monday. (As shall be seen, Caldemeyer in fact did place an ad in southern papers shortly thereafter.) Caldemeyer concluded by saying that before he would let anybody tell him how to run his business, or dabble in his profits, he would sell out and go south or move the plant. It is found that the manifestly coercive statements made by Caldemeyer in this conversation were in violation of Section 8(a)(1).⁶

On the evening of October 29, Caldemeyer also engaged two other employees in a conversation about the Union. Clarence Sims testified that Caldemeyer approached him as he was working on his truck in the parking lot and remarked that he intended to fire driver Howard Dunn because Dunn had told "everyone up north" that the drivers were going on strike.⁷ Caldemeyer then left the area. A few minutes later, Carvel Dillback, who was scheduled to make a trip that evening, came up and started to talk to Sims. As they were talking, Caldemeyer returned and engaged them in further conversation. According to the credited and mutually corroborative testimony of Dillback and Sims, Caldemeyer began by telling them that if the Union came in he would replace the Company's present trucks with Chevrolet trucks.⁸ Caldemeyer continued by stating, according to Dillback's

⁶ Although Caldemeyer did not deny that he spoke to a group of mechanics and maintenance employees in the garage on October 29, he did, in response to a question from his counsel, make a general denial of ever having told employees that he would shut down the plant and move it down South where labor is cheap. As indicated, I have credited Davis' account of the conversation to which he testified. Caldemeyer did, however, testify concerning a talk (not alluded to by General Counsel's witnesses) which he had with a group of 100 production employees about 3 p.m. on October 30. Caldemeyer credibly testified that this talk was prompted by information he had received to the effect that Howard Dunn, an over-the-road driver, had told a dealer handling Respondent's products that there would be no more deliveries because the drivers were going on strike. On this occasion Caldemeyer told the production employees that the drivers were going out on strike and that it would be necessary to keep the plant rolling. According to Caldemeyer, "Consequently, I asked them if they knew of any person who would be interested in driving if they did go on strike . . . if they knew of anyone to send them in . . . and we would hire them."

⁷ As will be seen, Dunn was not fired. The above statement was not alleged as violative of Section 8(a)(1) and no such violation is found.

⁸ The testimony indicates that Chevrolet trucks would be of lighter weight than the trucks then in use. Concerning this aspect of the conversation, Dillback testified that Caldemeyer said, "If this thing goes through—he would buy Chevrolet trucks—[and] there would be somebody following us." Sims testified that Caldemeyer said, "You boys can have the Union but I'll tell you one thing, you'll be driving Chevrolets and people will be following you up and down the street." Although there was this minor variation, the implication to Dillback and Sims is plain.

credited testimony, "that he guessed he could just close the plant, or he would move it to Mississippi, down south where the wages were cheap, and he wouldn't have any trouble. And he also said he didn't have to operate, that he could get him a job some place else. . . . He said the Interstate Commerce Commission had been on him, and that he thought the union, the Teamster Union put them on him." Sims' testimony concerning this part of the conversation was corroborative of Dillback's. Inasmuch as it is representative of much of his testimony, I believe it appropriate here to set forth Caldemeyer's testimony concerning the conversation which he concededly held with Dillback and Sims on this occasion. Thus, Caldemeyer testified:

I asked them how things were getting along, and they were talking about the problems, and we got to talking about the Huntingburg contract. And I believe I asked them exactly if anything—if there was any trouble, what the trouble was. I believe that's the way I put it.

And they said yes. They were talking about it, and they would like to have a Huntingburg contract. And I asked them what the Huntingburg contract was and he said it was around seven and a quarter cents a mile. I explained to him then that we had different types of trucks than Huntingburg, and the situation was considerably different than what they had.

And it's been my theory, and during the war I got into quite a few things. In fact I graduated from the United States Army and Navy Engine Training School, and I believe I know a little something about the aircraft and maintenance. I was third echelon maintenance officer on B-17's. At that time we studied horsepower, and things of that sort. And it's been my theory that a truck with 450 cubic inches is far better than a truck that has a smaller cubic inch capacity, because it doesn't move as fast, and I told the boys that these trucks were far superior to the others, but that they cost more money to operate than the trucks that are smaller trucks to operate. And economically from the standpoint of a rate, that they would have to think about the rate as well as the trucks, themselves, because they can go faster and make better time with bigger equipment. The money, itself, is immaterial; it's how much they earn from an economic standpoint.

And though that is the light in which I discussed with them to try to explain to both Sims, and the others, what had happened, and exactly what my theory was versus what other people's theory of operations was.

* * * * *

And Mr. Sims told me, he said, "Well, that truck's good for five years. You don't have to trade that in."

I told him, well, it was my prerogative to trade that truck any time, and if it becomes economically too costly to operate those trucks it was within my prerogative, . . .

It will thus be noted that there is no denial by Caldemeyer concerning the statements attributed to him by Sims and Dillback with respect to moving or closing the plant if the Union came. As I have credited Sims and Dillback, I find these statements violative of Section 8(a)(1). As to Caldemeyer's statement with respect to replacing the Company's present trucks with lighter models, such testimony has been also credited. I do not regard Caldemeyer's explanation of this aspect of the conversation, which in itself is not very clear, as dispositive of the impact or thrust it had upon these employees. As the testimony of Sims and Dillback indicates, there was conveyed to them at least an implied threat that the Company's trucks which they drove would or could be replaced with less desirable models if the Union came in. I find the statement to this effect to be in violation of Section 8(a)(1).

About 8:30 on the following morning (October 30), Ottman told driver Richard Rhone to report to the office of Lloyd Caldemeyer, vice president of the Respondent.⁹ Present were Dan and Lloyd Caldemeyer. According to the credited testimony of Rhone, Dan Caldemeyer began by saying that he wanted to discuss the matter of the Union, adding that "Now, you don't have to talk to me if you don't want to, but you'll have to listen to what I have to say." Rhone testified that then "he went on and told me that if the union came in that he could close the plant down, or move it south; he could sell his fleet of trucks, take a vacation, go to Florida, or said he could purchase warehouses throughout the country, he could ship by rail, or he could piggyback." Rhone credibly testified that during this conversation Dan Caldemeyer stated that no union was going to run his business for him and that he

⁹ This is the only incident in the record in which Lloyd Caldemeyer participated. All other references to Caldemeyer herein refer to Daniel Caldemeyer.

also asked him (Rhone) how long it would take to get applications for 100 drivers if he put an ad in a southern paper. Dan Caldemeyer finally stated to Lloyd, "I believe after talking to four or five more of the drivers we can separate the men from the boys and we won't have anything to worry about." The foregoing conversation as testified to by Rhone, whom I credit, is uncontroverted.¹⁰ I find that the statements made by Caldemeyer concerning what he could do with his business if the Union came in exceeded the permissible expression of views contemplated by Section 8(c) of the Act and are in violation of Section 8(a)(1) thereof. I find that likewise violative was Caldemeyer's remark about separating the men from the boys, clearly a veiled threat under the circumstances present.

When Rhone left the office of the vice president, he was stopped by Ottman and told to report to the office of Personnel Director Holt. Rhone credibly testified that when he arrived in the office, "Mr. Holt asked me what this is about joining the union, and I told him I believed it was wages. And he said at this time there will be no chance for any expense money or any raise in wages. And he said that 'there will be no Union in this plant'" Rhone thereupon told Holt that he had joined the Union and left the office. I find that Holt's questioning of Rhone and his statement constitutes a violation of Section 8(a)(1).

On the same morning (October 30), driver James L. Crane was also summoned (alone) to Holt's office. According to Crane's credible and uncontroverted testimony, Holt began by asking "what was the trouble with us drivers" and "why we had gone to an outsider rather than come to them about our problems and difficulties." Crane's further testimony about the conversation is best set forth in his own words:

And, of course, I stated to him I didn't know because, insofar as I was the last on the board and I didn't say much to him about it, because he asked me who started all this trouble, and I told him I didn't know.

And he asked me if I'd talk to them about this union, and what I'd done. I said I just went down and signed that card. And he told me—well, me and him was talking back and forth about—oh, of our troubles, and all like that with it, and I said, and so I told him I was sticking with the men. And so after it was all over with of talking, me and him, why, he asked me, he said what I was going to do. And I told him I didn't know.

He said, "When you go down there and cast your vote whether you want a union in this place or not," he said, "Remember that you get paid by National Furniture and not by any outsiders," and that they've been without a union in here for 40 years, and they don't intend to have one now.

From the foregoing I find that Holt's interrogation of Crane and his statement to him that the Respondent did not have a union for 40 years "and they don't intend to have one now" is violative of Section 8(a)(1).

We turn now to the events of the following day, October 31, which was the day on which the strike started. About 11 a.m. on this day, six of the drivers were summoned to the office of Personnel Director Holt. These included Buell Morehead, C. T. Lawson, Clarence Sims, Herschel Gibbs, Clifford Bell, and Howard Dunn. Present in addition to Holt were Dan Caldemeyer and Howard Quackenbush, the latter plant products engineer. Each of the six drivers testified concerning this meeting. With minor variations, the testimony of these employees is corroborative and consistent, although some testified in greater detail than others.¹¹ It is undisputed that sometime during this meeting, most probably at the beginning, Caldemeyer took driver Dunn to task for spreading the word to certain dealers that there might be no further deliveries of furniture because the employees had organized and were likely to strike. The matter ended with Caldemeyer telling Dunn that he was not fired. The nature of the talk which Caldemeyer then had with the assembly of drivers is best described from illustrative portions of the testimony. Thus, Buell Morehead credibly testified, "Well, it was mentioned about the union, and Dan [Caldemeyer] says he didn't want any part of the union; we could join the union if we wanted to, but he didn't have to accept it . . . He stated that he might even get shut of the trucks, and ship by rail . . . he could rent warehouses throughout

¹⁰ Lloyd Caldemeyer, who was present at this conversation, was not called as a witness by the Respondent

¹¹ Gibbs, as a witness, started to testify about this meeting. At this point Respondent's counsel stated that he was "willing to stipulate he would testify substantially the same as Lawson, Bell, and anyone else who has testified at this hearing today." The General Counsel accepted this stipulation and consequently Gibbs did not testify as to what was said at this meeting.

the country and store furniture, and ship it like that . . . he mentioned that he didn't have to accept the union, that he might even go to Florida." C. T. Lawson testified, "He was speaking about some company in the south, asked us how many trucks we had seen of theirs on the road; nobody had seemed to have seen any. He said, 'They don't have any . . . they ship their furniture to warehouses and distribute their furniture out from the warehouses.' He said he could do the same if he had to . . . he said if we went out on strike, he and his brother hadn't had a vacation this year, they'd just go to Florida . . . he said he didn't want a union there, there never had been one, and he said something about any time two people had to have a contract it was immoral." Howard Dunn testified, "Mr. Caldemeyer said he wouldn't accept any union or work with any union, and that we had all joined the union . . . he asked us if we had ever seen any Stratolounger trucks . . . and very few of us had . . . and he said maybe he was going at it wrong, that maybe he should get off the truck, or sell the trucks, to that effect, and ship by rail like they do . . . and he also said that they thought they had him over a barrel, but they didn't. He'd move the plant south and hire help down there . . . I think most of the boys admired him for his physical powers . . . he was the only man that ever beat Jesse Owens in one day . . . and that was brought into it as teamwork, that we should work together without . . . having anybody of the union, or anybody to help us along that way . . . and that anytime anybody . . . required a contract to work together, that was immoral." Without further burdening the record, suffice it to say that testimony of Sims, Gibbs, and Bell is substantially in accord with that of Morehead, Gibbs, and Dunn, as related. Caldemeyer acknowledged that he spoke to the group of six drivers on this occasion and that the general topic of his talk related to the employees' union activities. He did not deny much of the significant testimony of the drivers and much of his testimony as to what he said at this meeting was of a vague and general nature.¹² It will also be recalled that two of Respondent's supervisors, Holt and Quackenbush, were present at this meeting. They were not, however, called upon to rebut any of the drivers' testimony concerning what transpired. Accordingly, the general denials of Caldemeyer, if they be considered such, are insufficient to overcome the weight of the credible and consistent testimony of the drivers concerning the statements made by him at this meeting. I find that Caldemeyer's remarks at this meeting were reasonably calculated to convey to the drivers that Respondent would not accept the Union and that in the event the Union did come in, Respondent could or would move its plant or discontinue its trucking operations. Such statements are clearly violative of Section 8(a)(1) of the Act.

Driver Daniel Hughes was not present at the foregoing meeting, but about an hour later he was called to Holt's office in the presence of Holt, Caldemeyer, and Quackenbush. The conversation which followed was much the same as that which preceded it. Caldemeyer began by asking "what was the trouble" and Hughes referred to certain working conditions. According to Hughes' credited testimony, which was not denied by Caldemeyer, Holt, or Quackenbush, Caldemeyer then said that "he couldn't give us any more" and that "furthermore, if we joined the union, why, he would close up and move south before he would recognize the union." During

¹² Thus, note the following colloquy between Respondent's attorney and Caldemeyer:

Q All right, did you on or about October 31 tell a group of your employees that you wouldn't let the union in your plant, and that you would close the plant and take a vacation in Florida?

A No I said I would take a vacation in Florida. But I haven't had a vacation in the last three years, and it's getting rather tiresome. And if I had gone to Florida and stayed two days, a week, or a month, it made no difference because I left behind Mr. Holt, and I left behind Mr. Ottman, and I left behind Mr. Bud Mozer, and I would leave behind my brother, if he would stay.

Q All right. I ask you whether or not on or about October 31 you told several employees of the plant that you would sell your trucks, that you would set up warehouses throughout the country and ship by the railroads?

A No, Art I patiently explained to these boys, and I mean patiently explained to them that our competition, Stratford, Jackson and Siesta, who have grown from nothing to be 17 and 21 million dollar outfits, and they're all located in the Mississippi-Tennessee area, have done so because they were using warehouses in their operation; and that we had to watch our costs so that we didn't get our costs out of line.

And these warehouses that these people have set up are seemingly a better way of doing things, because they are growing and we aren't, and there must be some reason for it.

the conversation Caldemeyer asked Hughes how he felt about the union, to which Hughes replied, "I told him I was with the boys, whichever way the boys went, why, I was going with them." It is found that the inquiries and statements by Caldemeyer in this conversation are violative of Section 8(a)(1).

Having thus been broached by the Respondent with interrogations and threats concerning their organizational activities, the drivers met at the union hall on the afternoon of the same day and by a vote of 9 to 2 decided to take immediate strike action. As we have seen, the strike began about 6 p.m. that day.

2. Conduct and events after the strike

Except for an innocuous conversation which Plant Products Engineer Quackenbush had with some of the drivers and Union Representative Wilkinson on the first evening of the strike, the details of which need not be related, no contact was made between the Respondent and the striking employees or any union representative until the following week.¹³

Early in the following week, driver Calvin Belt, who had not gone on strike and who then had not yet signed a union card, requested Quackenbush to arrange a meeting between him (Belt) and Dan Caldemeyer. On November 4 (a Wednesday), a meeting was held in Caldemeyer's office with Belt, Quackenbush, Caldemeyer, and Holt present. At this meeting it was agreed that Belt and Quackenbush would visit the striking employees to determine how strong the employees were in their attitude toward the strike. Although there is some dispute as to who initially suggested that Quackenbush participate in these visits, it is clear that Respondent authorized and sanctioned such action on Quackenbush's behalf. Thus, Caldemeyer testified, "I specifically told both of them [Belt and Quackenbush] that it would be all right to go ahead and talk with the people, but that they should listen and learn and find out and bring me back facts."¹⁴

On that same evening, November 4, Quackenbush and Belt proceeded on their mission to visit the striking employees. Their first calls were to the homes of Barnett and Morehead. According to the testimony of the latter employees, which is credited, Quackenbush and Belt asked how strongly they and the other drivers felt about the Union. Both replied that their feelings and that of the others in this regard remained as strong, if not stronger, than it had been at the beginning of the strike. Morehead credibly testified, and it is denied, that Quackenbush also asked him what he thought about a company union. He answered that he did not think the men would go for a company union.¹⁵

Quackenbush and Belt next went to the home of driver C. T. Lawson. By this time it was after 12 p.m., November 5. The strike was generally discussed and Lawson was asked, as had been the others, whether the men were still solid in their feelings for the Union. While they were thus talking, drivers Sims, Dillback, Davis, Crane, Dunn, and Barnett arrived and entered the house.¹⁶ According to the corroborative testimony of Dillback and Lawson, which I credit, Quackenbush stated that he was trying to find out how firm the men were about the Union so that he could report back to Caldemeyer and that he had been sent out by Caldemeyer for this purpose.¹⁷ Dillback thereupon asked Quackenbush if he didn't think it was "off

¹³ Although Respondent is responsible for certain activity in which Quackenbush, a supervisor, thereafter engaged, Quackenbush, as a person, impressed me as being only sincerely interested in trying to bring about some amicable agreement between the Respondent, the employees, and the Union.

¹⁴ Caldemeyer testified that he also told Belt and Quackenbush to tell the employees "to come back to work and have an election in an orderly fashion after we had determined the proper unit."

¹⁵ Quackenbush credibly testified that during the discussions they also talked about the men's grievances and the causes of the strike; also that he urged the employees to return to work and let the matter go to a National Labor Relations Board election.

It should also be noted that Quackenbush, in his testimony, indicated that it was Belt who asked Morehead and Barnett if they were still "solid" for the Union. The latter employees and Belt testified that it was Quackenbush who asked the question. However, whether this inquiry was made by Quackenbush or Belt, the fact of the matter is that the former was a supervisor and that both he and Belt had been authorized by Caldemeyer to make the visits. The impact upon the employees, under the circumstances, was the same regardless of who asked the question.

¹⁶ With the exception of Barnett, the drivers came from the picket line where they had learned that Quackenbush and Belt were out visiting the homes of drivers.

¹⁷ Quackenbush made no denial of having made these statements during this conversation.

color" or "unfair" for a company man to be visiting with the drivers. He also made it clear to Belt that he (Belt) should be on the picket line.¹⁸ When the conversation at Lawson's house broke up all of the drivers present, together with Belt and Quackenbush who rode in a separate car, went to the picket line. When they arrived another conversation ensued between Quackenbush and a group of the drivers. According to the credited and undenied testimony of Dillback and driver Rhone, Quackenbush again made the statement that he was there to find out how firm the men were. Although the record is rather vague as to what else was said at this point, further participation in the conversation involved only Quackenbush, Dillback, and Union Representative Glenn Wilkinson. (The latter testified that he came to the picket line around 2.30 a.m. after having received a call from one of the drivers that Quackenbush was there.) At this point Quackenbush asked what the men wanted and what was the nature of their demands. Wilkinson replied by stating that the Union had a contract with the Huntingburg Furniture Company and suggested that the men would be satisfied with a contract along the same line. According to Quackenbush, whose testimony here was in accord with that of Wilkinson, "I told him [Wilkinson] that didn't look too bad to me, but I would take it back to Mr. Caldemeyer." It is undisputed that Quackenbush thereupon told Wilkinson and Dillback that he would resign if Caldemeyer did not accept his recommendation which would be to the effect that Respondent accept the proposal which Wilkinson had made.

On November 5, about 9 a m., Wilkinson followed Quackenbush's suggestion and called Caldemeyer. This was the first occasion of any communication between Caldemeyer and a representative of the Union from the time the Union had requested recognition on October 28. The conversation was an amicable one. It is undisputed that Wilkinson asked to sit down and negotiate, and that reference was made to the Huntingburg contract. Wilkinson testified without contradiction that Caldemeyer promised to call him back after he had discussed the matter with others.¹⁹ However, there was never any further contact between the Respondent and the Union.

It is undisputed, and I find, that on the same day, November 5, Quackenbush reported to Caldemeyer the results of the visits which he and Belt had made to the homes of the employees on the night before. That evening Quackenbush spoke to Belt on the telephone and told him that the whole thing had fallen through because Caldemeyer had spoken to his attorney and that it was now a "legal matter."

3. The wage increase; promises of benefit

On or about November 9, the Respondent resumed its trucking operations which had been interrupted by the strike and replaced the striking over-the-road drivers with new hires. On that same date the Respondent, without notifying or consulting the Union, placed into effect a rate increase for the employees in this job classification.²⁰ Holt testified that the wage increases were given at this time because of the "additional responsibility," "threats," and "accident hazards" to which the drivers allegedly would be subjected by the Teamsters organization in connection with the strike.²¹

The unrefuted evidence discloses that Respondent also made efforts to induce several of its striking drivers to return to work by offering them a wage increase. Thus, on November 7, Dillback called Ottman to inquire about getting his paycheck. Clarence Sims was on an extension telephone. The credited testimony of Dillback

¹⁸ Quackenbush testified that Dillback told Belt, "We don't like what you're doing here. If you want to save yourself get down to the picket line and walk it, and I mean right now." Belt testified that Dillback told him that "I could rectify myself and get back in the graces of the boys by coming down and joining them on the picket line." The record is not clear whether Belt joined the strike at this time, but he subsequently signed a union authorization card on November 8.

¹⁹ Caldemeyer testified, and Wilkinson denied, that during this conversation Wilkinson stated that the Union had lost the election three times before at Respondent's plant and that he was not going to give the employees another chance to vote. The record discloses that the Teamsters had lost but one election at Respondent's plant. In any event, assuming the remark to have been made, it is not dispositive or controlling of the issues herein. *The record is clear that the Respondent never requested the Union for proof of majority.*

²⁰ Mileage rates were thereby increased from 6 cents to 6½ cents, and other rates applicable to layovers, breakdowns, and the pickup of various types of furniture also were increased.

²¹ There is no evidence that the replacements in fact were in any way molested.

and Sims reveals that during this conversation Ottman asked them if they had heard about the new raise and that he went on to explain to them the nature of the new wage rates. When Dillback asked whether this meant returning with or without the Union, Ottman replied that meant without the Union. Caldemeyer then got on the telephone, recited all or a part of the Lord's Prayer, and accused the men of trespassing against him.

On the same day (a Saturday), driver Lawson met Ottman at a tavern. Ottman mentioned the raise to Lawson and asked if he felt the other drivers would accept it and return to work. Lawson replied that most of the men thought they would be fired if they went back to work without a union. Later that same evening Ottman spoke to Dillback and Lawson in the latter's car which was parked at the picket line. After again discussing the raise, Ottman told these employees that the "trucks were going to roll on Monday" and that he wanted to see them on the trucks.

A final incident, insofar as the record discloses, occurred on December 2, when Ottman encountered employees Rhone and Bell at a tavern. According to the unrefuted and credited testimony of Rhone, Ottman stated that he was opposed to the Union and that he did not see what they would accomplish by joining it. Ottman asked if Dillback had explained the new wage setup to them. They replied in the affirmative but asked if the replacements were in fact receiving the increase. Ottman said that they were. During the conversation Ottman also told the employees that "they were forgiving people at National Furniture" and that if the men wanted to return to work without the Union they could do so.

C. Conclusions with respect to interference, restraint, and coercion

In order to avoid undue repetition, I have in a preceding section stated my conclusions with respect to Respondent's conduct found to be violative of Section 8(a)(1) of the Act insofar as such conduct preceded the strike which began on October 31, 1959.²² Additionally, I find that the visits of Quackenbush to the homes of the striking employees for the purpose of ascertaining the attitudes of those employees concerning the Union and the strike, as heretofore described, likewise constituted a violation of Section 8(a)(1). It is further concluded and found that Ottman's offer of a wage increase to certain of the striking drivers, as described above, and his solicitation of those employees to abandon the strike and return to work without a union, independently constituted a violation of Section 8(a)(1).²³

D. The appropriate unit; the Union's majority status

In its brief Respondent states that it was "not required to recognize and bargain with the Union under Section 8(a)(5) because the alleged unit was not appropriate and, further, that the Respondent had an honest doubt as to the appropriateness of the unit."

In the first instance, it should be noted that whatever doubt the Respondent may have had concerning the unit, that doubt, if any, was not conveyed by the Respondent to the Union as a reason for refusing to grant recognition. Further, the Board has held, as the General Counsel correctly points out, that the right of an employer to insist upon a Board-directed election is not absolute. If he entertains no reasonable doubt with respect to the appropriateness of the proposed unit or the Union's representative status, he cannot insist upon a Board-directed election merely because the Union had previously filed a petition for certification.²⁴

The Board has frequently found a unit of over-the-road truckdrivers to be appropriate, including the drivers of a furniture manufacturing business.²⁵ The Respond-

²² General Counsel's complaint alleges that Caldemeyer caused certain newspaper articles to be published "which threatened Respondent's striking employees that it would move its plant because of a strike" and that such conduct constituted an 8(a)(1) violation. Although the evidence shows that a newspaper did quote Caldemeyer as voicing a threat to move the plant, it is clear that this was a news item, not an advertisement. It is also clear that the article resulted from an interview which a reporter sought and held with Caldemeyer. It is apparent, therefore, that Respondent cannot be held responsible for the publication thereof. Accordingly, the allegation that Respondent thereby violated Section 8(a)(1) is dismissed.

²³ *N.L.R.B. v. Irving Tastel, et al. d/b/a I. Tastel and Son*, 261 F. 2d 1 (CA 7), enfg. 119 NLRB 910; *N.L.R.B. v. Wooster Division of Borg-Warner Corporation*, 236 F. 2d 898 (CA 6), enfg. 113 NLRB 1288.

²⁴ *United Butchers Abattoir, Inc.*, 123 NLRB 946

²⁵ *Gluck Bros., Inc.*, 119 NLRB 1848. See also *K D Shaver d/b/a Shaver Transfer Company*, 119 NLRB 939; *Jocie Motor Lines, Inc.*, 112 NLRB 1201.

ent contends that the over-the-road truckdrivers at its plant in Wellington, Kansas, which is 650 miles distant from its plant at Evansville, Indiana, must be included in the unit. I find no merit to this contention. Without burdening this report with a discussion of the testimony, which I have carefully considered, suffice it to say that the record reflects no real interchange of employees in this classification between the two plants²⁶ and, further, that each group is separately supervised.²⁷ The Board has found a single-plant unit of truckdrivers to be appropriate where, as here, (1) there has been no previous bargaining history, (2) no union seeks a broader unit, (3) there is a geographical separation of employees, (4) there is no interchange of employees, and (5) there is local supervision of the employees.²⁸ Accordingly, and in view of all the foregoing, it is found that all Respondent's over-the-road truckdrivers at its Evansville, Indiana, plant, excluding clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees, constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

As to the Union's majority status, we have seen that 10 of the Respondent's 13 over-the-road truckdrivers signed union authorization cards on October 24 and that the remaining 3 employees in the unit signed cards on October 27, October 28, and November 8. Accordingly, it is found that on October 28, the date on which the Union made its request for recognition, the Union represented a majority of the employees in the appropriate unit.

E. Conclusions with respect to the refusal to bargain and the unfair labor practice strike

Since October 28, when Respondent received the Union's request for recognition and the accompanying request for bargaining, Respondent has refused to grant recognition on the ground that it allegedly had a good-faith doubt as to the Union's majority status. Respondent contends that in view of this alleged good-faith doubt it had a right to insist upon a Board-conducted election as proof of the Union's majority status. As previously found, the Union in fact did represent a majority of employees in an appropriate unit at the time the demand was made.

In a long line of cases, the Board and the courts have followed the principle first enunciated in *Joy Silk Mills, Inc.*, *supra*.²⁹ That principle has been recently reasserted in *Laabs, Inc.*, 128 NLRB 374, where the Board stated: "It is true that an employer may in good faith insist upon a Board election, as proof of a union's majority status. However, when its insistence upon an election is motivated, not by any bona fide doubt as to the union's majority status, but rather by a rejection of the collective-bargaining principle, or a desire to gain time within which to undermine the union, such insistence is unlawful. This question of good faith is one which, of necessity, must be determined in the light of all relevant facts in the case, including any unlawful conduct of the employer."

Here, as in the *Laabs* case, the record clearly establishes that Respondent's failure to bargain was motivated by its complete rejection of the collective-bargaining principle. The record is abundantly clear that immediately upon receiving the Union's request for recognition, the Respondent embarked upon a campaign designed to thwart the statutory rights guaranteed its employees in Section 7 of the Act. As has been found and detailed in preceding sections, Respondent's top management, including its president, its personnel manager, and its traffic manager, interrogated, threatened, and warned each and every one of its over-the-road truckdrivers to refrain from assisting, or becoming or remaining members of, the Union by threatening to shut down its business, to move the plant, or to eliminate their truck-driving positions entirely by the adoption of some other delivery system. As has also been seen, several of the drivers were flatly told that Respondent would not

²⁶ Holt could testify as to only one instance of where a driver of the Evansville plant worked out of the Wellington plant, this a situation which lasted for only 3 weeks. There are four over-the-road drivers regularly employed at the Wellington plant.

²⁷ Holt, who is stationed in Evansville, testified that he also exercises general supervision of the drivers located in Wellington. However, a leadman who is located at Wellington makes the assignments to the drivers there.

²⁸ *K. D. Shaver d/b/a Shaver Transfer Company, supra.*

²⁹ See also *Transamerican Freight Lines, Inc.*, 123 NLRB 1033; *Emma Gilbert et al. d/b/a A. L. Gilbert Company*, 110 NLRB 2067, 2069; *N.L.R.B. v. Wheeling Pipe Line, Inc.*, 229 F. 2d 391 (C.A. 8). Respondent relies on *N.L.R.B. v. Jackson Press, Inc.*, 201 F. 2d 541 (C.A. 7), and other cases. I find the situation here is more akin to that found in *N.L.R.B. v. Taitel*, 261 F. 2d 1 (C.A. 7), *enfg.* 119 NLRB 910.

have a union. As if this were not enough, Respondent further demonstrated its determination not to recognize the Union by placing advertisements for truckdrivers in Tennessee and Mississippi newspapers on the morning before the strike began.³⁰

Assuming *arguendo* that Respondent may have had some real doubt as to its employees' representation wishes, certainly any such doubt was dispelled by Quackenbush's report to Caldemeyer after visiting the striking employees. Although the conduct of Quackenbush in visiting the strikers was in itself a violation of the Act, Respondent at least thereby learned that all of these employees continued to stand solidly in favor of the Union. Finally, the Respondent's subsequent offer of a wage increase and solicitation of individual strikers to return to work without the Union offers additional evidence of Respondent's determination to ignore the Teamsters and to refuse that Union any recognition.

The Respondent points out that in 1957, and notwithstanding its claim of majority at that time, the same Teamsters Union involved herein lost a Board-conducted election by a vote of 13 to 0 in a unit including its over-the-road truckdrivers, local truckdrivers, mechanics, and mechanics' helpers. Respondent asserts that on this basis it had good reason to doubt that its over-the-road drivers, a number of whom remained the same individuals, had in fact selected this union as their bargaining representative in 1959. Standing alone, this is a fair and reasonable position. I have no doubt but that Respondent, in view of such past experience, would have been within its lawful rights in insisting upon an election. That is to say, however, if it had refrained from simultaneously engaging in the unlawful course of conduct which it did, the purpose of which I have found was to avoid being placed in a position whereby it would be obligated to bargain with the Union.

Respondent raises several other defenses which need to be dealt with but briefly. Thus, the nationwide publicity about the Teamsters Union, to which Respondent alludes, is irrelevant to the issues in this proceeding. That publicity was not raised by the Respondent as a reason for refusing to recognize the majority status of the Union at any time prior to the hearing. Further, there is no evidence whatsoever to support Respondent's claim that the Union had threatened, intimidated, or coerced its employees into signing union authorization cards.

Respondent also intimates that Caldemeyer obtained information from his discussion with the employees which gave him reason to doubt the Union's majority status. To the contrary, and as we have already seen in reviewing the testimony, those discussions should have led Caldemeyer to reach the opposite conclusion.³¹

In view of all the foregoing, and upon the record as a whole, I find that on about October 28, 1959, and at all times thereafter, Respondent's refusal to recognize and bargain with the Union was not motivated by a good-faith doubt as to its majority status. Accordingly, I find that Respondent has thereby violated Section 8(a)(1) and (5) of the Act. I further find that Respondent's unilateral granting of a wage increase was in disregard of its obligation to bargain with the Union as the exclusive bargaining representative of its employees, and independently constituted a violation of Section 8(a)(5) and (1) of the Act.³²

Finally, we turn to the strike which the evidence clearly indicates, and I find, was called for the purpose of achieving recognition. As found above, the Union had achieved a majority status on October 31, the date on which the strike began, and Respondent's refusal to recognize that status was in violation of Section 8(a)(5). The Board has held that where a union strikes for recognition under the circumstances herein found, such strike is an unfair labor practice strike.³³ In view of this precedent, which is determinative here, it is found that the strike involved in the instant case is an unfair labor practice strike. As such, the employees who participated in the strike are unfair labor practice strikers and they are entitled, upon application, to reinstatement regardless of whether they had been replaced.

³⁰ Caldemeyer conceded that he instructed Holt to place these advertisements on the morning of October 31. Although Caldemeyer first testified that the ads were placed for the purpose of finding out the nature of the wage rates in these areas, he subsequently testified that the ads called for over-the-road truckdrivers at 6 cents a mile and that he received 250 applications within 3 days after the ads were placed.

³¹ As to Respondent's reference to a letter which it received from the Acting Chairman of the Board in 1955 (which was in answer to Respondent's complaint about an election at its plant), I find nothing in that letter which could lead Respondent to believe that it would always have a right to insist upon a Board-conducted election. The law applicable to the situation has been heretofore discussed.

³² *Tampa Crown Distributors, Inc.*, 121 NLRB 1622.

³³ *Wheeling Pipe Line, Inc.*, *supra*, and cases cited therein.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices of the Respondent, set forth in section III, above, occurring in connection with the operations of the Respondent, set forth 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 affecting commerce and the free flow of commerce.

V. THE REMEDY

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

Having found that Respondent on October 28, 1959, and at all times thereafter has refused to bargain collectively with the Union as the representative of a majority of the employees in an appropriate unit, I shall recommend that the Respondent, upon request, bargain collectively with the Union as the exclusive representative of all the employees in the unit heretofore found appropriate, and, if an agreement is reached, embody such understanding in a signed agreement.

Since I have found that the strike, which began on October 31, 1959, and which was still in progress at the time of the hearing, was caused by the Respondent's unlawful refusal to bargain with the Union, the strikers were entitled to reinstatement, upon application, irrespective of whether or not their positions have been filled by the Respondent. Accordingly, in order to effectuate the status quo that existed prior to the time the Respondent engaged in the unfair labor practices, I shall recommend that the Respondent offer, upon application, reinstatement to their former or substantially equivalent positions without prejudice to seniority or other rights and privileges, to all its employees who went on strike on October 31, 1959, or thereafter, dismissing, if necessary, any person hired on or after that date. I shall also recommend that the Respondent make whole said employees for any loss of pay they have suffered or may suffer by reason of the Respondent's refusal, if any, to reinstate them, by payment to each of them of a sum of money equal to that which he normally would have earned as wages during the period from 5 days after the date of his application to return to work to the date of the Respondent's offer of reinstatement. Backpay shall be computed in accordance with the formula in *F. W. Woolworth Company*, 90 NLRB 289.

Since the violations of the Act which the Respondent has committed are related to other unfair labor practices proscribed by the Act, and the danger of their commission in the future is reasonably to be anticipated from its past conduct, the preventive purpose of the Act may be thwarted unless the recommendations are coextensive with the threat. To effectuate the policies of the Act, therefore, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed by the Act.

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

CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. All Respondent's over-the-road truckdrivers at its Evansville, Indiana, plant, excluding clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. By failing and refusing at all times since October 31, 1959, to bargain with the Union as the exclusive bargaining representative of employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
5. By interfering with, restraining, and coercing employees in the exercise of 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.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]