

Murphy Brothers Incorporated and Communications Workers of America, AFL-CIO. Case 5-CA-14156

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND ZIMMERMAN

On 25 February 1983 Administrative Law Judge Irwin Kaplan issued the attached Decision in this proceeding. Thereafter, the Charging Party filed exceptions to the Decision, and the Respondent filed a brief in answer to the Charging Party's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

¹ The Charging Party has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We note, with reference to an alleged "hooding" incident in 1981, the Administrative Law Judge's finding at one point in his Decision that alleged discriminatee Draucker passed his fellow driver Hatton at Taxi Stand 43. In fact, as earlier found by the Administrative Law Judge, the record reveals that Draucker passed Hatton at Stand 17, and not at Stand 43.

Chairman Dotson did not participate in the prior Board determinations regarding the Respondent herein. For the purposes of this proceeding, he accepts those determinations, without necessarily indicating agreement on the merits.

DECISION

STATEMENT OF THE CASE

IRWIN KAPLAN, Administrative Law Judge: This case was heard in Washington, D.C., on August 30 and 31 and September 1 and 2, 1982. The underlying charges were filed on March 11, 1982, by Communications Workers of America, AFL-CIO (herein also the Charging Union or Union). The aforementioned charges gave rise to a complaint and notice of hearing on May 18, 1982,

267 NLRB No. 117

alleging that Murphy Brothers Incorporated (herein the Company or Respondent) discharged James F. Draucker because of his union activities and that Respondent thereby violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended (herein the Act).

Respondent filed an answer, amended by stipulation at the hearing, conceding, *inter alia*, jurisdictional facts insofar as they relate to its business operations but denying jurisdiction otherwise, on the basis that said James Draucker, a taxicab lease operator, assertedly, was not its employee. In any event, Respondent denied that it terminated its lease arrangement with said James Draucker because of his union activities but rather because he allegedly engaged in certain improprieties, to wit, "hooding" (described *infra*) and the harassment of another of its lease operators.

Upon the entire record, including my observation of the demeanor of the witnesses, and after careful consideration of the comprehensive post-trial briefs, I find as follows:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Virginia corporation, with an office and place of business in Falls Church, Virginia, is, and has been, at all times material herein, engaged in the operation of a taxicab business. Annually, Respondent, in connection with its operations described above, derives gross revenue in excess of \$500,000. Further, annually, Respondent purchases and receives products valued in excess of \$50,000 directly from points located outside the State of Virginia. It is alleged, the Respondent admits, and I find that it is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.¹

Respondent admits, and I find, that Communications Workers of America, AFL-CIO, is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

A. Background and Sequence of Events

As noted above, the Respondent, Murphy Brothers Incorporated, is engaged in the operation of a taxicab business. In connection therewith, Respondent employs both owner/drivers and lease/drivers. James Draucker, the alleged discriminatee herein, was employed by Respondent as a lease/driver from 1972 until his discharge on February 26, 1982, at which time the company unilaterally terminated his lease.

Since the spring of 1980 and while Draucker was still employed by Respondent, he had been deeply involved in the Union's organizational efforts, and Respondent ad-

¹ While Respondent admitted that it is engaged in interstate commerce as alleged, it does not thereby concede that its drivers are employees rather than independent contractors. For reasons noted *inter alia*, I find that James Draucker and other drivers similarly situated, at all times material herein, were employees, as contended by counsel for the General Counsel.

mittedly had knowledge thereof. These activities consisted, *inter alia*, of soliciting drivers to sign union authorization cards and testifying as a union witness in representation proceedings before the Board.²

Pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted by mail between November 17 and December 2, 1980, whereby challenged ballots were sufficient in number to affect the results. The aforementioned election eventually culminated in a Decision and Certification of Representative which issued on April 28, 1982, approximately 2 months after Draucker's discharge.³

Respondent denied that it canceled Draucker's lease in whole or in part on his known union activity but rather because he (allegedly) engaged in substantiated instances of "long-hooding,"⁴ despite management warnings that such conduct could lead to the loss of his lease and because he repeatedly harassed Robert Hill, a fellow driver.

James Toye, the Company's general manager, testified that, while "many drivers" had previously complained about hooding on the part of Draucker, the first substantiation thereof occurred in late November or early December 1981 and involved then fellow driver Dennis Hatton. According to Toye, with corroboration from Hatton generally, the latter complained to him personally about two instances of "hooding" by Draucker, approximately 1 week apart and, pursuant to Hatton's request, he, Toye, listened to the tapes of the events which confirmed Hatton's allegations.⁵ On one of those occasions, Hatton actually received the fare when the dispatcher substituted him for Draucker although the latter was initially awarded the call. This was done after Hatton spotted Draucker driving in the opposite direction of the call and he, Hatton, thereupon contacted Johnny Eppard, the dispatcher, Eppard assertedly was unable to raise Draucker on the radio and reassigned the trip to Hatton.

Draucker asserted that he merely made a mistake (he bid "Tremont," when he was actually at "Churchhill," a quarter of a mile distant), which he realized when he passed Hatton at stand 17 and then radioed Eppard to re-

assign the trip to Hatton.⁶ Hatton testified that he did not say anything to management initially about this incident because he was eventually awarded the call but, when he again experienced hooding by Draucker a week or two later, he went to the office to complain to Toye.

The second disputed incident of hooding involved a call to pick up a passenger at 301 Maple Avenue, Vienna, Virginia, which was awarded to Draucker over Hatton. According to Hatton, he was then still conscious of the earlier incident of hooding by Draucker and, as he heading in the direction of Maple Avenue, he took it upon himself to investigate and drove to the location of the call. There, Hatton saw the passenger who waited another 4 or 5 minutes before Draucker arrived. Hatton testified that he questioned Draucker as to the location of his bid and the latter responded, "Don't give me no shit." This time Draucker completed the trip. The same day Hatton went to the office and complained to Toye about Draucker. Still the same day, Toye summoned Draucker and discussed Hatton's complaints.

According to Toye, he told Draucker that the tapes confirmed Hatton's allegations of hooding and offered to play them but Draucker declined the invitation. Further, Toye made note of Draucker's considerable background as a driver and training instructor asserting that he, Draucker, understood "as well or better than anyone," the company policy against long-hood, it could result in the termination of his lease. Toye testified that Draucker opined that Hatton needed his eyes examined, that he actually had not seen him. According to Toye, Draucker did not take his admonition seriously. Draucker denied any conversation with Toye relative to Hatton.

The next incident involving alleged hooding by Draucker occurred a couple of weeks after Hatton's complaint. According to Toye, Angelo Trunzo, another Respondent taxicab driver, came into his office "steaming mad," to protest that Draucker had hooded him out of a trip in the vicinity of Route 236 and Lynhurst Avenue and claiming that this was not the first time.⁷ After listening to the tape, Toye summoned Draucker to the office to get his side of the story. Toye testified that he told Draucker he was certain that the latter had long-hooded Trunzo and "if he were caught at it again it would most probably result in a termination of his lease." According to Toye, Draucker again discounted his threat, denied that Trunzo saw him, and made some reference to Trunzo needing glasses.

Draucker denied that he hooded Trunzo, although he admitted that Trunzo complained to the dispatcher that he, Draucker had hooded him out of the Route 236, Lynhurst, assignment. Further, Draucker confirmed that he was summoned to the office and met with Toye over Trunzo's accusation 2 hours after the disputed assignment. According to Draucker, Toye asked him for his side of the story and, after hearing it, he, Toye stated, "It is one guy's word against another, forget about it." Draucker denied that he indicated to Toye that Trunzo

² On another front, *Draucker* was also a founder of the Fairfax County Taxicab Association, an organization created to give drivers a voice in dealings with the county board of supervisors on such concerns as intra-county fares and rate increase for drivers.

³ The certified unit is described as follows:

All owner/drivers and full-time regular part-time lease drivers employed by the Employer at its Falls Church, Virginia location excluding all other employees, dispatchers, mechanics, office clerical employees, supervisors and guards as defined in the Act. [See *Murphy Brothers*, 261 NLRB 416 (1982), G.C. Exh. 8.]

⁴ Customer calls are awarded on the basis of a bidding system and in connection therewith, Respondent has divided the county into approximately 40 taxicab stands. The dispatcher will award the customer call to the driver who has been at the stand in the area of the pickup point first. If the stand is free of taxis, any driver in the area may bid for the call. The essence of the system is to accept bids from the driver closest to the customer pickup location. The term "hooding" or "long-hooding" applies to a driver who misrepresents his location to the dispatcher thereby wrongfully depriving another of the call.

⁵ In July 1981, Respondent instituted a new tape recording system whereby all dispatcher and driver conversations are recorded. According to Toye, the system has made it easier to substantiate acts of hooding by reconstructing the disputed incident as well as other acts of misconduct by drivers.

⁶ *Eppard*, the dispatcher, did not testify.

⁷ *Trunzo* did not testify nor did he appear at the trial. However, as noted *infra*, it is undisputed that *Trunzo* accused Draucker of hooding him out of an assignment on that occasion.

needed glasses and also denied that Toye threatened to terminate his lease if he, Draucker, continued to "hood."

In mid-February 1982,⁸ Robert Hill, another of Respondent's lease/drivers complained of harassment by Draucker and asked Assistant Manager Vance Meadows to get him (Draucker) off his back. Within a week, Hill again complained to Meadows about Draucker, this time in the presence of Toye. As testified to by Hill, he told Toye, "I [have] taken all I could take," and threatened to turn in his cab and terminate his lease.

Draucker and Hill met about 4 years earlier, while both were working for Respondent and had become friends, sometimes socializing on Draucker's boat. However, their friendship cooled around mid-1981, assertedly because of harassment by Draucker. Hill also testified that he caught Draucker hooding him out of a couple of calls in August and September 1981 and, when he protested, ["Draucker] just laughed." According to Hill he did not then complain to management about Draucker's hooding because of their friendship and because he hoped that their differences would settle in time. With regard to harassment by Draucker, Hill testified, *inter alia*, that Draucker regularly drove around and around his taxicab in the parking lot at stand 43 (Hill's normal station), repeatedly blowing his horn, sometimes from 5 to 10 minutes before he stopped. According to Hill, he complained to Draucker about these antics but to no avail. Hill testified that, in order to avoid Draucker at stand 43, he, Hill, eventually operated from another stand, where he made less money because he was not as well known by the customers.

Hill asserted that he also objected, *inter alia*, to Draucker's practice of referring short trips from one of Draucker's longtime customers, a blind woman named Ieda. These trips at times involved driving Ieda to the grocery store, where he, Hill, would help with the shopping. Hill testified that these trips cost him money because he would not charge Ieda "waiting time, while they were inside the store. Still further, Hill objected to Draucker assertedly bidding Hill's taxicab number for calls that he did not want.

According to Draucker, Hill did not complain to him about harassment. Insofar as driving around Hill's taxicab stand and blowing his horn, Draucker asserted that taxicab operators did that to each other, sometimes to wake up a driver or simply to signal a greeting. In any event Draucker denied that Hill ever complained or asked him to stop. Draucker also denied any responsibility for short trip referrals from the woman named Ieda. According to Draucker, he drove Ieda on long runs, but, because he did not charge her for the short trips, she would request Hill by name or another driver.⁹

Hill testified that, when he complained to management in February, "I had just taken all I could take." According to Toye, as he was aware of Draucker's union activities, he treated the complaints as a "sensitive problem" and consulted with his superior, Vice President Wilburn Scruggs, before terminating Draucker's lease on February 26 (approximately 1 week after Hill complained to

Respondent a second time). Toye testified that Draucker's lease was terminated because he was caught hooding on several occasions and more important because of his overall harassment of fellow driver Robert Hill.¹⁰

B. Discussion and Conclusions

1. Draucker's status (employee or independent contractor)

As noted previously, Respondent maintains that, at all times material herein, Draucker, as a lease driver, was an independent contractor and, as such, not entitled to the protection accorded employees under the Act. The record disclosed that on October 22, 1980, the Regional Director, in a Decision and Direction of Election in Case 5-RC-11279 found, *inter alia*, that lease drivers were employees, not independent contractors (G.C. Exh. 7). Subsequently, on April 28, 1982, the Board, in the aforementioned case, issued its Decision and Certification of Representative for a unit expressly including lease drivers (G.C. Exh. 8). At the trial, Respondent was denied the opportunity to adduce evidence that changed circumstances between the time of the initial unit hearing (1980) and the certification date (April 1982) made lease drivers independent contractors.

In rejecting Respondent's offer of proof, it was noted, *inter alia*, that Respondent had not notified the Board of such changes in a motion for reconsideration before its Decision and Certification of Representative. Further, the offer of proof itself was vague and uncertain with regard to the alleged changes and for the most part related to lease drivers in general rather than specifically to Draucker. For example, counsel for Respondent represented that a new taxi lease arrangement had been put into effect "sometime in the last six months." He was uncertain, however, whether the new lease arrangement was in existence at the time of Draucker's severance.

Still further, it is noted that the validity of the unit determination is presently before the Board in a Motion for Summary Judgment in Case 5-CA-14358. In view of the foregoing and on the total state of this record, I find that Respondent has not developed an appropriate foundation to justify a departure from my previous ruling.

Accordingly, and consistent with the Board's Decision and Certification of Representative in *Murphy Brothers*, 261 NLRB 416 (1982) (G.C. Exh. 8), I find that James Draucker at all times material herein was an employee within the meaning of the Act.

2. Credibility

Toye asserted that Draucker's lease was terminated mainly because he harassed Hill and also because of substantiated complaints from Hatton and Trunzo of hooding by Draucker (as assertedly evidenced by the dispatcher tapes). Draucker disputed that hornblowing and circling of Hill's cab at stand 43 as well as other conduct

⁸ All dates hereinafter refer to 1982 unless otherwise indicated.

⁹ Draucker testified that drivers receive up to \$1.80 for short runs, as compared to \$18 or \$20 for long runs.

¹⁰ The General Counsel contends that Hill's testimony was exaggerated, or trivial and in some cases the incidents complained about did not occur. Moreover, it is contended that Draucker was treated disparately. These matters will be discussed more fully *infra*.

ascribed to him by Hill amounted to harassment. Moreover, December denied Hill's testimony that the latter ever complained to him or asked that he stop such conduct. Draucker also denied all accusations of hooding and denied further Toye's testimony that he had been cautioned about losing his lease if he continued to hood. In this connection, Draucker denied categorically any discussion with Toye about hooding over Hatton's complaints.

A determination of whether Respondent was unlawfully motivated in discharging Draucker, in part, turns on resolving the credibility conflicts noted above. Thus, if I were to credit Draucker in all material respects, I would tend to view the reasons advanced by Respondent for terminating him as false or pretextual. As the Board has observed, "A pretextual reason of course supports an inference of an unlawful one." See *Keller Mfg. Co.*, 237 NLRB 712, 717 (1978).

A careful review of Draucker's testimony however disclosed that at times he was unsure, evasive, and inconsistent and appeared less than forthright and implausible. For example, Draucker, when asked about his recollection of what Toye told him in a critical conversation over Trunzo's complaint, responded, "I don't know, I guess he said, hi, I want to hear your side of the story." Similarly, with regard to an encounter with Hill, Draucker was "not sure" of Hill's response when he, Draucker, confronted him over a dispute as to whether he, Hill, had charged Ieda (the blind woman customer) a fare for short runs. Still further, Draucker, when asked whether Hill ever said anything to him about circling his taxicab while he was parked at the taxistand, responded, "He [Hill] may have said I circled his cab, I don't know."

As noted above, Draucker's testimony, *inter alia*, was also inconsistent. Thus Draucker at first denied that Hill complained or asked him to stop blowing his horn and circling Hill's taxi, but later retreated when asked whether Hill even indicated displeasure over such conduct by responding, "I don't know quite honestly; I do not know whether he did or did not." Draucker at one point denied or could not recall whether Hill had accused him of hooding over an assignment at 3251 Old Lee Highway, although he testified in detail with regard to everything else concerning that assignment. A moment later, Draucker, after examining his affidavit, admitted that Hill had accused him of hooding.

Draucker also appeared somewhat less than forthright and/or evasive when he first denied that Toye told him that Trunzo was "steaming mad" about Draucker's hooding him, but then retreated to acknowledge that Toye might have told him that Trunzo was only "mad." In sum, I found Draucker an unreliable witness.

On the other hand, I was also unimpressed with Respondent's principal witness, James Toye. At times I found him unresponsive, evasive, conclusionary, and confused as to the temporal sequence of certain events, particularly with regard to Hatton's complaints of hooding by Draucker. In this latter regard, Toye asserted that the "Vienna" incident occurred first, and the "Stand 17"

second; whereas Hatton testified that they occurred in the reverse order.¹¹

Toye was also somewhat elusive in responding to questions about the number of complaints which were brought to his attention of hooding by Chandar Lamba, an owner/operator, also known as "O-Kay Dokey." I did not view with favor Toye's reluctance to respond on the basis that "substantiated complaint" and "rumor" had to be defined. Still, on the basis of the entire record including demeanor factors, I found Toye more credible than Draucker.

In crediting Toye over Draucker, it is noted that the essence of his testimony is plausible (although not without suspicion) and largely corroborated by credited testimony of Hatton and Hill.¹² Conversely, given that certain critical testimony on behalf of Respondent was either admitted or not controverted by Draucker, I find Draucker's version of the disputed hooding incidents and dealings with Toye over them untenable and is rejected.

For example, Draucker admitted that Hatton accused him of hooding in the latter part of 1981. On that occasion, Hatton spotted Draucker coming from the wrong direction relative to his bid and immediately contacted the dispatcher who eventually rewarded the call to Hatton. Draucker recalled the incident, but he dismissed it as a mere "mistake" which he assertedly realized, as soon as he passed Hatton at stand 43. As I have found Draucker otherwise unreliable as a witness, I am unwilling to accept his explanation of "mistake" particularly in the absence of any corroborated testimony. Rather, it appears that Draucker was caught in the act of hooding, as he was then accused by Hatton. Significantly, even Draucker did not assert that he had apologized to Hatton or acknowledged to him that he made a mistake. In any event, since Hatton had received the fare, it is understandable that he did not then complain to management. However, as Hatton credibly testified that he was involved in another hooding incident with Draucker about 1 week later, I accept the testimony of Toye and Hatton as plausible that Hatton would complain about both incidents and that Toye would summon Draucker to explain his conduct.

As noted previously, Draucker denied having any discussion with Toye over Hatton's complaints. However, contrary to Draucker's denial, I find it likely that a meeting occurred particularly as Draucker admitted to such

¹¹ I attribute this confusion more to the fact that the hooding incidents occurred approximately 1 week apart rather than a desire by Toye to obfuscate the record on this matter. Of greater significance is the fact that two hooding incidents occurred as testified by Hatton.

¹² Hill's explanation that he did not complain to management for a number of months about harassment by Draucker because of their friendship, hoping that their differences would settle in time is plausible and is credited. Further, Hill testified simply with little embellishment and overall responsively. In sum, I found him to be an impressive witness and credit his testimony in all material respects. I found Hatton less impressive and not fully candid. In assessing Hatton's overall credibility it is noted, *inter alia*, that, at the time he testified, he had become an assistant manager for Respondent, and, as such, was not a disinterested witness. On balance however, including demeanor factors, I credit Hatton over Draucker noting, *inter alia*, that the latter was admittedly involved in at least one hooding incident with the former, which Draucker unconvincingly characterized as a "mistake" on his part.

meeting with Toye over Trunzo's complaints a few weeks later.

In sum, I credit the testimony of Toye that Hatton, Trunzo, and Hill complained to him about Draucker's conduct with Hill, threatening to surrender his lease, unless something was done and that Toye told Draucker that he faced the loss of his lease if he continued to hood.

3. Alleged discriminatory discharge

It is disputed that Draucker was a principal supporter of the Union's organizational efforts and that Respondent had knowledge thereof. Respondent, however, denied that it terminated Draucker's lease because of his union activities but rather because of complaints of harassment by Hill and hooding by Hatton and Trunzo. According to Respondent, it bent over backwards to retain Draucker. Thus, Respondent asserted, "The fact that Draucker's lease was not terminated after the Trunzo complaint reveals the delicacy, if not indulgence, with which Draucker was handled because of his union activities."

On the other hand, the General Counsel contends that Respondent's asserted reliance on harassment and hooding by Draucker is pretextual. According to the General Counsel, the so-called harassment of Hill by Draucker was either trivial or did not occur. As for "hooding," the General Counsel asserted that the record does not support the conduct ascribed to Draucker and, in any event, Respondent had long tolerated its practice. Thus the General Counsel contends that, by discharging Draucker for "hooding," Respondent treated him disparately, which, in the circumstances of this case, warrants an inference of unlawful motivation.

The General Counsel's assertion that Draucker was treated disparately is not without some appeal. For example, it is noted that Respondent had not discharged any of its drivers for "hooding" prior to terminating Draucker.¹³ Further, while the record tends to show that a few drivers, most notably driver Don Rice, had long been accused of hooding, only Rice was terminated solely for hooding and not until June or July 1982.¹⁴

While the record disclosed that hooding was not uncommon (particularly before the new taping system), it does not follow that Respondent tolerated its practice. For example, the record disclosed that Toye resolved a number of hooding complaints by having the alleged hooder surrender the fare to the complaining driver. According to Toye, stronger disciplinary action is warranted only where accusations of hooding are substantiated. Given the nature of the industry, it is readily apparent (in the absence of a disinterested witness) that acts of

¹³ Toye made reference to terminating driver *Howard Gooding* prior to *Draucker*. However the record disclosed that *Gooding* was then involved in a physical fight with another driver in front of a customer over the hooding incident and both drivers were discharged. Thus, *Gooding* was not terminated for hooding itself but also for fighting in front of a customer.

¹⁴ Toye described one document containing the names of 11 drivers including that of *Bob Price* as, "a partial list of people [Rice] hooded. (See G.C. Exh. 4.) According to driver *Price*, *Rice* had been hooding for the past 6 years.

hooding are difficult to substantiate. Thus, as noted previously, in July 1981, Respondent installed a new taping device to assist, *inter alia*, in its investigation of alleged hooding complaints.

The credited testimony disclosed that Toye heard the dispatcher tapes relative to the complaints of Hatton and Trunzo and they tended to support the allegations of hooding by Draucker. Further, Toye credibly testified that he warned Draucker that he faced the loss of his lease if he continued to hood but the latter appeared not to take the threat seriously. In any event Toye asserted that the "main reason" for terminating Draucker's lease was Hill's complaints of harassment. Thus, Draucker's overall conduct must be assessed before it can be determined whether Respondent treated him disparately.

While the General Counsel discounts the so-called harassment as trivial, the credited testimony disclosed that it was serious enough for Hill to abandon his normal taxi-stand and find another one, *albeit*, less profitable.¹⁵

In addition, the credited testimony disclosed that Hill complained to management in early February to get Draucker off his back and then again approximately 1 week later. On this latter occasion, Hill threatened to surrender his lease, unless the Company took some action against Draucker.

Given the temporal proximity of the "substantiated" hooding complaints with those complaints of harassment made by Hill (all within approximately 2 months), I am not, in the circumstances of this case, persuaded that Respondent's reliance on these complaints is pretextual. In assessing the total circumstances of the instant case, it is noted that there is a dearth of evidence reflecting any union animus and, in fact, there are no allegations that Respondent otherwise violated the Act. This, notwithstanding the fact that Draucker was actively and visibly engaged in a wide range of union activities over a 2-year period before is discharge. As the Board has observed, even where "substantial suspicions" have been raised, the General Counsel is not relieved of the burden of proving that Respondent acted with illegal motive. See *Carrom Division*, 245 NLRB 703, fn. 1 (1979). Similarly, in the instant case, on the basis of the entire record, I am unpersuaded that the General Counsel has established by a preponderance of the credible evidence that Respondent acted with illegal motive in discharging Draucker. Accordingly I shall dismiss this allegation.

CONCLUSIONS OF LAW

1. The Respondent, Murphy Brothers Incorporated, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Communications Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The General Counsel had not proved by a preponderance of the credible evidence that Respondent has violated Section 8(a)(3) and (1) of the Act.

¹⁵ *Robert Price*, a witness on behalf of the General Counsel, acknowledged on cross-examination that *Hill* complained to him about *Draucker's* harassment, calling it "overbearing."

Upon the foregoing findings of fact and conclusions of law and upon the entire record in these proceedings, and pursuant to the provisions of Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹⁶

The complaint is hereby dismissed in its entirety.

¹⁶ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.