

Hutchens Trucking Company, Inc. and Henry Hilliard and Donald Fulcher. Cases 11-CA-10483 and 11-CA-10483-4

11 January 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 5 August 1983 Administrative Law Judge Leonard N. Cohen issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,¹ findings, and conclusions and to adopt the recommended Order.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Hutchens Trucking Company, Inc., Winston-Salem, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² The notice prescribed by the judge does not contain the full language of his Order. We shall substitute a notice which conforms with the Order.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discourage membership in Teamsters Local No. 391 or any other labor organization by refusing to hire job applicants or by delaying

offers of employment to job applicants because of their union activities.

WE WILL NOT tell job applicants that they will not be hired by us because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer an over-the-road truckdriver job to Henry Hilliard and WE WILL make Henry Hilliard and Donald Fulcher whole for any loss of pay they may have suffered by reason of the discrimination practiced against them, with interest.

HUTCHENS TRUCKING COMPANY, INC.

DECISION

STATEMENT OF THE CASE

LEONARD N. COHEN, Administrative Law Judge: This matter was tried before me in Winston-Salem, North Carolina, on November 8, 1982.¹ On August 6, the Regional Director for Region 11 of the National Labor Relations Board issued a complaint and notice of hearing based on unfair labor practice charges filed by Henry F. Hilliard, Jr., an Individual, and Donald J. Fulcher, an Individual, on June 28 and July 6, respectively. The complaint alleges, inter alia, that Hutchens Trucking Company, Inc., herein called the Respondent, in violation of Section 8(a)(3) and (1) of the Act, failed and refused to hire job applicants Hilliard and Fulcher because of their union membership while employed by another employer. The Respondent filed a timely answer in which it denies the commission of any unfair labor practice.

All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witness, to argue orally, and to file briefs. Counsel for the General Counsel and counsel for the Respondent both filed briefs which have been carefully considered.

On the entire record of this case, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a motor freight carrier licensed by the Interstate Commerce Commission, is a North Carolina corporation with a principal office and place of business in Winston-Salem, North Carolina, where it is engaged in the business of transporting freight by motor vehicle. During the past 12 months, the Respondent purchased and received goods and materials valued in excess of \$50,000 at its Winston-Salem, North Carolina facility directly from points outside the State of North Carolina. Accordingly, the Respondent admits, and I find and conclude, that the Respondent is an employer within the meaning of Section 2(6) and (7) of the Act.

¹ Unless otherwise stated, all dates are in 1982.

II. THE UNFAIR LABOR PRACTICES

A. *The Facts*²

1. Background

In mid-1978, Hilliard and Fulcher were hired as over-the-road truckdrivers by North Carolina Allstates Service, Inc., herein called Allstates, a local trucking operation with offices located in the General Electric Company, herein called GE, Winston-Salem, North Carolina warehouse. Allstates hauled freight exclusively for GE and employed at one time during the early portion of 1981 as many as 84 truckdrivers. For some unidentified period of years, Allstates' truckdrivers had been represented by Teamsters Local Union #391, herein called the Union, with 100 percent of those employees paying union dues through the checkoff provisions of the most recent in a series of collective-bargaining agreements. Under the terms of a supplemental agreement extending for 1 year the terms of the 1979-82 collective-bargaining agreement, over-the-road truckdrivers such as Hilliard and Fulcher would be paid 25 cents per mile when driving alone and 28 cents per mile to be equally divided when riding in a two-man sleeper tractor.

Allstates had a history of making substantial temporary layoffs during the slack season during Thanksgiving and Christmas of each year. Normally these layoffs were of relatively short duration with most, if not all, of the truckdrivers recalled by February of the ensuing year. Thus, consistent with past practice, late in 1981 Allstates cut back its work force to approximately 24. Among those laid off were Charging Parties Hilliard and Fulcher. Unfortunately, unlike prior years, only a handful of the approximately 60 laid-off truckdrivers were recalled by Allstates during 1982.

For some unidentified time, GE also had contracted with the Respondent for the hauling of freight. Although the record is unclear, it appears that, prior to November 1981, this work was not substantial and had little, if any, impact on Allstates' business relationship with GE. Beginning in that month, however, and continuing thereafter, the situation changed dramatically. As an apparent cost-saving measure, GE began utilizing the Respondent and its truckdrivers for deliveries and hauling formerly made by Allstates. This trend continued well into 1982. Due to this increase in work, the Respondent established its own office at the GE warehouse and, on March 15, hired William Linde, Allstates' regional manager and the immediate supervisor of the truckdrivers, and placed him into the newly created position of controller. Prior to Linde's coming on board, all hiring by the Respondent for work out of the GE facility was handled either directly by James Hutchens, the Respondent's president, or by his secretary, Mona Martin. Shortly after assuming his new position, Linde took over the hiring function exclusively.

2. Henry Hilliard

On Thursday, April 1, Hilliard drove the 55 miles from his home to Winston-Salem in order to submit a job

application with Trans Personnel, a driver leasing company. Prior to keeping that appointment, Hilliard stopped by the GE warehouse to see if GE's business had picked up. During a brief discussion with a representative of GE, Hilliard mentioned that he was planning to see Hutchens about a job. Hilliard was told at that time that Hutchens not only now had its own office at the GE warehouse, but also that his former supervisor, William Linde, was managing it. Hilliard went across the hall and spoke to Linde.

A substantial dispute arises in the respective versions offered concerning this relatively brief one-on-one conversation. I will first relate Hilliard's account. After exchanging pleasantries, Hilliard said that he had heard that Hutchens was doing some hauling for GE and was putting on drivers. He then asked Linde if he had any chance of getting on. Linde replied, "Henry, it won't do any good to put in an application. They are not going to hire anybody that's in the Union and had worked for GE." Hilliard responded that he did not reckon it would do any good then to put in an application. Linde then commented that GE could not be blamed for using Hutchens rather than Allstates since they saved 50 cents a mile which could add up to a savings of as much as \$3 million a year. Linde then added that Hutchens' drivers were only making 18 cents a mile to be split between two drivers. Hilliard simply observed that that figure "wasn't much." Shortly before the conversation ended, Hilliard told Linde that he was going to put Hutchens down as an unsuccessful employment contact with the state unemployment commission. Linde replied that, if the State checked, he would verify that Hilliard had been in looking for a job.

Hilliard then left the GE warehouse and proceeded to Trans Personnel where he made application for work. That evening Hilliard told his wife about the conversation he had had with Linde.

Linde's version differs in several material respects from that offered by Hilliard. Linde testified that the substance of the conversation opened with Hilliard asking him what Hutchens' drivers were being paid. When Linde answered that the pay had just gone up from 18 cents a mile split to 20 cents a mile split, Hilliard stated that he would not drive for 20 cents a mile split. Hilliard added that the reason he had stopped by was to fulfill the state requirements necessary to draw unemployment. Hilliard added that he had really come to Winston-Salem to apply for a job with Trans Personnel. Linde responded that he did not see any need for Hilliard to fill out an application, that, if the State made an inquiry, he would verify that Hilliard had talked to him but that Hutchens did not meet the pay standards of Hilliard's previous job. Linde further testified that he did not discuss during this conversation the 50 cents per mile savings that GE was realizing by using Hutchens rather than Allstates. Linde explained at the hearing that he had made similar comments to Allstates' drivers in November 1981 when Allstates was unsuccessfully seeking to obtain wage concessions from its employees.

In October 1982, Hilliard secured an over-the-road truckdriver position with a trucking concern located in

² Except as specifically noted, the material facts are not in dispute.

Clover, South Carolina. This job paid even less than did the Respondent's.

3. Donald Fulcher

On June 14, Donald Fulcher called Linde at his office and inquired as to whether Hutchens was accepting applications. Linde indicated that they were but that he was tied up that day and that Fulcher should come in the following afternoon. On June 15 Fulcher went to Linde's office as instructed and was given an application and a standardized Department of Transportation test to fill out. After completing this material, Fulcher took it back to Linde who proceeded to grade the Department of Transportation test which Fulcher passed. Linde then stated that Hutchens was having difficulty leasing sufficient equipment and that he would know more about it toward the end of that week. Linde then suggested that Fulcher call him at that time. During this brief conversation, Fulcher indicated that he was ready to go to work then and was becoming "desperate."

On June 17 Fulcher called Linde and asked him if he knew anything more. Linde stated that he did not have any more information. When Fulcher asked Linde if he should call him at some later point, Linde replied, "Don't call me, I'll call you."

By letter dated July 29, the Regional Office notified the Respondent that it intended, absent settlement, to issue a complaint alleging, inter alia, that the Respondent's failure to hire Fulcher was unlawful. On August 6, Linde called Fulcher with an offer of a job to start on August 9. Fulcher accepted the offer and made one delivery. Upon his return from that trip, he was informed by his wife that another carrier had called with a job offer. Fulcher accepted this job offer and voluntarily quit his brief employment with the Respondent.

Between June 18 and June 23, the Respondent interviewed and hired five truckdrivers, Russell Hutchens, Johnny Rothrack, James Matthews, Young Coleman, and Robert May. No others were hired between June 15, the date Fulcher submitted his application, and August 6, the date when Fulcher was offered employment with the Respondent.

In defense to the Fulcher allegation, Linde testified as to his reasons for hiring each of these five in preference to Fulcher. With regard to the hiring of Russell Hutchens,³ Linde testified that Hutchens was brought in and was recommended by Jerry Beeding, another of his drivers. According to Linde, Beeding was having problems with his partner at that time and requested that Linde put on Russell Hutchens so that they could ride together. Linde further explained that, generally if an employee wanted to ride with someone else who is qualified, Linde will hire the second driver. Linde further explained that, in trying to team people up, they frequently ran into personality conflicts and that it was generally a better business practice to hire a team when the opportunity arose. Hutchens' application indicated that he had been a tractor-trailer driver for some 18 years.

³ That Russell Hutchens has the same last name as the owner of the Respondent is a mere coincidence.

In explaining the hiring of Matthews and Coleman, Linde testified that at that time he had a team composed of James Smith and William Parlow, who were having a personality problem that required their being broken apart as a team. Since both Smith and Parlow were black, the Respondent wished to continue with its policy of teaming drivers by race unless otherwise requested. Therefore, he was looking for two black drivers to team with Smith and Parlow. Coleman and Matthews were the only blacks who then had current applications on file. Both Matthews and Coleman had extensive experience in driving tractor-trailers prior to their hire by the Respondent.

With regard to Rothrack, Linde testified that he was referred by James Hutchens, the Respondent's president, and James Hill, another driver who wished to be teamed with Rothrack. Like the other three mentioned above, Rothrack had extensive experience as a tractor-trailer driver.

The same cannot be said with regard to Robert May, the fifth driver hired after Fulcher had filed his application. In explaining his reasons for hiring May, Linde testified:

Mr. May was very enthusiastic. He assured me that he would do a good job, called me several times after he had put in the application wanting to know if I knew anything or had heard anything yet. Then he told me he was sure he could do a good job.

A review of May's written application discloses several interesting factors. First, unlike both Fulcher and the other four successful applicants, May did not have substantial experience as a tractor-trailer driver. Additionally, unlike Fulcher and the others, his driving record was less than ideal. In this regard he had received three speeding tickets during the period of November 1981 through February 1982 and in January 1982 had been involved in a two-vehicle accident.

In further explaining why the other five applicants were better suited than was Fulcher, Linde testified that Fulcher had had a problem while at Allstates in keeping a driver to ride with him due to his personal hygiene. Linde conceded that at no time during the investigation did he ever mention to any investigator from the Board this alleged problem. In explaining why this subject had never been mentioned prior to the date of hearing, Linde answered simply that he did not believe it was something that needed to be brought out because of its "embarrassing" nature.

Linde further testified that he knew Fulcher personally and was familiar with his driving record while employed at Allstates. Despite the fact that Fulcher had a good driving record, was a safe driver, and lived within 3 miles of the GE warehouse, a factor considered important by the Respondent, Fulcher was, nonetheless, not considered by Linde to be one of Allstates' better drivers. Other than mentioning the alleged hygiene problem, Linde did not expand on this conclusion or observation. Linde further testified that since Fulcher had on June 15 indicated that he was "desperate" for a job, it was apparent to him that the Respondent was Fulcher's employer

of last resort and that management "did not appreciate" that. Finally, Linde testified that neither Fulcher's filing of an unfair labor practice charge nor his being informed by the Regional Office that a complaint was going to issue on the Fulcher situation influenced him whatsoever in his ultimate decision to offer Fulcher employment on August 6.

4. Statistical breakdown of the Respondent's work force

From November 1, 1981, through November 8, 1982, the Respondent hired 73 truckdrivers. Of those, 21 had worked with trucking companies who had bargaining relationships with the Teamsters Union. Of the 73, 47 were hired by Linde after March 15. Of those, 16 had prior union affiliation. Fulcher was the first of four drivers to be employed by the Respondent who had previously worked at Allstates.

5. Miscellaneous

In November 1981 Leroy Stack, a truckdriver employed with Allstates, was laid off. When he received his last paycheck, he believed it to be short so he went to the GE warehouse to see Linde to get the matter straightened out. While there, he had an opportunity to speak with James Hutchens, the Respondent's president.⁴ Stack approached Hutchens on the loading dock and asked if the Respondent needed any drivers. He then added that he needed a job. Hutchens answered that, if Stack were given a job there, he would "have all the boys organized within 30 days." Stack answered simply that he would take a lot less than he was currently earning, which was nothing. That ended this brief exchange.

Stack explained that he had been a member of the Teamsters for 38 years and had worked with James Hutchens back in the 1950's when they had both been employed with Roadways. At that time Stack was a shop steward, a position he ultimately held for over 23 years.

Hutchens, in exceedingly unconvincing testimony, denied ever having any such conversation with Stack. I credit Stack's account.

B. Conclusions

1. Hilliard

The respective versions offered by Hilliard and Linde regarding what occurred during their April 1 conversation are not reconcilable. The Respondent argues that Linde's version that Hilliard clearly and unequivocally stated that he would not work for the wages the Respondent paid be credited in full and that this complaint allegation should, therefore, be quickly put to rest. In support of its argument that Hilliard's account is less objectively believable than Linde's the Respondent notes that Hilliard's and Linde's friendly relationship continued after April 1, that the Respondent had by the time of this conversation already hired many drivers with prior union affiliation, and that Hilliard waited some 3 months

or until after he attended a union meeting before filing his unfair labor practice charges. After careful consideration, I do not view these factors, either separately or taken together, as supportive of the Respondent's position.

First, there is simply nothing in Linde's April 1 statement to Hilliard regarding the Respondent's hiring practices which would end their cordial past relationship. In this regard I view their further "chatty" comments during this same conversation as inherently plausible.

Secondly, the Respondent's argument that Linde would not have made the alleged unlawful remark since it was contrary to the Respondent's hiring practice is simply not valid. Hilliard was not told that the Respondent would not hire over-the-road truckdrivers who had previously been affiliated with the Union. What he was told was that the Respondent would not hire anyone who had been in the Union *and* had worked for GE. As of that conversation, the Respondent, true to Linde's word, had not done so.

Finally, Section 10(b) of the National Labor Relations Act gives an aggrieved person 6 months of the unlawful act within which to file unfair labor practice charges. That Hilliard chose to wait for almost 3 months before availing himself of this opportunity is simply of no moment. Perhaps, as the Respondent suggests, Hilliard's attendance at the mid-June union meeting in which GE's continued use of the Respondent to the detriment of Allstates was discussed did influence Hilliard in finally deciding to file charges against the Respondent. It is, however, a quantum leap to further suggest that because of what he heard at this meeting Hilliard decided to file false charges against the Respondent. I am not prepared to make such a leap. Further, Mrs. Hilliard's credible testimony that her husband told her on the evening of April 1 what he and Linde had discussed earlier on the day dissipates any argument that Hilliard's account of the conversation as given to the Board at the time he filed the charges was a result of recent fabrication.

Certain other factors convince me that Hilliard's version of the conversation is more reliable than Linde's. First, Linde's comment is totally consistent with the sentiments uttered several months earlier by the Respondent's president, James Hutchens. Secondly, Hilliard subsequently accepted employment with another trucking company which paid only slightly more than the Respondent. Finally, Linde appeared less than candid during that portion of his testimony concerning Fulcher. Specifically, I refer to Linde's belated claim that Fulcher had difficulty in keeping partners because of personal hygiene and Linde's flat denial that the Board's stated intention to issue a complaint on Fulcher's charge played no role whatsoever in Linde's subsequent decision to hire Fulcher. Accordingly, based on the foregoing and in view of the demeanor of the witnesses, I credit Hilliard's account of the April 1 conversation with Linde.

Having resolved this credibility question in favor of Hilliard, the ultimate conclusion regarding his complaint allegation requires little discussion. The landmark case of *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177 (1941), clearly established that Section 8(a)(3) extends to applicants for

⁴ The General Counsel recognized that this conversation was well outside the 10(b) statute of limitations and was only offered to reflect union animus on the part of Hutchens.

employment. Here, Hilliard, a fully qualified over-the-road driver visited the premises of his former employer and while there was told that the Respondent now had an office located in the same facility. Hilliard proceeded to go to that office and speak to his former supervisor with Allstates who was then the Respondent's new controller. When Hilliard asked Linde about securing employment with the Respondent, Linde told him not to even bother filing an application since the Respondent would not hire anyone who had been in the Union and had worked for GE. I find that in making this statement, the Respondent interfered with Hilliard's Section 7 rights in violation of Section 8(a)(1) of the Act.⁵ I further find that in refusing to hire Hilliard for one of the several over-the-road truckdriver positions for which it then currently had job openings, the Respondent violated Section 8(a)(3) of the Act.⁶

2. Fulcher

A review of the evidence persuades me that the counsel for the General Counsel has met her burden under *Wright Line*, 251 NLRB 1083 (1980), of making out a prima facie showing sufficient to support the inference that Fulcher's union membership while employed by Allstates was a "motivating factor" in the Respondent's initial decision not to hire him.

Thus, in addition to Hutchens' and Linde's previously noted antiunion remarks, the General Counsel introduced evidence that Fulcher, a 22-year veteran over-the-road truckdriver, had an intimate working knowledge of the locations of the GE customer's warehouses, the routes that should be taken in making deliveries, and the hours of operation of such facilities. Additionally, during the 3 years of his employment with Allstates, Fulcher had an exemplary driving record during which he had had no accidents and received no tickets. Shortly after Fulcher submitted his employment application on June 15, five other applicants submitted their applications and were hired almost immediately. None of the five had ever worked with Allstates in making deliveries for GE.

The Respondent argues that the existence of legitimate business considerations establishes that it would have taken the same action with regard to Fulcher's mid-June application even in the absence of Fulcher's protected concerted activity. I disagree. While "pairing" requirements and preferences may explain the hiring of Hutchens, Matthews, Coleman, and Rothrack, it does not even begin to explain the hiring of Robert May. Even the most cursory examination and the respective work records of May and Fulcher establish Fulcher's superiority. He was a mature, experienced, over-the-road driver with an enviable driving record. May was not. Further, Fulcher, who lived near the facility, was entirely familiar with all aspects of the GE operation. Again, May was not. While Linde chose to view May's persistence in seeking a job as a positive display of enthusiasm, he viewed similar conduct by Fulcher as a negative display of desperation. Thus, Linde selected an unknown applicant who merely assured him that he could do a good

job rather than hire an applicant he knew would do a good job.

Linde's further observations regarding the undesirability generally of Allstates drivers and specifically of Fulcher simply does not stand scrutiny. Thus, while Linde feared Allstates drivers would leave the Respondent's employ to return to Allstates at the first opportunity, he apparently had no such similar concerns with regard to laid-off drivers from other employers. No showing was made that Allstates drivers had a higher likelihood of recall with their Employer than did the laid-off drivers of other companies whom the Respondent did not similarly disqualify.

Although Linde testified that he did not consider Fulcher as one of Allstates better drivers the only support for such a conclusion was Linde's own observation that Fulcher had difficulty in keeping a partner due to personal hygiene problems. No evidence regarding any such past difficulties Fulcher may have encountered was offered. Even apart from the severe doubts raised by Linde's failure to even tell the Board agent investigating the unfair labor practice charge of Fulcher's alleged problems, Linde's own subsequent action in hiring Fulcher in early August belies that he attached any serious importance to such a condition, if it in fact existed at all. In these circumstances and in view of the record as a whole, I find that the General Counsel has established that the Respondent refused to hire Fulcher for one of the several over-the-road truckdriver positions for which it then currently had job openings in violation of Section 8(a)(3) of the Act.

CONCLUSIONS OF LAW

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

2. By discriminatorily failing and refusing to hire Henry Hilliard and Donald Fulcher the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

THE REMEDY

Having found that the Respondent has committed violations of Section 8(a)(1) and (3) of the Act, I shall recommend that it be required to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminatorily refused to hire Henry Hilliard, I shall recommend that the Respondent be ordered to offer him employment. *Phelps Dodge Corp. v. NLRB*, supra at 192-193. Further, I shall recommend that the Respondent be ordered to make Henry Hilliard and Donald Fulcher whole for any loss

⁵ *Universal Fuel*, 204 NLRB 26 (1973).

⁶ *Young Hinkle Corp.*, 244 NLRB 264, 267 (1979).

of earnings that they may have suffered by paying them sums of money equal to which they would have earned as wages from the date of the discrimination until the date of the Respondent's offer of employment. Backpay to be paid shall be computed in accordance with the formula in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner and amount prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).⁷

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

ORDER⁸

The Respondent, Hutchens Trucking Company, Inc., Winston-Salem, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in Teamsters Local No. 391 or any other labor organization by refusing to hire job applicants or by delaying offers of employment to job applicants.

(b) Telling job applicants that they will not be hired by the Respondent because of their union activities.

(c) In any other like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

⁷ See generally *Isis Plumbing Co.*, 138 NLRB 716, 717-721 (1962).

⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action designed to effectuate the purposes and policies of the Act.

(a) Offer immediate employment as over-the-road truckdriver to Henry Hilliard.

(b) Make whole Henry Hilliard and Donald Fulcher for any loss of pay suffered by them by reason of the discrimination practiced against them in the manner described above in the section entitled "The Remedy."

(c) Preserve and, upon request make available to the Board or its agents for examination and copying all payroll and other records necessary to analyze the amounts of pay due under the terms of this Order.

(d) Post at its Winston-Salem, North Carolina facility copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁹ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."