

MPG Transport, Ltd. and International Brotherhood of Teamsters, Local 560, AFL-CIO. Case 22-CA-18609

October 31, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On July 7, 1994, Administrative Law Judge Steven Davis issued the attached decision. The Respondent filed exceptions and a supporting 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 brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, MPG Transport, Ltd, Newark, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

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), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge found that the Respondent violated Sec. 8(a)(1) by the threat of Joseph Wadena, the Respondent's director of automotive transportation, to employee Roy Rappa to close the plant or to subcontract the employees' work if the employees chose the Union as their bargaining representative. The Respondent in its brief contends that during a preelection speech to all employees the Respondent's president, Michael Wysocki, repudiated that threat. Although Wysocki told the employees that the Respondent would not close the terminal or cancel its order for new delivery trucks, we find that this statement did not effectively disavow the prior threat under the criteria set forth in *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). The repudiation was not timely, but occurred approximately 1 month after the initial threat. Furthermore, it was not "specific in nature to the coercive conduct," since Wysocki did not refer to the initial threat and specifically deny its substance. *Id.* at 139. Finally, Wysocki's statement did not assure employees that in the future the Respondent would not interfere with the exercise of their Sec. 7 rights by such coercive conduct. Accordingly, we agree with the judge that Wadena's threat violated Sec. 8(a)(1) of the Act.

Chevella Brown-Maynor, Esq., for the General Counsel.
Paul A. Montalbano, Esq. (Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano, Esqs.), of Cranford, New Jersey, for the Respondent.

DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. Based upon a charge filed on August 7, 1992, by International Brotherhood of Teamsters, Local 560, AFL-CIO (the Union) in Case 22-CA-18609, a complaint was issued against MPG Transport, Ltd. (Respondent) on January 29, 1993.

The complaint alleges, essentially, that in July 1992 Respondent (a) through its employee agent, induced its employees to abandon their support for the Union by encouraging them to form their own committee to request benefits from Respondent and (b) threatened its employees with the closing of its facility and with loss of work, in violation of Section 8(a)(1) of the Act. The complaint further alleges that in September 1992 Respondent discriminatorily assigned a long-distance route to its employee in violation of Section 8(a)(3) and (1) of the Act.

On November 16, 1993, a hearing was held before me in Newark, New Jersey.¹ Upon the evidence presented in this proceeding, and my observation of the demeanor of the witnesses and after consideration of the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, having its office and place of business in Newark, New Jersey, has been engaged in the interstate transportation of automobiles. During the past year, Respondent received gross revenues in excess of \$50,000 from the transportation of automobiles from New Jersey directly to points outside New Jersey. Respondent admits and I find that it is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent also admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

Respondent's business consists of delivering Volvo automobiles to dealerships pursuant to a contract with Volvo Cars of North America. It employs its own employees, and also contracts with other carriers to deliver the cars. Employees are paid based upon the mileage of the trip they complete and the number of times they delivered.

¹ This case had been consolidated for hearing and decision with Case 22-RC-10652, involving objections to the election. Following the close of the hearing, on January 25, 1994, counsel for the General Counsel moved to sever and remand the representation case to the Regional Director, on the ground that the Union had requested that its petition and objections be withdrawn in view of its filing a new petition in Case 22-RC-10901. On February 3, I granted the motion, not having received any objection thereto. On February 4, Respondent filed its opposition to the General Counsel's motion. On February 4, I reaffirmed my order, and noted Respondent's opposition thereto. I noted that I had limited authority, in hearing this consolidated case, as to the representation case aspect thereof. I noted that Respondent's request that I deny a petitioner's right to withdraw its objections and petition is more properly addressed to the Regional Director and to the Board.

Sometime prior to July 1992, Respondent placed an order for 17 new tractors, which represented a major commitment toward its growth.

Roy Rappa, having the most seniority of Respondent's approximately 20 drivers, began his employment with Respondent in 1991.

Rappa testified that other drivers complained to him about Respondent's low payment structure, and said they were interested in being represented by a union. Rappa called the Union.

On July 9, 1992, the Union's recording secretary sent the following letter to Respondent:

I am writing to you on behalf of your employees who have signed authorization cards for Local 560, IBT, and who have emerged as leaders in Local 560's effort to become the collective bargaining representative of the employees. Due in large part to the efforts of those employees, Local 560 will soon file a petition with the National Labor Relations Board, seeking to have the NLRB conduct a secret ballot election to determine whether employees in an appropriate bargaining unit wish to have Local 560 serve as their collective bargaining representative. Several employees, including Roy Rappa, have come forward as leaders in the Local 560 organizing campaign.

The letter warned Respondent not to take any adverse action against Rappa or against "the other leaders in the Local 560 organizing campaign."

Respondent admits receiving the letter, and posting it in the drivers' room.

A. *The Alleged Threats*

Rappa testified that a few days after the letter was posted, Joseph Wadena, Respondent's director of automotive transportation, asked him, "[W]hat are you doing to me? I expected to stay in this job the rest of my time. I can't live with a union contract. I'll either close the place down or cancel the trucks, or bring in outsiders and do away with [Respondent's] drivers." Rappa replied that it would take 51 percent to vote for a union, and that he was only one vote.

Wadena admitted having a conversation with Rappa that day about an assignment, during which he screamed at Rappa, and "flipped [his] lid," and was very vocal and very mad. Later that day, he apologized to Rappa for his conduct. Specifically, Wadena denied the comment about canceling the truck order, but did not testify about the alleged threat to close the terminal.

Michael Wysocki, Respondent's president, testified that the truck order was never canceled, or threatened to be canceled, and in fact, he increased the number of trucks ordered. The trucks were delivered and put into service in October and November 1992.

B. *The Alleged Discriminatory Assignment*

The complaint alleges that in July 1992, Respondent discriminatorily assigned a long-distance route to Rappa.

Because employees were paid based upon mileage and the number of cars delivered, those drivers making the most deliveries per day earned the most money. As the most senior driver, Rappa enjoyed the privilege of requesting the runs he

desired. He preferred local runs, those under 30 miles from the terminal, because he could earn more money on several short runs to local dealerships, than on one long-distance delivery. Wadena conceded that Rappa desired short runs, and that Respondent "understood and agreed with that."

Although he sought short runs, Rappa has been assigned to, and has accepted longer runs, such as to Long Island, a 60-mile trip, and to Poughkeepsie, a 90-mile trip, if those were the only runs available. When given such an assignment, it has been the practice that he loads the truck with the cars in the afternoon of the day of the assignment. In fact, Rappa testified that upon his hire, he was told by Wadena that he would load the long runs the night before. He then makes the delivery early the following morning, arriving at the dealership at 8 a.m. Through this pre-load method, Rappa was able to make the morning long-distance delivery and return to the terminal later that day and still complete additional deliveries that day.

Rappa was a highly productive driver, averaging at least two trips per day, and on some days three or four, and occasionally five trips in 1 day.²

On July 16, he made a short, local delivery and returned to the terminal at about 11:30 a.m. or 12 noon. Upon his return, Terminal Manager and Dispatcher Rick O'Connell assigned him to make a delivery to Poughkeepsie that afternoon. Wadena was present when the assignment was made.

Ordinarily such a long run was done as a pre-load, with the cars being loaded in the afternoon, and the run made the following morning. However, O'Connell said he wanted the delivery made that afternoon. Rappa loaded the vehicles and made the run to Poughkeepsie, returning at 5:45 p.m. that day, too late to make any other deliveries. Rappa asked why he was given the Poughkeepsie run in the afternoon, and not handled as a pre-load, with delivery the following morning. O'Connell and Wadena replied that that was the only run they had.³ Rappa replied that other, local trips were available. The delivery orders are kept on a table, and he noticed a large number of New Jersey orders there. Rappa inquired about those, and Wadena repeated that the Poughkeepsie run was the only one available.

Rappa stated that in the past, he has never been given a long trip to be made in the afternoon of the assignment. Rather, the trip may have been assigned in the afternoon, but the truck would be pre-loaded that afternoon for delivery the following morning.

The General Counsel's argument is that Respondent (a) departed from its existing practice permitting Rappa to pre-load such long-distance deliveries as the Poughkeepsie run and (b) withheld local deliveries from Rappa while requiring him to perform the Poughkeepsie run.

The argument continues that had Rappa been permitted to perform additional local runs in the afternoon of July 16, he could have done two or three such deliveries, thereby earning more money than he earned in the Poughkeepsie run, and in addition, pre-loaded the Poughkeepsie run for delivery the next morning. Thus, the argument is that Respondent unlawfully withheld short runs from Rappa that afternoon, and in-

² One trip is defined as a departure from the terminal and a return to the terminal, regardless of the number of dealers the driver delivers to during that run.

³ Rappa could have refused to make the delivery but that would have constituted insubordination.

stead discriminatorily assigned him to the Poughkeepsie delivery.

Rappa conceded that had he been able to make only one additional local run that afternoon, he would have earned \$10 less than he did by making the Poughkeepsie delivery. Accordingly, Rappa suffered no discrimination if he would have been assigned to one additional run. However, he argues that he sometimes makes three or more deliveries in 1 day, and a third local delivery would have resulted in him earning more money than he did with the morning local delivery and the Poughkeepsie run.

The questions thus become (a) whether there were additional local runs to be made on July 16 and if so, (b) were those runs unlawfully withheld from him. When the Poughkeepsie run was assigned, Wadena told him that nothing else was available. However, Rappa noticed stacks of receipts for local deliveries waiting to be assigned.

In this regard, Wadena testified that, as a rule, if the receipts are on the table, the deliveries are ready to be assigned. However, in certain cases, receipts are present on the table, but the deliveries are not ready because they have been put on "hold" by the shipper.

An analysis of the assignments for July 16 and 17 is therefore necessary.

On July 16, Rappa made two trips, one was a local, two-delivery trip to Hawthorne and Upper Saddle River, and upon his return to the terminal, was given the Poughkeepsie run. Wadena testified that that assignment was a day's work.

On that day, employee Zacconi also made two trips: to Englewood and Cherry Hill.

Wadena stated that the trips completed by Rappa and Zacconi that day are about the same in terms of the miles driven.

The General Counsel and the Union argue that Rappa should have been assigned the Englewood trip in addition to Hawthorne and Upper Saddle River, and then given the Poughkeepsie trip to preload that day, and deliver the next day, on July 17. Indeed, Wadena testified that such an arrangement was possible and could have been done.

However, Wadena further stated that if that was done, Zacconi would have had only the Cherry Hill run to make. Wadena testified that Zacconi could not have made the Cherry Hill and Poughkeepsie deliveries because he could not have finished both assignments that day. In addition, under this arrangement, a third driver or an outside contractor would have had to be called in to do the Poughkeepsie run. Wadena stated that by splitting the work, each driver received two trips that day, rather than Rappa receiving two, and Zacconi, one.

In addition, Wadena stated that if Respondent rearranged the two trips so that Poughkeepsie was not done that day, the eight cars in the Poughkeepsie trip would not have been delivered that day, and its shipper had the authority to penalize it for not making that delivery.

On July 17, Rappa made deliveries to East Hanover, Elizabeth, and Brooklyn, which consisted of three trips. Zacconi went to Nanuet, Hasbrouck Heights, and a three way trip to Elizabeth, Red Bank, and Manasquan, a total of three trips. Other employees that day went on longer trips, to Vermont, upstate New York, Massachusetts, and on runs which originated from Baltimore and Boston, and two employees did not work at all.

C. Actions of the Alleged Employee Agent

The complaint alleges that employee William Slack, acting as agent of the Respondent, induced the employees to abandon their support for the Union by encouraging them to form their own committee to request benefits from Respondent.

There was no evidence that William Slack is an employee of Respondent. There was testimony about employee Charlie Slack, and the case was litigated on that basis.

Rappa testified that in mid-July, Slack told him that Wadena wanted the employees to have a meeting at which they would decide what to demand from Respondent in order to avoid unionization. Slack told Rappa that Respondent would pay for the meeting room at the Holiday Inn North (Holiday Inn) in Newark.

On July 25, Slack conducted a 1-hour meeting, at which five employees were present, including Rappa.⁴ Slack announced that the Respondent "set up" the meeting so that the employees could determine what they wanted to present to Respondent to keep the Union out. Slack suggested that employees would vote against the Union if Respondent offered them a certain sum of money. He said that Respondent wanted to know what the workers wanted to keep the Union out. The workers discussed the formation of a committee to learn what demands the drivers wished to make, which would be presented to Respondent. The employees agreed to ask for a raise of 4 cents per mile.

William Gabriele, Respondent's director of quality assurance, testified that employee John Glenn told him that he wanted to have a drivers' meeting, in order to "poll" them, learn what direction they wanted to go; get some things straight; and to learn where they stand. Gabriele assumed that these topics related to the union campaign which was then active. Gabriele did not give Glenn any instructions as to the purpose or content of the meeting.

Glenn asked Gabriele if Gabriele would rent a meeting room at the Holiday Inn for the meeting. Glenn asked him to make the arrangements because Glenn was on the road and could not attend to the details.

Gabriele called the Holiday Inn and reserved a room with his company credit card. The contract prepared by the Holiday Inn and sent to Gabriele at Respondent's office, listed the representative as John Glenn, and the organization as MPG Transport, and bore Gabriele's name and credit card number. A meeting planning guide prepared by the Holiday Inn listed John Glenn's name, stated that the terms were cash upon arrival, and also noted Gabriele's name and credit card number.

Gabriele testified that the cost of the room was not charged to his credit card, and that he was not responsible for the charges or the meeting room. Holiday Inn documents do not show who paid for the room or the method of payment.

Gabriele stated that he made these arrangements as a courtesy to Glenn. This was the first time that Gabriele had used his credit card to reserve a meeting room for a driver.

Shortly thereafter, employee Slack called Gabriele and made the same request. Gabriele told him that he had already

⁴No management personnel were present. I cannot find that "Cal," a working manager, who Rappa testified was present, was a statutory supervisor. There was no evidence as to his supervisory authority.

arranged for a room, and told Slack that he must pay cash for it as the room was simply being held by Gabriele, through his credit card.

Gabriele testified that 1 week after the meeting, Glenn briefly described the meeting, but gave no details.

Analysis and Discussion

The Alleged Threats

A few days after Respondent received the letter informing it that its employees were interested in joining the Union, and that the Union would be filing a petition with the Board to represent them, Rappa had a conversation with Manager Wadena.

Rappa credibly testified in detail as to the nature of the discussion, specifically that Wadena told him that he could not live with a union contract, and that he would either close the terminal, cancel the new truck order, or contract out the work that Respondent's employees were performing.

In contrast, Wadena could not remember what he told Rappa during this discussion. He did deny threatening to cancel the truck order, but conceded screaming at Rappa and being very vocal and angry, prompting an apology to Rappa later that day.

I credit Rappa, and find that Wadena's statements constitute an unlawful threat to close, and a threat that employees would lose their jobs through subcontracting of their work. *Equitable Resources Energy Co.*, 307 NLRB 730, 731 (1992).

I credit president Wysocki's testimony that the new truck order was not cancelled, and in fact was increased. However, that Respondent did not carry out its threat to cancel the order is not decisive "for the Board, in determining whether such a threat is unlawful, looks to whether the threat has a reasonable tendency to restrain or coerce employees in the exercise of their Section 7 rights, not to whether the threat has been carried out." *Alaska Pulp Corp.*, 296 NLRB 1260, 1262 (1989).

Wadena's remarks to Raffa, coming on the heels of notification that the Raffa was the leader of the Union's attempt to organize Respondent, clearly had the effect of restraining and coercing Raffa and other employees from exercising their Section 7 right to seek representation by the Union. Indeed, Raffa's response to the remarks, in attempting to minimize his role by saying that he was only one vote, and that the Union needed 51 percent to win, demonstrate the coercive nature of Wadena's comments.

I accordingly find that Wadena's remarks violation Section 8(a)(1) of the Act as alleged.

The Alleged Discrimination

The complaint alleges that in July 1992 Respondent discriminatorily assigned a long-distance route to Rappa.

Rappa made the initial contact with the Union at his co-workers' request. In the letter sent to Respondent by the Union, he was identified as a "leader" in the Union's organizational effort. Thus, knowledge of Rappa's union activities is clear and undisputed.

Animus toward the Union and toward Rappa has also been proven. Shortly after Respondent received the letter, its director of automotive transportation, Joseph Wadena, focused his attention upon Rappa, asking him "what are you doing

to me? I expected to stay in this job the rest of my time." Thus, Wadena correctly attributed the Union's efforts to Rappa and accused him of affecting his job tenure.

As set forth above, I have found that Respondent violated the Act through Wadena's threats to Rappa, in the same conversation in which he said that he could not live with a union contract and would close the terminal, and cancel the new truck order or subcontract the employees' work.

The question next becomes whether the assignment at issue constituted discrimination. Within about 1 week after the conversation with Wadena, on July 16, Rappa received the assignment from Terminal Manager O'Connell with Wadena present. Rappa made a local run in the morning of July 16, and then was given a Poughkeepsie assignment in the late morning. Contrary to past practice which permitted Rappa to preload the autos for delivery the following day, he was asked to deliver them the same day, July 16. The General Counsel argues that this assignment constituted discrimination because by requiring that the delivery be made that day, Rappa was deprived of making other, local deliveries that day.

Rappa conceded that if he made only one additional run that day, a total of two runs on July 16, he would have earned \$10 less than he did by making the Poughkeepsie delivery. Accordingly, he earned more by making the Poughkeepsie delivery. However, the General Counsel contends that, as Rappa was a very productive driver, he could have made three, four, or even five deliveries that day.

Respondent argues that there is no proof that other, local deliveries were available on July 16. It points to the testimony of Rappa that Wadena said that the Poughkeepsie run was the only assignment then available.

However, Rappa testified that the table was covered with orders for local deliveries to which he could have been assigned. In fact, Wadena conceded that Rappa could have been given the Englewood trip which was done by Zacconi that day, and then given the Poughkeepsie trip to preload for delivery the next day.

Accordingly, a second trip, the Englewood delivery, was available on July 16. As to Respondent's argument that if this had been done, Zacconi would have had only one delivery, to Cherry Hill, is beside the point, since Raffa, as the most senior employee, was given preference in assignments, and routinely made three deliveries per day. Respondent's further argument that a failure to make the Poughkeepsie delivery on July 16 could have resulted in penalties did not seem to be a consideration in the past, when preloading, and not delivery, was done on the day of the assignment to the driver.

If Rappa made only two local deliveries that day, to Hawthorne-Upper Saddle River, and to Englewood he would have earned less than he had when he made the Hawthorne-Upper Saddle River and Poughkeepsie deliveries. Accordingly, the General Counsel argues that Rappa should have been assigned three local deliveries that day. I do not credit Wadena's testimony that no other local deliveries were available since he readily testified that Englewood was available and could have been assigned to Rappa.

In addition to Englewood, the Cherry Hill run could also have been assigned to Rappa, making three local deliveries that day. Although this would have resulted in no assignment to Zacconi, this would appear to conform to past practice in-

asmuch as Rappa has been given preference in assignments and his desire for local assignments has been honored. Further, there appear to have been local runs the following day, July 17, which were made by Rappa and Zacconi, and which may have been available on July 16.

I therefore find and conclude that, inasmuch as additional local deliveries were available on July 16, combined with the fact that Respondent departed from its past practice permitting Raffa to preload long runs such as the Poughkeepsie run, Respondent (a) discriminatorily withheld the Englewood run from Raffa, (b) required him to make the Poughkeepsie run that day, and (c) refused to permit him to preload that run, all of which resulted in a loss of pay to him.

I accordingly find that the General Counsel has made a prima facie showing that the union activity of Raffa was a motivating factor in Respondent's decision to require him to make the Poughkeepsie run on July 16. *Wright Line*, 251 NLRB 1083 (1980).

Based upon my discussion of Respondent's defenses, set forth above, I conclude that Respondent has not demonstrated that it would have required Raffa to make the Poughkeepsie run on July 16 in the absence of his union activities. *Wright Line*, supra.

The Alleged Action of the Alleged Agent

The complaint alleges that Respondent through its agent Slack, induced its employees to abandon their support for the Union by encouraging them to form their own committee to request benefits from Respondent.

"The test for agency is whether, under all the circumstances, an employee would reasonably believe that the alleged agent was reflecting company policy and speaking for management." *Stalwart Assn.*, 310 NLRB 1046, 1055 (1993).

A question which must be answered in the affirmative in order to find an employee to be an agent is whether the employer has placed the alleged agent in a position—in the position of a conduit—where employees could reasonably believe that he speaks in behalf of management. *Three Sisters Sportswear Co.*, 312 NLRB 853, 865 (1993); *Juniper Industries*, 311 NLRB 109, 110 (1993); *Virginia Mfg. Co.*, 310 NLRB 1261, 1266 (1993).

I have credited Rappa's testimony that Slack told him that Wadena wanted the employees to have a meeting to decide what demands they should make of Respondent in order to keep the Union out. Slack was further quoted as having said that Respondent "set up" the meeting. Slack did not testify. However, statements of an alleged agent do not constitute evidence of agency status. *Virginia Mfg.*, supra.

There is no evidence that Slack had in the past conveyed messages to employees from management, *Virginia Mfg.*, supra, or that he supervised or corrected the work of other employees. *Three Sisters*, supra, or had more authority than other employees and was a leadman, *Stalwart*, supra.

The only evidence which would establish that Respondent placed him in a position where employees could believe that he spoke in behalf of management, was the way in which the meeting was arranged. Respondent's official, Gabriele reserved the meeting room for Slack. There was no evidence that Respondent paid for the room. In fact, the hotel's confirmation notes that although the room was reserved with Gabriele's credit card, cash was to be the method of pay-

ment. Indeed, Gabriele testified that he told Slack that Slack was responsible for the cash payment for the room. Although this was the first time that Gabriele had reserved a room for a driver, he gave uncontradicted testimony that he did so at the employee's request.

Based upon the above, particularly that the General Counsel has not proven that Respondent placed Slack in a position where employees could reasonably believe that he spoke for management, I find and conclude that Slack is not an agent of Respondent, and therefore no violation has been proven concerning the meeting at the Holiday Inn.

CONCLUSIONS OF LAW

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

2. International Brotherhood of Teamsters, Local 560, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening its employees with closure of its facility, and by threatening its employees with loss of work, Respondent violated Section 8(a)(1) of the Act.

4. By discriminatorily assigning its employee Roy Rappa to a long-distance route, Respondent violated Section 8(a)(3) and (1) of the Act.

5. Respondent has not violated the Act in any other respect as alleged in the complaint.

THE REMEDY

Having found that Respondent has engaged in unlawful conduct under the Act, I will recommend that it cease and desist therefrom, and take certain affirmative action which is necessary to effectuate the policies of the Act.

Having found that Roy Rappa was discriminatorily assigned a long-distance route on July 16, 1992, thereby preventing him from making additional deliveries, I shall recommend that Respondent be ordered to make him whole for any loss which resulted from that assignment. The amounts to be paid to him shall be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

The Respondent, MPG Transport Ltd., its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Threatening its employees with closure of its facility and with loss of work.
 - (b) Discriminatorily assigning its employees long-distance routes.
 - (c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

⁵If 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 necessary to effectuate the policies of the Act.

(a) Make whole Roy Rappa for any loss of earnings and other benefits suffered as a result of its discriminatory assignment to him on July 16, 1992, of a long-distance route, in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Newark, New Jersey facility, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 22, 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.

⁶If 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."

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

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 threaten our employees with closure of our facility or with loss of work.

WE WILL NOT discriminatorily assign our employees long-distance routes.

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

WE WILL make whole Roy Rappa for any loss of earnings and other benefits suffered as a result of our discriminatory assignment to him on July 16, 1992, of a long-distance route.

MPG TRANSPORT LTD.