

**Ryder Student Transportation Services, Inc. and  
School Service Employees Local 284, SEIU.**  
Case 18–CA–15176

January 12, 2001

**DECISION AND ORDER**

**BY CHAIRMAN TRUESDALE AND MEMBERS  
LIEBMAN  
AND HURTGEN**

On August 14, 2000, Administrative Law Judge C. Richard Miserendino issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party 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, findings,<sup>1</sup> and conclusions<sup>2</sup> 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, Ryder Student Transportation Services, Inc., its officers, agents, successors, and assigns, shall take the action set forth in the Order.

*Nichole L. Burgess, Esq.*, for the General Counsel.

*Richard H. Allen Jr., Esq.*, of Memphis, Tennessee, for the Respondent.

*Bruce P. Grostephan, Esq.*, of Minneapolis, Minnesota, for the Charging Party.

<sup>1</sup> 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.

In adopting the judge's findings that the Respondent violated Sec. 8(a)(1) by statements at its May 1999 Burnsville and Como terminal town hall meetings, Member Hurtgen finds it unnecessary to rely on the adverse inferences the judge drew against the Respondent for failing to call corroborative management witnesses.

<sup>2</sup> In adopting the judge's finding that the Respondent unlawfully enforced its unwritten no-solicitation/no-distribution rule, Member Hurtgen notes that the "female organizer" referred to by the judge in "Sec. 4. Analysis and findings" was an employee of the Respondent's Snelling facility who was handbilling at another of the Respondent's facilities. Member Hurtgen further notes that the employees of the various Minneapolis/St. Paul metro terminals against whom the Respondent applied its no-solicitation/no-distribution rule are part of a single appropriate unit. See *Eagle-Picher Industries*, 331 NLRB No. 14, slip op. at 2, fn. 2 (2000).

**DECISION**

**STATEMENT OF THE CASE**

C. RICHARD MISERENDINO, Administrative Law Judge. This case was tried in Minneapolis, Minnesota, on April 4, 2000. The charge was filed by the School Service Employees Local 284, SEIU (Union) against Ryder Student Transportation Services, Inc. (Respondent)<sup>1</sup> on April 12, 1999,<sup>2</sup> and was amended on January 10, 2000. The complaint was issued on January 27, 2000.<sup>3</sup>

The Respondent has an unwritten no-access policy that prohibits employees from entering the property of a terminal where they do not work and from entering the property of their own work terminal at times they are not scheduled to work. In the Minneapolis/St. Paul area, the Respondent has 11 terminals that provide bus service for transporting children to and from school. In March 1999, the Union commenced an organizing campaign at these terminals. On various dates and at various times in March–April 1999, the Respondent sought to prohibit employees from distributing union literature at terminals where they did not work in accordance with its unwritten no-access rule. Thus, the complaint alleges that the Respondent violated Section 8(a)(1) of the Act by promulgating, maintaining, and enforcing an unlawful unwritten no-access rule.<sup>4</sup>

In May 1999, in the course of the organizing campaign, the Respondent held several "town hall" meetings to oppose the Union and to answer employee questions. The complaint alleges that at two of these meetings the Respondent's supervisors/agents promised benefits if the Union was not elected, threatened that it would not bargain in good faith, and threatened that bargaining would be futile. Thus, the complaint alleges that the Respondent violated Section 8(a)(1) of the Act by

<sup>1</sup> The un rebutted evidence shows that in July 1999, First Student Transportation acquired Ryder Student Transportation Services, Inc. (Tr. 24.)

<sup>2</sup> All dates are in 1999, unless otherwise indicated.

<sup>3</sup> At trial, the parties stipulated that on April 15, 1999, the Union filed a petition in Case 18–RC–16461 to represent the school bus drivers, aides, and wash rack employees at the Respondent's Minneapolis/St. Paul metro area terminals. On May 26 and 27, 1999, an election was conducted which the Union lost 664 to 723. In addition, the General Counsel asserts in her posthearing brief at pp. 2–3 that the Union filed objections to the results of the election, that the Regional Director found the conduct to be objectionable, and that he recommended that the election be set aside. The General Counsel further asserts that the Respondent appealed, and that the Regional Director's recommendation was pending before the Board at the time the briefs were submitted. However, there is no evidence in the record, other than the parties' brief stipulation, pertaining to the representation case nor was that case consolidated with the instant unfair labor practice case for hearing. I therefore deny the General Counsel's request to take administrative notice of the representation case proceedings.

<sup>4</sup> At trial, the General Counsel's unopposed motion to amend par. 4 of the complaint and all subsequent paragraphs consistent with the amendment was granted to add the following names: Tom Larson, Jim Berneche, and Jeff Cain. The Respondent was also permitted to amend par. 4 of its answer to admit that Lawrence McDonald, Bruce Dischinger, Dan Berg, David Brabender, Tom Larson, and Jim Berneche are supervisors and agents of the Respondent within the meaning of Sec. 2(11) and (13) of the Act.

interfering with, restraining, and coercing employees in the exercise of their Section 7 rights.

The Respondent's timely filed answer denied the material allegations of the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent,<sup>5</sup> I make the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, a corporation with a principal place of business in St. Paul, Minnesota, and additional terminals in the St. Paul/Minneapolis, Minnesota area, is engaged in the bus transportation of school children. During the calendar year ending December 31, 1999, in the course of conducting its bus operations, it purchased and received at the above-referenced terminals goods valued in excess of \$50,000 directly from points outside the State of Minnesota and received gross revenues in excess of \$250,000. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. *The Respondent's Unwritten No-access Policy*

The undisputed evidence shows that since early 1990, the Respondent has had an unwritten no-access policy that prohibits employees from entering the property of a terminal where they do not work and from entering the property of their own work terminal at times they are not scheduled to work.<sup>6</sup> According to Lawrence McDonald, the Respondent's director of labor relations, the policy was promulgated for security and safety reasons and to reduce workplace violence. He did not elaborate on the issue. McDonald did not state that there had been a problem that needed to be addressed or that the unwritten policy was promulgated as a preventative measure. In any event, in the last 10 years, circumstances have not prompted the Respondent to reduce the policy to writing and widely publicize it. (Tr. 191.)

Instead, the evidence shows that the unwritten policy has not been widely disseminated among the employees. Contract Manager Dave Brabender could not explain how the policy was conveyed to employees. (Tr. 176.) He conceded that unless an employee was told about the unwritten no-access policy, the employee would not know that there was a policy or whether

his conduct was permissible under the policy. (Tr. 177.) Although he testified that the rule applied to any type of activity (Tr. 150), Brabender stated that in 1999, he did not tell any employees about the policy other than those involved in the union campaign. He further conceded that between 1990–1991, he could not remember telling any employees about the unwritten policy, other than employees involved in another union organizing campaign.<sup>7</sup> (Tr. 177.)

In *Tri-County Medical Center*, 222 NLRB 1089 (1976), the Board held that a no-access rule applying to off-duty employees is valid if it:

(1) limits access solely with respect to the interior of the plant and other working areas; (2) is clearly disseminated to all employees; and (3) applies to off-duty employees seeking access to the [facility] for any purpose and not just to those employees engaging in union activity. Finally, except where justified by business reasons, a rule which denies off-duty employees entry to parking lots, gates, and other outside nonworking areas will be found invalid.

The evidence shows that the Respondent's unwritten no-access policy unquestionably fails to meet the first two criteria of *Tri-County Medical Center*. The policy does not limit access solely to the interior of the plant and other working areas and it has not been clearly disseminated to all employees. The evidence also shows that over the years the policy has been applied chiefly to employees engaging in union activity.

In addition, other than McDonald's generalized testimony about the reason the policy was promulgated 10 years ago, there is no evidence that the Respondent has, or had, any incidents of workplace violence or any security or safety problems, which would justify such a broad sweeping rule. *Orange Memorial Hospital Corp.*, 285 NLRB 1099 (1987).

I therefore find that the rule is unlawful on its face. It excludes off-duty employees from all outside nonworking areas of the Respondent's property. Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act as alleged in paragraph 5(a) of the complaint.

#### *B. Enforcement of the Unwritten No-access Policy*

Active union supporter Mike Hughes was employed by Respondent as a bus driver at the Snelling terminal location. During the organizing campaign, he traveled during his off-duty hours to other terminals to distribute union literature, solicit union authorization cards, and otherwise encourage union support.

##### 1. Moundsview terminal

On March 30, 1999, Hughes and another Snelling bus driver, Frank Pahl, arrived at the Moundsview terminal at 5 a.m. to distribute union literature and solicit authorization cards. Standing in a designated no parking area about 6–8 feet from the

<sup>5</sup> The Respondent also filed a posthearing motion requesting leave to file a reply brief that was denied on the grounds that such briefs are not provided for by the Board's Rules and Regulations. The reply brief has not been reviewed and/or considered. The paragraphs of the motion pointing out various alleged inaccuracies and alleged misrepresentations in the General Counsel's posthearing brief has not been considered in determining the issues in this case.

<sup>6</sup> The Respondent also has a written no-solicitation policy in its employee handbook that prohibits employees from soliciting and distributing literature during work hours and in work areas. (R. Exh. 1.) This written rule is not the subject of any allegation in the complaint.

<sup>7</sup> Brabender testified that "when people have tried to hand out other things, I have put a stop to it. Not necessarily things to a union campaign." (Tr. 177.) He did not elaborate, however, on those circumstances and it is not clear whether he was acting pursuant to the Respondent's unwritten no-access policy or its written no-solicitation policy.

terminal door, they handed leaflets to employees entering the terminal to clock in. (GC Exh. 3.) A few minutes later, Dispatcher Jeff Cain came out of the terminal to tell Hughes that he could not distribute literature on company property. Hughes informed Cain that he was a company employee, showed him his identification badge, and refused to leave. An unidentified woman later came out of the terminal to write down Hughes' and Pahl's names. The two off-duty employees left the terminal around 7 a.m.

On April 8, 1999, Hughes and Pahl returned to the Moundsville terminal at 4 p.m. to distribute union literature and solicit authorization cards. They were joined by a group of Moundsville and Snelling employees as they finished work and clocked out. They stood in the striped no parking areas handing out literature to employees as they left the terminal after clocking out. Contract Manager Dave Brabender approached Hughes several times that afternoon. He first told Hughes that he could not hand out literature on company property and that he needed to stand off the property on a sidewalk about 75 yards from the terminal building. When Hughes asserted his right to distribute union literature in a nonworking area, a shouting match took place, which ended with Brabender threatening to call the police to arrest the group for trespassing.

Brabender later returned, after consulting upper management, to instruct Hughes and the others to stand off to the side of the walkway in an area reserved for parking to allow employees unimpeded access to and from the building. (GC Exh. 3.) Occasionally, he would come out of the terminal building to admonish the employees if they stepped outside the designated area.

#### 2. Stillwater terminal

On April 2, 1999, Hughes and Pahl arrived at the Stillwater terminal at 5 a.m. They began distributing union literature in an area used for employee parking near the entrance to the terminal. Later they stood in an area used by employees to walk into the terminal, approximately 100 feet long, between the front door and main gate. Minutes later, an unidentified manager came out of the terminal to tell them that they could not distribute literature on company property. Hughes asserted that they were acting within their rights, showed him his employee identification badge, and continued leafleting. He also leafleted at an employee parking lot across the street where a mini bus was shuttling employees from a parking lot to the terminal entrance. Hughes and Pahl left the Stillwater terminal at 7 a.m. after the last employees had arrived for work.

#### 3. Oakdale terminal

At 4 p.m. on April 21, Hughes, Pahl, and a few nonemployee organizers handbilled at the Oakdale terminal. The nonemployee organizers stood on a sidewalk off company property. Hughes and Pahl stood on a sidewalk in front of the terminal building door about 50 yards from the gate where employees enter the property. Contract Manager Jim Berneche asked Hughes and Pahl to leave the property. Hughes told him that he was an employee and that he had a right to be there so long as he did not interfere with employees working. Berneche left and a short time later came out of the terminal building. He told Hughes that he had spoken to his terminal manager, the re-

gional manager, and someone from the NLRB, all of whom stated that Hughes and Pahl had to leave. Hughes refused. Berneche left and came back a third time, apologized to Hughes and Pahl, and told them that they could hand out literature so long as they stayed out of the bus yard, the fuel islands, and away from employees on the clock. They agreed and continued leafleting in the employee parking lot and at the gate.

#### 4. Analysis and findings

An invalid no-access rule cannot be lawfully enforced. *Stoody Co.*, 320 NLRB 18, 29 (1995). In addition, the Board has held that employees of an employer who work at one facility are still considered employees of the employer if they handbill at another of the employer's facilities. *ITT Industries*, 331 NLRB No. 7, slip op. at 4 (2000). There is no credible evidence that Hughes, Pahl, or any of the other employees, who handbilled at the various terminals, prevented anyone from entering or leaving any of the terminal buildings or in any way disturbed anyone working.

The Respondent argues that its misconduct in enforcing the unwritten no-access policy, if anything, is de minimus. It asserts that the employees were not deterred from distributing literature and that only one incident occurred after the representation petition was filed. I disagree. First, the test is not whether the conduct succeeded or failed, but whether the conduct reasonably tends to interfere with the free exercise of Section 7 rights. *Waste Management of Palm Beach*, 329 NLRB 198 (1999). Brabender testified that a female organizer handbilling in the parking lot left after he told her she had no right to hand out material there. He also testified that four other employees stopped handbilling after he spoke to them on a cellular phone. (GC Exh. 2.) The credible evidence further shows that Brabender had a heated argument with Hughes in front of other employees about their right to handbill, threatened to call the police, and insisted that they pass out literature off the property. I therefore find that the Respondent's unlawful conduct reasonably tended to interfere with the employees' Section 7 rights.<sup>8</sup>

Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act as alleged in paragraphs 5(b)–(e) of the amended complaint.

#### C. The Alleged Promise to Create an Employee Association

In spring 1999, Theresa Stewart was a bus driver assigned to the Stillwater terminal. In mid-May, she attended a company sponsored "town hall" meeting at her terminal where the Respondent's labor relations director, Larry McDonald, spoke. Stewart testified that during the meeting, she asked McDonald who would negotiate with him for more affordable medical benefits, if the Union was not elected. (Tr. 111.) According to Stewart, McDonald "described an employee association that would be able to sit down with him and negotiate with him." He added that no promises were being made. (Tr. 121.) She further testified that McDonald stated that "it would be a group of employees that he would be willing to meet with and negoti-

<sup>8</sup> That only one reported instance occurred after the representation petition was filed does not minimize the fact that the Respondent's unlawful conduct interfered with the employees' Sec. 7 rights.

ate with.” (Tr. 112.) Stewart testified that after the Union lost the election, she asked her manager, John Thomas, if there was going to be an employee association and how could she become involved. Stewart stated that Thomas told her that there would be an election, but it never occurred. (Tr. 114.)

McDonald recalled being asked who the company would negotiate with if the Union lost. (Tr. 197.) However, he denied telling Stewart or anyone else that he would meet and negotiate with an employee association in the event the Union lost the election. (Tr. 199.) He testified that he told the employees it was unlawful for him to encourage an outside group or internal group. He also told them that over the years, some employees had unsuccessfully attempted to form their own groups to talk with the Respondent. McDonald conceded that he may have used the word “associations,” but testified that he told the employees that he did not favor that type of arrangement. (Tr. 198.) McDonald testified that he told the employees that the Respondent favored open forum meetings or town hall meetings to discuss issues and educate employees. (Tr. 198–199.) Brabender corroborated McDonald’s testimony on this point. (Tr. 161.)

For demeanor reasons, I credit McDonald’s corroborated testimony on this point. In contrast, Stewart’s testimony was uncorroborated, despite the fact that approximately 150 employees attended the same meeting. She also testified that she was sitting in the back of the room, behind approximately 150 employees, who were noisy and acting unprofessional at times. This evidence supports a reasonable inference that Stewart may have misunderstood or misheard McDonald’s response.

Accordingly, I shall recommend that the allegations of paragraph 5(f) of the amended complaint be dismissed.

*D. The Unlawful May 11 Threat that the Respondent Would not Bargain in Good Faith*

Paragraph 5(g) of the complaint alleges that in a May 1999 meeting at its Burnsville, Minnesota terminal, an unidentified agent of the Respondent threatened employees that the Respondent would not bargain in good faith or that bargaining would be futile. The evidence shows that on May 11, 1999, the Respondent held three town hall meetings at its Burnsville terminal: one in the morning, one at noon, and one at 5 p.m. Bus driver Jane Olson, who was assigned to the Burnsville terminal, attended all three. Olson stated that four management officials attended one or more of the meetings for the Respondent. There was a man from St. Louis, whose name she could not remember; a location manager named “Fred;” the Burnsville safety director, Martha Whitman; and the Burnsville contract manager, Ralph Garbe. (Tr. 25–26.)

Olson testified that at the 5 p.m. meeting, the man from St. Louis introduced himself indicating that he would be negotiating with the Union. He reviewed how the bargaining process worked. Olson testified that “he said what will happen is the union employees or the union will have a list of demands that they want from Ryder, and he said I will come back with a list of demands that the Company wants because the Company also will have demands that they want, and there will be a counter offer to my offer and he said then I will come back with a uni-

laterally binding contract and that will be the end of it. There will be no more negotiations.”

(Tr. 27.) According to Olson, the St. Louis man said that the Union would have two or three bus drivers at the bargaining table and he would represent the Respondent.

The Respondent did not call a man from St. Louis to testify. Rather, Labor Relations Director McDonald testified that he conducted all three Burnsville meetings himself and that a contract manager from another terminal, Fred Retzloff, was present for each meeting. (Tr. 200.) He testified that the negotiation process was discussed at each meeting and that he explained in detail how the bargaining process worked. (Tr. 201–203.) According to McDonald, he told the employees at these meetings “if agreement can’t be reached at the bargaining table and it comes to impasse, the company has a right to give its final and best offer to the union and characterize it as a final and best offer, and then if it doesn’t get ratified the company has a right to unilaterally install a final and best offer.” (Tr. 202.) McDonald denied telling the Burnsville employees that after one or two moves he would suddenly implement a unilaterally binding contract and that would end the negotiations. (Tr. 204.) Fred Retzloff testified that he attended all three meetings and generally corroborated McDonald’s testimony about what he told the employees at the three meetings. (Tr. 227–228.)

Neither McDonald nor Retzloff testified that anyone else was present at any of these meetings for the Respondent. Retzloff was not asked whether a man from St. Louis was present at the Burnsville meetings. McDonald did not expressly deny that a man from St. Louis was present and spoke at the 5 p.m. meeting. Rather, he testified around the issue by stating that a human resources manager from St. Louis named Gary Anderson was in Minnesota for a very short period of time. McDonald, however, quickly pointed out that Anderson did not fit the physical description given by Olson of the St. Louis man at the 5 p.m. meeting, thereby fostering the impression that Olson was mistaken and that he alone spoke at the 5 p.m. meeting.

On cross-examination, McDonald attempted to bolster the impression he had fostered. He was asked:

Q. Mr. McDonald, isn’t it true that at the May 11th meeting at Ryder’s Burnsville facility a company representative from St. Louis did say that he wouldn’t sit down with any union?

A. Not that I know of.

(Tr. 214–215.)

However, the un rebutted evidence shows that on or about August 5, NLRB Agent Deborah Rogers wrote a letter to McDonald which stated, “At the May 11th meeting at the Burnsville facility, an employer representative from St. Louis allegedly threatened (a) that he would not sit across the table from any union negotiator, (b) that the Employer would unilaterally implement a contract, and that (c) if a union came in, employees would no longer go to their managers.” (Tr. 217–218.) At trial, the General Counsel showed McDonald his re-

sponse,<sup>9</sup> dated August 25, to the letter, in which he effectively acknowledged that there was a man from St. Louis at the May 11 meeting, by stating:

a human resources manager from St. Louis did say that he would not sit across the table from the union. He wouldn't. He would not be involved in the negotiations. That would be the sole province of the director of labor relations, (b) unilateral implementation is the only possible subsequent to rejection of the company's final and best offer. This allegation is obviously used out of context, and (c) it was probably stated at one time or another that the election of a union mandated that the company recognize the union [as] the exclusive representative for all union employees and that a supervisor would have to respect and work within that relationship.

(Tr. 218.)

McDonald eventually admitted at trial that a human resources manager from St. Louis was at the May 11 meeting and reluctantly conceded that he did say that he would not sit across the table from the Union. (Tr. 219.) At the same time, however, he implied that Anderson was the human resources manager from St. Louis (Tr. 220), but clarified himself by stating that Anderson was not at Burnsville when he (McDonald) was there.

I find that McDonald's testimony on this issue was contradictory, purposefully evasive, misleading, and not credible. In addition, Retzler's generalized testimony did nothing to rehabilitate McDonald's unconvincing testimony. Moreover, the un rebutted evidence shows that Contract Manager Ralph Garbe was present at the 5 p.m. meeting, but the Respondent did not call him to testify at trial or offer any explanation for his failure to appear. It is well settled that when a party fails to call a witness who is likely to be favorably disposed to the party, an adverse inference may be drawn about any factual question on which the witness is likely to have knowledge. That is, it may be inferred that the witness, if called, would have testified adversely to the party on that issue. *Jim Walter Resources*, 324 NLRB 1231, 1233 (1997). I draw such an adverse inference here.

On the other hand, for demeanor reasons, I find Olson was very credible and to the point. I therefore credit her testimony concerning the statements made by the management official from St. Louis at the 5 p.m. meeting on May 11, 1999. I find that the statements attributed to the man from St. Louis tended to interfere with the employees' rights under Section 7 of the Act.

Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act as alleged in paragraph 5(g) of the complaint.

*E. The Unlawful Statement Made at the Como Terminal Town Hall Meeting*

Paragraph 6(h) alleges that in approximately May 1999, Contract Manager Dan Berg threatened employees in a meeting at the Como terminal that the Respondent would not bargain in good faith or that bargaining would be futile.

<sup>9</sup> McDonald identified and acknowledged that he wrote the August 25 letter. (Tr. 215, 218.)

The evidence shows that in spring 1999, the Respondent held several employee meetings at its Como terminal to discuss its opposition to the Union and to explain how negotiations worked. Driver Keith Mader, who was assigned to Como, testified that he attended three separate employer such meetings on different days. (Tr. 125, 133.) Mader stated that at the second meeting he attended there were six to seven employees present and three management officials: Regional Supervisor Dan Berg; Arlen Hviding, the Como location manager; and a supervisor named Jeff Mueller. (Tr. 134.) Mader testified that when Berg spoke to the employees in attendance he "mentioned something to the effect that we'd negotiate back and forth, off and on, and that he basically would not accept none of it, that he would just get up and walk out." (Tr. 126.) On cross-examination, Mader reiterated that Berg stated "that the negotiations go back and forth and then he'd just say forget it, get up and walk out because they don't have money to negotiate with." (Tr. 136.) According to Mader, Berg's exact words were "If I do not agree to it I will get up and walk out" (Tr. 137). Mader conceded, however, that Berg told the employees that he said he would walk out after the parties were unable to reach an agreement. Mader further testified that the other supervisors talked about cutting up the pie, and stated that they could not negotiate with what they did not have. Specifically, he stated that Supervisor Jeff Mueller stated, "We can't pay you any more. We ain't making no money now." (Tr. 127.)<sup>10</sup> Mader stated that Berg told the employees that most of the money was now going to the employees and that is why the Respondent did not have money to negotiate. (Tr. 137-138.)

Berg could not recall if he discussed what would happen if the parties were unable to reach an agreement after negotiating for some time. (Tr. 232.) However, he denied making the statements attributed to him by Mader. He denied that he told anyone that he would not accept anything that the union proposed and that he would get up and walk out. He also denied telling the employees that the Respondent could not negotiate something that it did not have. (Tr. 233.) For demeanor reasons, I do not credit Berg's denials. Also, the Respondent failed to call as corroborative witnesses Location Manager Arlen Hviding and Supervisor Jeff Mueller. I draw an adverse inference from the Respondent's failure to call these witnesses that, if called, they would have testified adversely to the Respondent on this issue. *Jim Walter Resources*, supra at 1233. On the other hand, for demeanor reasons, I credit Mader's testimony.

Thus, the evidence shows that the thrust of Berg's remarks were that the Respondent had no money to negotiate and therefore after going through the motions it would get up and walk away from the table. Accordingly, I find that the Respondent violated Section 8(a)(1) of the Act as alleged in paragraph 5(h) of the complaint.

<sup>10</sup> Mader also testified that he attended a third meeting where Berg, Hviding, and a company representative from Pennsylvania spoke to the employees. According to Mader, the man from Pennsylvania "mentioned we would start from ground zero. We wouldn't get nothing until after the negotiations were done and over with." (Tr. 128.) The complaint does not allege, nor does the General Counsel argue, that any statements made by the Respondent's representatives at the third meeting violated the Act.

## CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct:

(a) Promulgating and maintaining an unwritten no-access policy prohibiting its employees from having access to and distributing literature at its terminals unless they worked at those terminals and/or prohibiting them from entering the property of their own terminal at times they are not scheduled to work.

(b) Enforcing its unwritten no-access policy by attempting to prohibit employees from distributing union literature at terminals where they did not work and attempting to prohibit employees from entering the property of their own terminal at times they were not scheduled to work.

(c) Telling its employees that if the Union was elected it would not bargain in good faith and that bargaining would be futile.

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

5. The Respondent has not engaged in any unfair labor practice not specifically found here.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>11</sup>

## ORDER

The Respondent, Ryder Student Transportation Services, Inc., Minneapolis/St. Paul, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and maintaining an unwritten no-access policy prohibiting its employees from having access to and distributing literature at its terminals unless they worked at those terminals.

(b) Enforcing its unwritten no-access policy by attempting to prohibit employees from distributing union literature at terminals where they did not work and attempting to prohibit employees from entering the property of their own terminal at times they were not scheduled to work.

(c) Telling its employees that if the Union was elected it would not bargain in good faith and that bargaining would be futile.

<sup>11</sup> 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.

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

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its offices in St. Paul, Minnesota, and at all of its terminals in the Minneapolis/St. Paul, Minnesota area, copies of the attached notice marked "Appendix."<sup>12</sup> Copies of the notice, on forms provided by the Regional Director for Region 18, 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 30, 1999.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

## 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.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT promulgate and maintain an unwritten no-access policy prohibiting our employees from having access to and distributing literature at our terminals, unless they work at those terminals and/or prohibiting them from entering the property of their own terminal at times they are not scheduled to work.

<sup>12</sup> 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."

WE WILL NOT enforce an unwritten no-access policy by attempting to prohibit employees from distributing union literature at terminals where they do not work and by attempting to prohibit employees from distributing union literature at their own terminals at times they are not scheduled to work.

WE WILL NOT tell our employees that if School Service Employees Local 284, SEIU is elected we will not bargain in good faith and that bargaining would be futile.

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

RYDER STUDENT TRANSPORTATION  
SERVICES, INC.