In the Matter of AMERICAN MANUFACTURING CONCERN *and* LOCAL NO. 6, ORGANIZED FURNITURE WORKERS

Case No. C-403.—Decided June 7, 1938

School and Office Supplies, Furniture, Toy, and Wooden Specialties Manufacturing Industry—Interference, Restraint and Coercion: antiunion statements; engendering fear of loss of employment for union activity; expressed opposition to labor organization; persuading employees to resign from union; employer's action in discharging employees taking part in walk-out, treated only as—*Company-Dominated Union:* domination of and interference with formation and administration—*Discrimination:* employer's statement that employees taking part in walk-out were discharged, held to have no actual effect upon tenure of employment; charges of, dismissed—*Employee Status:* following walk-out—*Strike:* held to exist when employees cease work in order to secure compliance with a demand for some condition of employment, the refusal of which by the employer has given rise to a labor dispute—*Reinstatement Ordered:* strikers to be placed upon list of employees temporarily laid off and to be offered employment in order of seniority when employment becomes available.

Mr. Edward B. Flaherty, for the Board.
Mr. Clive L. Wright, of Jamestown, N. Y., for the respondent.
Mr. Daniel B. Shortal, of Buffalo, N. Y., for the Union.
Mr. Sumner Marcus, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Local No. 6, Organized Furniture Workers, herein called the Union, the National Labor Relations Board, herein called the Board, by Henry J. Winters, Regional Director for the Third Region (Buffalo, New York), on December 7, 1937, issued and served a complaint and notice of hearing upon American Manufacturing Concern, herein called the respondent, and upon the Union. The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section

8, (1), (2), and (3), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint alleged in substance that the respondent, by failing to reinstate and reemploy a group of 32 named individuals who walked out of the respondent's factory in concerted activity, discriminated and is discriminating in regard to their hire and tenure; that the respondent dominated and interfered with the formation and administration of a labor organization, described as The Independent Company Union, and contributed support to it; and that thus and in various other ways, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent filed a written answer, dated December 11, 1937, in which it admitted the allegations of the complaint with respect to the respondent's business and denied each of the other allegations.

Pursuant to the notice of hearing, a hearing was held in Jamestown, New York, on December 17, 20, 21 and 22, 1937, before Louis L. Jaffe, the Trial Examiner duly designated by the Board. At the hearing the Board, the respondent, and the Union were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties.

At the close of the Board's case and again at the close of the hearing the respondent moved to dismiss the complaint on the grounds that the allegations of the complaint were not sustained by the evidence, and on the ground that 29 of the 32 persons named in the complaint were legally discharged. These motions were denied. The rulings are hereby affirmed. The respondent also moved in substance to dismiss the allegations in the complaint with respect to certain persons named in the complaint who, it appeared at the hearing, did not desire reinstatement. The Trial Examiner took this motion under consideration and stated in the Intermediate Report that he was in effect granting the motion by not recommending any relief in respect to these persons. This motion will be granted in so far as it relates to the allegations that such persons were refused reinstatement.

During the course of the hearing, the Trial Examiner made several rulings on objections to the admission of evidence. The Board has reviewed these rulings and rulings made with respect to motions of the parties and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On January 13, 1938, a stipulation regarding the circumstances of the alleged discharges and the subsequent employment records

of 15 persons named in the complaint was entered into between the Board, the respondent, and the Union and, by agreement of the parties, was made part of the record.

On January 26, 1938, the Trial Examiner issued his Intermediate Report, which was duly served upon the parties. He found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7) of the Act, and recommended that the respondent cease and desist from interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and that the respondent place upon a roll of persons currently employed by the respondent but at the moment laid off, 27 persons with respect to whom the complaint had alleged that the respondent had committed an unfair labor practice within the meaning of Section 8 (3) of the Act, and that the respondent employ them when employment became available.

Thereafter, both the respondent and the Union filed exceptions to the findings, conclusions, and recommendations of the Intermediate Report. Pursuant to notice to both the respondent and the Union a hearing was held, at the request of the respondent, before the Board on March 17, 1938, in Washington, D. C., for the purposes of oral argument upon the respondent's and the Union's exceptions. Briefs were filed by the respondent and the Union in support of their respective exceptions. The Board has considered these exceptions and the arguments in their support and save as they are consistent with the findings and conclusions below, it finds them to be without merit.

Upon the whole record the Board makes the following:

Findings of Fact

I. THE BUSINESS OF THE RESPONDENT

The respondent is a New York corporation having its principal office and place of business in Falconer, New York. It manufactures beehives, school and office supplies, toys, furniture, and wooden specialties. It sells annually approximately $300,000 worth of merchandise, of which approximately 75 per cent is shipped to States other than New York as well as to Great Britain, the West Indies, South Africa, Australia, and Asia. Approximately 25 per cent of the raw materials used by the respondent in the manufacture of its products are bought in and shipped from States other than New York.

II. THE ORGANIZATIONS INVOLVED

Local No. 6, Organized Furniture Workers, affiliated with the Industrial Labor Council of Jamestown, New York, is a labor organization admitting to membership the respondent's production employees.

The organization described in the complaint as The Independent Company Union is an unaffiliated labor organization composed of production employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Events leading to the strike of July 14, 1937*

The Union was organized in March 1937. Almost immediately it acquired the membership of approximately 100 per cent of the respondent's production employees. At various times during the course of the progress of its organization several of the respondent's foremen displayed a hostile attitude towards the Union. Glenn Bloss, a member of the Union, testified that Earl Chapman, a foreman, talked with him "over and over" and said that "the Union never did amount to anything and according to his mind a union was only radicalism and all in it was a lot of trouble." Bloss also testified that Fritz Balder, a foreman, often "razzed" the Union and had stated that "Well, Unions and you fellows ought to be hung." Balder's statements were made as late as the end of June 1937. Albert Roman, a member of the Union, testified that Fritz Balder had warned him to keep his mouth shut with respect to the Union and had intimated that discharge might easily follow from continuation of his union activities. Emma Carlson, a member of the Union, testified that Balder told her and Beatrice Piazza not to join the Union.

There was also testimony by Harold Nyberg to the effect that Leslie Martin, the respondent's general manager, who was in full charge of the respondent's plant, had expressed antiunion sentiments to certain of the respondent's employees. Martin denied having made such statements. The statements attributed to Foremen Balder and Chapman were not denied, however. In view of the foregoing testimony, we find that the respondent attempted to place obstacles in the way of its employees' self-organization from the time the Union came into being, and by doing so, has interferred with, restrained, and coerced its employees in the rights guaranteed in Section 7 of the Act.

In April, the Union effected an agreement with the respondent regarding wages and hours. The agreement provided for a 45-hour week. It was further agreed at this time that the agreement should

last until July 10 and that at that time the question of the 40-hour week which the Union was demanding would be discussed further.

On June 29 the Organized Furniture Workers sent to each of the 17 furniture plants, in which locals affiliated with the Organized Furniture Workers existed, a demand for a 40-hour week and time and a half for overtime. On June 30 a meeting of the Manufacturer's Association of Jamestown, of which the respondent and other furniture manufacturers were members, was held for the purpose of discussing the demands presented by the Organized Furniture Workers. At this meeting, at which Martin was present, it was decided that each furniture company should continue the schedule of hours under which it was then operating. Martin denies that this decision by the Manufacturer's Association committed him to any definite policy in future dealings with the Union.

On July 1, 10, 12, and 13, conferences were held between the executive committee of the Union and Martin. There is some dispute as to the meeting at which the demand for the 40-hour week was first presented by the Union. It is clear, however, from Martin's testimony that the question of the 40-hour week was discussed at "about three meetings" and that Martin consistently refused to grant the Union's demands.

On the evening of July 13 the Union held a meeting. Dahlin, the president of the Union, and many others testified that there was discussion by the assembled group concerning what action the Union should take in view of Martin's continued refusal to grant the 40-hour week and that a motion was passed that the Union members should walk out of the respondent's plant at 3:30 p. m. on the following day if Martin persisted in his attitude.

The respondent contends that no official vote to walk out was ever taken by the Union and has adduced much testimony to prove that the only motion upon which the Union acted was in regard to the presentation of a demand for an 8-hour day on the following day. But even the witnesses offered by the respondent agreed that it had at least been "understood" by a group of Union members that the walk-out would take place if the respondent did not accede to the Union's demands. Since concerted action was contemplated by a group of union members for the purpose of securing shorter hours, it is immaterial to the issues in this case whether or not the Union's action was in accordance with the rules of parliamentary procedure and we consequently do not make any finding in this respect.

On the morning of July 14, the executive committee of the Union arranged a meeting with Martin for 11 a. m. Prior to this meeting, Martin had been informed by Warren Anderson, an employee of the respondent, who was the son of Charles Anderson, a foreman, of what

had happened at the Union meeting of the previous evening. Martin again refused to accede to the Union's demand for a 40-hour week and this time gave as an excuse that he must first speak to Davis, the president of the respondent, who was not in Falconer and who was not expected to return there for several days. This was the first time in the history of the relationship between the respondent and the Union that it had ever been intimated that Martin was not in sole control of the respondent's labor policies. An agreement between the Union and the respondent had been effected in April without Davis' intervention. Martin, moreover, had had notice of the Union's demand for a 40-hour week for several months and he could have consulted Davis during this period had he desired and intended to do so. The Union's representatives concluded that Martin was in effect refusing definitely to accede to their demand. It was therefore decided by the executive committee of the Union to carry out the walk-out at 3:30.

B. *The strike*

On the afternoon of July 14, Martin, having heard that there would be a walk-out, called Dahlin to his office and attempted to dissuade him from going through with it. Dahlin stated that the walk-out would definitely take place unless the demand for a 40-hour week was granted. Martin thereupon caused to be circulated among the employees notices to the effect that working hours of the respondent's plant were from 7 a. m. to 12 noon and from 12:30 p. m. to 4:30 p. m. and that any employee leaving the plant during working hours without express permission to do so would automatically sever his employment with the company. Notices to this effect were placed on the bulletin board and were read to most of the employees by foremen. Some of the employees denied that they ever saw or heard of these notices prior to 3:30 p. m. but in view of the testimony by both the respondent's and the Board's witnesses relating to the general circulation of these notices, we cannot give credence to this testimony.

At 3:30 p. m., 22 of the respondent's approximately 150 employees left their work and "rang out" their cards. As they did so they were requested by the foremen, who stood at the time clocks, to surrender their time cards. The following morning many of those employees returned and, not finding their cards in the rack, left the plant. At 3:30 p. m., on July 15, four more employees left their work. On July 16, one person walked out at 3:30 p. m. On July 19, two persons walked out at 3:30 p. m. All these walk-outs occurred for the same reason and in the same manner as that of July 14.

On July 21 the Union voted a full strike against the respondent. Clarence Jacobs, Myrtie Medberg and the 29 employees who had already walked out joined the strike at this time. June Proudman,

who had not worked at the respondent's plant since June 28, 1937, when she had become ill, joined the picket line on August 1, 1937.

The strike lasted for approximately 3 months. Of the 32 employees of the respondent who participated in the strike, Howard Hartzell, Clarence Jacobs, C. W. Parrette, and Leslie Mason have stated that they do not desire to be employed by the respondent. The company has offered employment to Francher Holsberg and to Clarence Jacobs. Holsberg has accepted this offer and was employed by the respondent at the time of the hearing. Lucius Mosher applied for a position with the respondent on October 1, 1937, and was told that there was no work available for him. The remaining persons named in the complaint have not applied for their former positions with the respondent and have not been offered positions by respondent. There is no evidence that they do not wish to be reemployed by the respondent.

The respondent's contention is that inasmuch as no strike was voted by the Union prior to July 21, the walk-out by 29 of the respondent's employees did not constitute a strike and that therefore the respondent was justified in discharging all employees who walked out on July 14, 15, 16, and 19 for the reason that they violated a rule of the respondent's plant forbidding employees to leave the plant during working hours.

We do not agree with the respondent in its contention that no strike existed prior to July 21. A strike exists when a group of employees ceases work in order to secure compliance with a demand for higher wages, shorter hours, or other conditions of employment, the refusal of which by the employer has given rise to a labor dispute. The cessation of work by a group is no less a strike because the group itself may not have considered its action to constitute a strike. Nor is the cessation of work any less a strike because it occurs at the moment that work would have ceased if the demand for the shorter working day had been granted. Nor does the fact that the persons who walked out desired to return the following day in order to work for 8 hours alter the strike character of their activity, since a refusal to work the number of hours required by an employer is tantamount to an absolute refusal to work. We find therefore, that a strike was instituted by a group of Union members against the respondent on July 14, 1937, at 3:30 p. m. for the purpose of enforcing their demand for an 8-hour day.

We do not find, however, that the purported discharge of the employees who left the plant at 3:30 on July 14, 15, 16, and 19 constituted a discharge. These employees, as we have just pointed out, were engaging in a strike and had no intention at that time of returning to work upon the respondent's terms. Consequently the respondent's statement that they were discharged had, at that time,

no actual effect upon their tenure of employment. As we have previously observed, such statements are primarily intended, not to effectuate a discharge, but as a tactical step designed to coerce the employees into resuming work or to defer those remaining at work from going out on strike.[1]

We find, therefore, that the respondent did not discharge the 29 employees when they left the respondent's plant at 3:30 p. m. on July 14, 15, 16, and 19, and, consequently, it is unnecessary for us to consider the justification of the "discharge."

Since there was no discharge at the time the strike began and since the evidence does not support the allegations of the complaint that the respondent refused to reinstate the employees after a request to do so, we find that the respondent did not discriminate in regard to the hire and tenure of the persons named in the complaint. The complaint will be dismissed with respect to the allegations that the respondent has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

However, since the purpose and the effect of the respondent's action in threatening to discharge and in purporting to discharge its employees who walked out was to restrain them from engaging in concerted activities for their mutual aid and protection, the respondent has engaged in an unfair labor practice within the meaning of Section 8 (1) of the Act. The fact that the respondent sought to justify its action by promulgating a plant rule does not alter our conclusion, since an employer cannot, in the name of plant discipline, coerce his employees for the purpose of discouraging collective activity.

C. *Unfair labor practices subsequent to the beginning of the strike*

On the morning of July 15, 1937, the day following the beginning of the strike, there was circulated among the respondent's employees during working hours a petition stating that the signers felt that the Union had been unfair and that they wished to establish a new independent company union. Ethan Allen, a member of the Union, and Aynard Anderson, a witness called by the respondent, both testified that among those circulating the paper was Charles Anderson, a foreman. This testimony was not contradicted. William Howard, another Union member, testified that Bascom, a fellow employee, was given express permission by Frank Anderson, a foreman, to halt the work of a group of employees and to speak to them in order to urge their signing the petition. This testimony also was uncontradicted.

[1] See *Matter of Biles-Coleman Lumber Company* and *Puget Sound District Council of Lumber and Sawmill Workers*, 4 N. L. R. B. 679; *Matter of Stackpole Carbon Company* and *United Electrical & Radio Workers of America, Local No 502*, 6 N. L. R. B. 171

Warren Anderson, an employee and a son of Charles Anderson a foreman, was given permission by his foreman to leave the plant during working hours to arrange for a hall in which to hold a meeting that night for the purpose of forming the new organization. A notice announcing the meeting was permitted to remain on the respondent's bulletin board while a notice announcing a meeting of the Union was turned toward the wall by Martin, the respondent's general manager, so that it was no longer visible to persons in the plant.

At the meeting which was held on the night of July 15 and which was attended by a large group of the respondent's employees, including three foremen, Bert Jay, Charles Anderson, and Earl Chapman, two pieces of business were transacted. A motion was passed that all those attending the meeting should resign from the Union, and officers of the new organization were elected.

Warren Anderson acted as chairman of this meeting and was elected president of the new organization. Lawrence Anderson, another son of Charles Anderson, was elected treasurer. Vance Verdine, an employee who had been active during the day in circulating petitions, was elected secretary. Verdine was the one nonsupervisory employee of the respondent who on July 22 accompanied Martin and Charles Anderson to a meeting of the officials of the village of Falconer at which there was discussed the question of the measures to be taken by the governmental authorities of the county and the village in regard to the strike. This circumstance indicates strongly the close relationship which Verdine bore to the respondent's management.

Martin's own testimony indicates that he knew of the formation and the activities of the new organization. In view of the relationship between him and the leaders of the organization his acquiescence in their actions, contrasted with the hostile attitude which he displayed toward the Union, was equivalent to encouragement of the new organization.

The organization created on July 15 never adopted a name; it has never requested the respondent to bargain collectively; and it has never transacted any business except to adopt the motion mentioned above. Furthermore, after holding but one further meeting, it became completely inactive.

The reason advanced for the formation of the new organization was that the procedure of the Union to which the respondent's employees had formerly belonged was undemocratic. It would appear to be more likely that the fault of the Union which was remedied by the new organization was that it presented demands to the respondent for shorter hours and higher wages, since, once the Union

ceased to constitute a threat to the respondent, The Independent Company Union also ceased to function.

We conclude that the respondent has dominated and interfered with the formation and administration of a labor organization and has thereby engaged in an unfair labor practice within the meaning of Section 8 (2) of the Act.

On July 27, 1937, the respondent inserted a large advertisement in two Jamestown, New York, newspapers, in which it stated the following:

> The presently much noised but inferior RIGHT TO STRIKE and RIGHT TO PICKET are merely LEGISLATIVE PRIVILEGES.
>
> More than 80% of our employees have continued at work in spite of threats and attempts at intimidation by a small minority who have listened too much to the voice of the outside agitator.
>
> Relying upon the common law of the State of New York, this factory will continue to operate and give employment to those of its employees who choose to work.

The respondent contends that it was justified in advising its employees of their rights inasmuch as there had been violence on the picket line and that, in any case, the advertisement did not discourage memberships in the Union. It was improper, however, to characterized the leaders of the Union as "outside agitators." This epithet, so freely used by opponents of labor organizations, is intended to provoke the antagonism which is easily aroused in many people against strangers to the community. It, of course, ignores the fact that in many situations it is only the "outsider," whose economic life is not at the mercy of the employer, who can safely and effectively represent the employees' interests. The further inference, from the advertisement, that the strikers were dupes of such a person was likewise unwarranted and improper. We find that the respondent, in publishing the advertisements and in procuring resignations from the Union through the medium of the labor organization which it aided, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a substantial relation to trade, traffic, and commerce among the several States and in foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

Since we have not found that the strike was induced or prolonged by the unfair labor practices in which the respondent engaged, we shall not make our usual order in such cases that the strikers be reinstated to the positions which they held prior to the beginning of the strike.

Under the circumstances of this case there is grave danger that, in the absence of an order by us, the respondent will not reemploy the strikers even if their former or substantially equivalent positions are open, since it has contended throughout these proceedings that the strikers were discharged for proper cause and since it has already shown itself to be predisposed towards engaging in unfair labor practices with respect to them. We shall order, therefore, that the respondent place the strikers upon a list of its employees who are temporarily laid off and that it shall offer them employment in the order of their seniority upon the list when employment becomes available before hiring other persons.

Since the respondent did not offer evidence in support of its contention that June Proudman was not an employee at the time the strike occurred and since persons absent from their work because of illness normally remain employees, we shall order her name to be included in the list of persons to be offered employment by the respondent when it becomes available. We shall not, however, include in the list the names of Leslie Mason, Francher Holsberg, Clarence Jacobs and Christopher W. Parrette since they do not desire employment with the respondent. We shall also exclude Howard Hartzell, since he was employed by the respondent at the time of the hearing.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. Local No. 6, Organized Furniture Workers and the organization described in the complaint as The Independent Company Union are labor organizations within the meaning of Section 2 (5) of the Act.

2. By its domination of and interference with the formation and administration of the labor organization described in the complaint as The Independent Company Union, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

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

4. The persons listed in appendix A are employees of the respondent, within the meaning of Section 2 (3) of the Act.

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

6. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, American Manufacturing Concern, its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From dominating or interfering with the administration of the organization described in the complaint as The Independent Company Union, or with the formation or administration of any other labor organization of its employees, and from contributing support to the organization described in the complaint as The Independent Company Union, or any other labor organization of its employees;

(b) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Place the employees listed in appendix A upon a list of employees temporarily laid off and offer employment to them in the order of their seniority upon this list when employment becomes available before hiring other persons;

(b) Post immediately in conspicuous places at its plant notices stating that American Manufacturing Concern will cease and desist in the manner aforesaid, and maintain such notices for a period of thirty (30) consecutive days from the date of posting;

(c) Notify the Regional Director for the Third Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply therewith.

It is further ordered that the allegations of the complaint that the American Manufacturing Concern has refused to reemploy and to reinstate 32 named individuals be, and they hereby are, dismissed.

APPENDIX A

Ethan Allen
Glen Bailey
Harris Becker
Glenn Bloss
Gerald Boyer
Henry Cady
Emma Carlson
Fern Chandler
Sam Cimo
Archie Cross
Carl Dahlin
LaVerne Erickson
George Fitch
Ardel Houston
William Howard
Arthur Jones
Arthur Meyers
Lucius Mosher
Harold Nyberg
Frank Parasilite
June Proudman
Orrin Rickerson
Hattie Ridby
Albert Roman
Gordon Schultz
Myrtie Wedberg
George Winn