

In the Matter of ENGINEERING & RESEARCH CORPORATION and UNITED
AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS,
CIO.

Case No. 5-C-1640.—Decided February 29, 1944.

Mr. George L. Weasler and Mr. Earle K. Shawe, for the Board.
Mr. Milton W. King and Mr. E. B. Miller, of Washington, D. C., for
the respondent.

Mr. Paul A. Wagner, of Baltimore, Md., for the Union.

Mr. John K. Keane, of Hyattsville, Md., for the Independent.

Mr. Gilbert V. Rosenberg, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a charge duly filed on June 2, 1943, by United Automobile, Aircraft and Agricultural Implement Workers, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint dated August 9, 1943, against Engineering & Research Corporation, Riverdale, Maryland, herein called the respondent, alleging 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. Copies of the complaint and of notice of hearing thereon were duly served upon the respondent, the Union, and Aircraft Workers Council, herein called the Independent, a labor organization alleged in the complaint to be dominated by the respondent.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent (1) on or about May 15, 1943, initiated, formed, and sponsored the Independent for the purpose of dealing with its employees concerning grievances, labor disputes, and conditions of employment and has since that date dominated and interfered with the administration of the Independent and contributed

financial and other support thereto; (2) since May 1, 1943, has (a) threatened its employees with discharge and other reprisals if they became or remained members of the Union, (b) urged, persuaded, and warned its employees to join and assist the Independent and not to become or remain members of any other labor organization, especially the Union, (c) questioned its employees concerning their activities on behalf of the Union, (d) indicated to its employees a preference for an unaffiliated labor organization, and (e) made disparaging and derogatory remarks to its employees about the Union, its members and representatives; and (3) on or about May 31, 1943, discriminatorily discharged and refused to reinstate Winifred Goss because of her union activities. On September 8, 1943, the respondent filed its answer admitting certain allegations with respect to its business, but denying the unfair labor practices alleged.

Pursuant to notice, hearings were held on August 23 and September 4, 1943, at Washington, D. C., and on September 8, 9, 10, and 11, 1943, at Hyattsville, Maryland, before Gustaf B. Erickson, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Independent were represented by counsel, and the Union was represented by one of its international representatives. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the hearing, the Trial Examiner granted a motion by the Independent to intervene in the proceeding. On September 8, 1943, counsel for the Board, the Union, and the respondent, entered into a settlement agreement amicably disposing of Winifred Goss' alleged discriminatory discharge, and, pursuant thereto, counsel for the Board moved to dismiss the complaint as to her. The Trial Examiner granted this motion without objection. At the conclusion of the Board's case and at the close of the hearing, counsel for the respondent moved to dismiss the complaint. The Trial Examiner reserved decision on these motions, and later denied them in his Intermediate Report. At the conclusion of the hearing, counsel for the various parties moved to conform the complaint and all other formal documents and pleadings to the proof. The motions were granted without objection. During the course of the hearing, the Trial Examiner made rulings on other motions and on objections to the admissibility of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On October 23, 1943, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties. He found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act. He recommended that the

respondent cease and desist from its unfair labor practices and that it disestablish and withdraw all recognition from the Independent. On November 22, 1943, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions.

Pursuant to notice and at the request of the respondent, a hearing was held before the Board at Washington, D. C., on January 13, 1944, for the purpose of oral argument. The respondent and the Union appeared and participated in the argument. The Independent did not appear.

The Board has considered the exceptions to the Intermediate Report and the brief filed and, insofar as the exceptions are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Engineering and Research Corporation, a Maryland corporation, is engaged at its plant at Riverdale, Maryland, in the manufacture, production, sale, and distribution of subassembly and aircraft parts. The respondent annually purchases aircraft parts, equipment and allied parts valued at more than \$1,000,000, of which approximately 80 percent is received from points outside the State of Maryland. The respondent annually sells finished products valued at more than \$5,000,000, of which approximately 95 percent is shipped to destinations outside the State of Maryland. The respondent employs approximately 2,000 employees.

II. THE ORGANIZATIONS INVOLVED

United Automobile, Aircraft and Agricultural Implement Workers is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the respondent.

Aircraft Workers Council is an unaffiliated labor organization, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

Interference, restraint, and coercion; domination and support of the Independent

There was no substantial union activity in the respondent's plant until the middle of May 1943, when several of the respondent's employees met with a representative of the Union and formulated plans for organizing the respondent's employees. On May 19 and 21, 1943,

the Union publicly opened its campaign by distributing union literature and membership applications in front of the respondent's plant. Several employees, including Arthur Rappaport, one of the leading proponents of the Union, participated in the activity on May 21, before the beginning of his shift. Later during the same day, after Rappaport had reported for work, John Bittenbender, a supervisory employee for whose conduct the respondent is admittedly responsible, charged Rappaport with violating company rule 8 by soliciting union members in the plant,¹ and also warned Rappaport not to engage in union activity in the plant. At about the same time, the respondent's head guard learned that a group of employees were going to hold a discussion about the Union in the rest room during a rest period and instructed Guard Mosely to break up the discussion. Pursuant to the instructions, Mosely disbanded employees engaged in discussion concerning union affairs in the rest room during their rest period.

Shortly after the Union began its campaign among the respondent's employees, the Independent came into existence. On May 24 and 25, 1943, the Independent conducted an open and widespread campaign in the plant during working hours. During these 2 days, some 30 employees circulated throughout the respondent's plant and solicited the employees to sign petitions designating the Independent as bargaining agent. As a result of intensive mass solicitation in the plant of this character, 1,064 of the approximate 1,800 employees then employed by the respondent signed such Independent petitions. The Independent then began to perfect its organization and conducted elections for departmental representatives on the production floor during working hours. The record shows that leadmen and instructors actively supported and participated in the Independent's campaign. During working hours, instructors and leadmen assisted in circulating these petitions and actually conducted some of the elections. Thereafter, Leadman Basile was elected secretary of the Independent.

The respondent contends that it is not responsible for the activities of its leadmen and instructors on behalf of the Independent. The record shows that the respondent now employs about 2,000 employees on 3 shifts. The plant has 3 general production divisions, which are in turn subdivided into 27 operating departments. The supervisory hierarchy consists of 5 superintendents, in charge of the 3 general divisions; 25 foremen and a few supervisors in charge of the operating departments; and 45 instructors and an undisclosed number of leadmen, all of whom work under foremen or supervisors. In general, leadmen and instructors assist the foremen in the operation of their respective departments. Under the direction of the foremen,

¹ Rule 8 reads as follows: Unauthorized work. You should not do work of a personal nature, either for yourself or for others without an order.

leadmen and instructors supervise, instruct, and assign work to groups of employees ranging in number from 5 to 20 persons. President Wells characterized leadmen as "working foremen," and Supervisor Bittenbender testified that the leadmen under him "see to it that the work goes on" when he is out of the department.² Like foremen, the time of leadmen and instructors is charged to non-production. Superintendent Stout's testimony, that he instructed foremen to inform leadmen that they were not to engage in union activity, further indicates that the leadmen have a management status comparable to that of foremen. The record also shows that leadmen and instructors were responsible for the work of the men under them. Instructor Baggett testified that it was part of his duty to report on the aptitude of employees under him, and that from time to time he had recommended raises for employees. He further testified that he had reported 2 employees as inefficient; both of them were discharged. Leadmen Basile and Mazza also testified that it was part of their duty to report unsatisfactory work by employees under them. We are convinced, and we find, as did the Trial Examiner, that leadmen and instructors have power to effectively recommend changes in the status of production employees working under them, that they exercise such power, and that the production employees had just cause to believe that leadmen and instructors were representatives of management. Under the circumstances, we further find that leadmen and instructors are supervisory employees and representatives of management and that that respondent is responsible for their union activity.

T. H. Huber and H. L. Van Horn were also elected officers of the Independent. Huber is one of two assistant purchasing agents employed by the respondent; he purchases materials requisitioned by the planning department in substantial amounts. Huber is a salaried employee and occupies an office directly in front of that of the respondent's treasurer. Van Horn is employed in the respondent's accounting department as "supervisor of accounts." The record shows that the "close connections" between Huber and Van Horn, respectively, and other officials of the respondent was the subject of discussion in the plant. Van Horn stated at a meeting of the Independent that "talk was going around the plant that he was in cahoots with Mr. Wells," the respondent's president. Huber testified that he knows "all the officials of the Company and usually when somebody sneezes around there [he] gets wind of it." On May 31, 1943, Van Horn and Huber tendered resignations as officers of the Independent "because of their close connections" with management. Their resignations were

² So far as the record discloses, leadmen and instructors have substantially the same functions and responsibilities. Leadmen are paid generally 10 cents an hour more than a first class mechanic; the record does not clearly show the rate paid instructors

not then accepted by the Independent; later, however, Van Horn effectively resigned his post as vice president of the Independent. So far as appears, Huber has continued as treasurer of the Independent. We are persuaded by the record and we find, as did the Trial Examiner, that Huber and Van Horn are closely associated and identified with management and that it reasonably appeared to the other employees that they were in fact representatives of management. We accordingly attribute responsibility for their activity on behalf of the Independent to the respondent.

It is clear, and we find, that the participation of leadmen, instructors, and other employees identified with management, in the formation and administration of the Independent constitutes domination and support of a labor organization, within the meaning of Section 8 (2) of the Act.³ Moreover, the respondent gave the Independent additional support and assistance by allowing the Independent virtually unrestricted and widespread use of company time and property for organizing purposes. The mass circulation of Independent petitions and the holding of elections during working hours in the plant, which unquestionably was known to the respondent, clearly indicated to the employees that the Independent bore the respondent's stamp of approval. In our opinion, the prestige thus acquired by the Independent materially contributed to the success of its campaign.

The respondent contends, however, that it sought to prevent the Independent from using company time and property in its campaign. The record shows that a few of the some 30 employees who engaged in such activity on behalf of the Independent were told on isolated occasions by several supervisory employees to stop soliciting in the plant, but these admonitions were not brought to the attention of the employees generally, and were not made effective. In short, the respondent's efforts in this connection were not commensurate with the scope and nature of the Independent's use of company facilities and failed to dissipate the natural impression of the employees that the Independent's campaign had the respondent's approval.

So far as the record shows, the most extensive utilization of company facilities by the Independent occurred in the sheet metal department where employees were individually solicited at their work benches, a table was set up to facilitate the signing of petitions, and two elections were conducted. According to Supervisor Bittenbender, who was in charge of the sheet metal department and who admittedly saw Independent activity in his department, he told three named employees on one occasion to stop soliciting for the Independent during working hours, but he did not indicate that such conduct was violative of the respondent's regulations; and later, upon learning that

³ See for example, *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 518.

the same employees still were engaging in such activity, he merely again told them to stop, without taking any disciplinary action or threatening to do so. In our opinion Bittenbender's admonitions were merely idle gestures not designed effectively to restrain the activity of these employees. In fact such Independent activity thereafter continued with the knowledge and acquiescence of the respondent. In contrast to these mild reproaches given to the adherents of the Independent for their misconduct, Bittenbender made it clear to Rappaport, one of the leading proponents of the Union, that solicitation by him in the plant was a serious offense for which he could be disciplined under rule 8. In addition, the respondent's head guard gave Guard Mosley express instructions to break up an employee discussion of the Union in the rest room, but, so far as appears, no such instruction was given with respect to the activities of the Independent in the plant, although such activities were more widespread and intense than those on behalf of the Union.

We find, as did the Trial Examiner, that the respondent, by the foregoing acts and conduct, dominated and interfered with the formation and administration of the Independent, and contributed support to it, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The Trial Examiner, in his Intermediate Report, made other findings of interference, restraint, and coercion based upon the testimony of Board witnesses Rappaport, Pearlstein, and Goss. The respondent questions the credibility of these witnesses on the ground that the record shows that they made false statements at the time they signed a petition for the Independent. We need not consider the credibility of these witnesses, since we do not rest our findings, conclusions, and order herein on their testimony.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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 close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the respondent has engaged in and is engaging in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that the respondent dominated and interfered with the formation and administration of the Independent and contributed support to it. In order to effectuate the policies of the Act and to free employees of the respondent from such domination and interference, and the effects thereof, which constitute a continuing obstacle to the exercise by the employees of the rights guaranteed them by the Act and render the Independent incapable of serving the employees as a genuine bargaining representative, we shall order the respondent to withdraw all recognition from the Independent as the representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, wages, rates of pay, hours of employment, and other conditions of employment, and to completely disestablish it as such representative.

Upon the basis of the above findings of fact and upon the entire record in these proceedings, the Board makes the following:

CONCLUSIONS OF LAW

1. United Automobile, Aircraft and Agricultural Implement Workers, affiliated with the Congress of Industrial Organizations, and Aircraft Workers Council are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of the Aircraft Workers Council, and contributing support to it, 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 in 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 aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) 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 herein orders that the respondent, Engineering & Research Corporation, Riverdale, Maryland, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Aircraft Workers Council, or with the formation or administration of any other labor organization of its employees, and from contributing

support to Aircraft Workers Council or to any other labor organization of its employees;

(b) Recognizing Aircraft Workers Council as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right 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 or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Withdraw all recognition from Aircraft Workers Council, as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Aircraft Workers Council as such representative;

(b) Post immediately in conspicuous places throughout its plant at Riverdale, Maryland, and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

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