

In the Matter of THE SANDY HILL IRON & BRASS WORKS¹ and INTERNATIONAL ASSOCIATION OF MACHINISTS, A. F. OF L.

Case No. 2-C-5071.—Decided February 24, 1944

DECISION

AND

ORDER

On December 29, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices affecting commerce, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. Thereafter the respondent filed exceptions to the Intermediate Report and other parts of the record, and a supporting brief. The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Pursuant to notice, a hearing for the purpose of oral argument was held before the Board at Washington, D. C., on February 1, 1944, at which the respondent and the I. A. M. were represented by counsel. The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations made by the Trial Examiner, with the following addition:

The respondent conceded that Billetdoux, Burns, and Whan were discharged by Juckett, the respondent's president, upon their informing him that they wished to present certain demands on behalf of all the employees and that the employees wished to form a union. The respondent contended, however, that there is no evidence that the discharges were in violation of the Act, although its counsel admitted at the oral argument before the Board that there was no evidence of any other reason for the discharges. We agree with the Trial Examiner that the action of the three discharged employees in conferring

¹ At the opening of the hearing counsel for the Board moved to amend the title of the case as it appears on all formal documents by substituting "The Sandy Hill Iron & Brass Works" for "Sandy Hill Iron & Brass Works." The motion was granted by the Trial Examiner without objection.

with Juckett on behalf of all the employes constituted concerted activity for their mutual aid and protection, within the meaning of Section 7 of the Act. Upon the basis of the entire record, we find that the participation of these three employees in such concerted activity was the motivating cause of their discharge and that, consequently, the respondent's action in discharging them not only violated Section 8 (1) of the Act, but also discouraged membership in a labor organization in violation of Section 8 (3) of the Act. Section 2 (5) of the Act defines the term "labor organization" to include "*any organization of any kind, or any agency or employee representation committee . . . in which employees participate and which exists for the purpose . . . of dealing with employers concerning grievances, labor disputes, wages, . . . or conditions of work*" (emphasis added). The report of the Senate Committee which considered the Act explains that the definition of "labor organization" was phrased "very broadly in order that the independence of action guaranteed by Section 7 of the bill, and protected by Section 8, shall extend to *all* organizations of employees that deal with employers" (emphasis added).² Here, the employees banded together and, through the three above-named employees as their spokesmen, presented to the respondent certain demands relating to their wages and conditions of employment. In view of Section 2 (5) and its broad purpose, it is clear, and we find, that when the employees informally presented a concerted demand concerning their terms and conditions of employment, they were acting as a "labor organization" within the meaning of the Act.³ Accordingly, we find, as did the Trial Examiner, that by the discharge of Billetdoux, Burns, and Whan, the respondent discriminated in regard to their hire and tenure of employment, thereby discouraging membership in a labor organization. We further find that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. Moreover, whether the discharge of the three named employees be regarded as a violation of Section 8 (1) or of Section 8 (3) of the Act, we find that it is necessary to order their reinstatement with back pay as hereinafter provided, in order to effectuate the policies of the Act.⁴

² Senate Report 573, 74th Congress, 1st Session, page 7.

³ *N. L. R. B. v. Tovrea Packing Company*, 111 F. (2d) 626 (C. C. A. 9), cert. denied, 311 U. S. 668. In *N. L. R. B. v. Central Steel Tube Company*, 13 L. R. R. 584 (C. C. A. 8, Dec. 27, 1943), enforcing 48 N. L. R. B. 604, the Court sustained the Board's 8 (1) and (3) finding as to an employee discharged for "attempting to initiate concerted action" to secure a wage increase.

⁴ *Fort Wayne Corrugated Paper Company v. N. L. R. B.*, 111 F. (2d) 869 (C. C. A. 7); *Mooresville Cotton Mills v. N. L. R. B.*, 110 F. (2d) 179 (C. C. A. 4); *Matter of Ever Ready Label Corporation*, 54 N. L. R. B. 551.

ORDER

Upon the basis of the foregoing findings of fact and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Sandy Hill Iron & Brass Works, Hudson Falls, New York, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in any labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to the hire or tenure of employment or any term or condition of employment of its employees;

(b) 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 purposes 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) Offer Edward Burns immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges;

(b) Make whole Edward Burns for any loss of pay he has suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(c) Make whole George Billetdoux for any loss of pay he has suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to September 20, 1943, less his net earnings during such period;

(d) Make whole Virgil Whan for any loss of pay he has suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of his discharge to December 2, 1943, less his net earnings during such period;

(e) Post immediately in conspicuous places in and around its plant in Hudson Falls, New York, and maintain for a period of at least 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) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), (c), and (d) of this Order; and (3) that the respondent's employees are free to become and remain members of any labor organization, and that the respondent will not discriminate against any employee because of his membership or activity in any labor organization or because he has engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection;

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

INTERMEDIATE REPORT

Mr. John J. Cunio, for the Board.

Mr. Walter C. Ross, of Springfield, Mass., for the respondent.

Mr. William H. Bradt, of Albany, N. Y. and *Mr. Stephen M. Estey*, of Syracuse, N. Y. for the Union.

STATEMENT OF THE CASE

Upon an amended charge duly filed on October 25, 1943, by International Association of Machinists, A. F. of L., herein called I. A. M., the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region (New York, New York), issued its complaint dated November 15, 1943, against The Sandy Hill Iron & Brass Works, Hudson Falls, New York, 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) 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, accompanied by notice of hearing thereon, were duly served upon the respondent and I. A. M.

In respect to the unfair labor practices, the complaint, as amended during the hearing, alleged in substance: (1) that on or about November 6, 1942, the respondent discharged George Billetdoux, Edward Burns and Virgil Whan because they joined or assisted I. A. M. and/or the Independent¹ or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection; (2) that from about November 6, 1942, the respondent has disparaged and expressed disapproval of I. A. M. and/or the Independent; interrogated its employees concerning their union affiliations; urged, persuaded or warned its employees to refrain from assisting, joining or remaining members of I. A. M. and/or the Independent; threatened them with discharge or other reprisals if they joined or assisted I. A. M. and/or the Independent; kept under observation the activities of I. A. M. and/or the Independent or the concerted activities of its employees for the purpose of self organization or improvement of working conditions, for the purpose of discouraging membership in, or assistance to I. A. M. and/or the Independent; and (3) that the respondent, by the foregoing acts, violated Sections 8 (1) and (3) of the Act.

¹ The "Independent" refers to the "Iron & Brass Employees of Hudson Falls New York" an unaffiliated labor organization, the formation of which was attempted in the respondent's plant, but which was never consummated.

The respondent, by its answer verified on November 19, 1943, and as amended during the hearing, admitted certain allegations of the complaint in respect to its corporate existence and business, but denied all material averments relating to the unfair labor practices. By way of affirmative defense, the respondent averred in its answer that if Billetdoux, Burns and Whan were discharged it was due to their own "misconduct and incompetence."

Pursuant to notice, a hearing was held on December 2, 3 and 4, 1943, at Glens Falls, New York, before the undersigned, W. P. Webb, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and I. A. M. by 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.

At the beginning of the hearing, counsel for the Board submitted a written motion to amend paragraph 10 of the complaint, also oral motions to change a date in paragraph 7 of the complaint and to change "City of Hudson Falls" to "Village of Hudson Falls," in paragraph 2 of the complaint. These motions were granted by the undersigned without objection. A motion by counsel for the respondent to amend the respondent's answer to conform to the amended complaint, was granted by the undersigned without objection.

Motion by counsel for the respondent, at the opening of the hearing, to adjourn the hearing until February 1, 1944, was denied by the undersigned. At the conclusion of the Board's case, a motion by Board's counsel to conform the pleadings to the proof in respect to names and dates and other minor matters was granted by the undersigned without objection. Motion by counsel for the respondent, at the end of the Board's case, to dismiss the complaint in its entirety was denied by the undersigned. At the conclusion of the hearing counsel for the Board and the respondent argued orally, on the record, before the undersigned. On December 20, 1943, the respondent's counsel filed a brief with the undersigned.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, The Sandy Hill Iron and Brass Works, is a New York corporation, having its principal office and place of business at Hudson Falls, New York, where it is engaged in the manufacture, sale and distribution of paper-mill machinery, deck machinery and automatic towing winches. The respondent is presently engaged in the manufacture of war material. In the operation of its business, the respondent purchases raw materials consisting of gray iron castings, steel castings, alloy steel castings, steel plates and steel shafting. During the fiscal year ending in March 1943, the respondent purchased such raw materials, valued in excess of \$250,000, of which approximately 90 percent originated outside the State of New York. During the same period the respondent manufactured and produced finished products valued in excess of \$500,000, of which approximately 90 percent was sold and delivered to points outside the State of New York. The respondent admits, for the purpose of this proceeding, that it is engaged in commerce within the meaning of the Act.²

² The findings in respect to the respondent's business are based upon a stipulation entered into by counsel for the Board and the respondent.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint and coercion; the discriminatory discharges*

1. Events leading up to the discharges

Prior to the summer of 1942, there had been no union or union activity among the respondent's employees in the plant.³ In August 1942, there was considerable discussion among unskilled employees in the plant regarding wages and other working conditions, and dissatisfaction was manifested. At that time George Billetdoux was employed by the respondent as a laborer and fire inspector. His duties took him to all parts of the plant. During lunch periods he frequently talked with various employees in regard to the low wages and what should be done to secure an increase. Billetdoux told them that the only way to "remedy that condition" was to organize. He further told them that he intended to secure the signatures of all those who desired to organize. According to Billetdoux, the employees "kept discussing it all the while and the boys seemed to be getting hot."⁴

On one occasion during August 1942, having been instructed by Enos Pratt, superintendent of the machine shop, to go to the plant parking lot and have some motor cars moved, Billetdoux asked Ernest Waters, day foreman in the machine shop, for a piece of paper. Waters said, according to Billetdoux's testimony, "What do you want paper for?" Billetdoux replied, "I have to go to the parking lot and get the numbers of the cars in the parking lot." Waters then said, "You won't need any paper if you keep going around talking union to the men. You will go over the hill talking to yourself." Waters made a general denial of ever having talked about unions with Billetdoux. While testifying, Waters was asked specifically, "Did you ever tell Billetdoux anything about going over the hill if he did not keep away from the Union?" Waters' answer was "I never spoke a word about unions or anything to Billetdoux." The undersigned was not favorably impressed with Waters as a witness and does not accept his general denial of Billetdoux's testimony as true. In view of this fact and the entire record in the case, the undersigned credits the testimony of Billetdoux and finds that Waters made the statements substantially as testified to by Billetdoux.

About the middle of October, 1942, Billetdoux decided to canvass the employees in order to ascertain if they would be willing to form a union in the plant. After discussing the idea with employees Edward Burns, Virgil Whan and others, Billetdoux requested Burns to draw up a document, with the proper heading for this purpose, to be circulated among the employees for their signatures. This document will be hereinafter referred to as the petition. Burns prepared a paper with the following caption:

We the Under-sign agree to join the local Union now being form of the Iron & Brass Employee of Hudson Falls, New York. [sic]

Assisted by employee J. (Sharkey) Dineen, Billetdoux circulated the petition among the employees, and by November 2 they had secured 162 signatures.

³ There is evidence that some of the foundry employees had belonged to a union at one time

⁴ These findings are based upon the undented and credible testimony of Billetdoux.

Billetdoux and Burns were the first to sign it. Later it was signed by employees Whan, Dineen, and others. In soliciting signatures for the petition, Billetdoux told the employees that when a sufficient number of signatures had been secured they would contact Frank A. Juckett, the respondent's president, and see if an organization could be formed. The employees who signed the petition told Billetdoux that he could select a committee to represent them at the interview with President Juckett. Billetdoux selected employees Edward Burns, Virgil Whan, Dineen and himself to represent the employees as their bargaining committee.

During the lunch period on November 6, 1942, this committee went to President Juckett's office. Burns acted as spokesman. Burns told Juckett that they were representing a large group of employees in the plant, and that they had a paper signed by them; that on behalf of these employees they wanted to talk to him in regard to bargaining for higher wages and better working conditions; and that the employees were not satisfied with their present wages. Juckett told them that the policy of the respondent was that an employee should see his foreman and tell him that he wanted an increase, and if the foreman thought he deserved it, he would refer it to higher authority for consideration. Burns told Juckett that he had never asked a foreman for a raise, and that he was not there to see Juckett for personal or individual reasons, but he was there on behalf of the employees who wanted to "organize a union." Juckett at once jumped up and said "I am going to lay off twenty-five men and you four are the first to go . . ." "The interview is over. Now get out." "Get out of here."⁶ The committeemen then left Juckett's office and went back to their jobs. Within a half hour after that meeting, all four of these employees were discharged.

Soon after the discharges, Billetdoux communicated with Fred P. Coonley, representative of I. A. M. Coonley came to Hudson Falls on November 9, 1942, and met with Billetdoux and Whan. The discharges of Billetdoux, Burns, Whan and Dineen, were discussed and Billetdoux gave the above-described petition to Coonley. Immediately after the meeting, Coonley and Whan went to the plant and interviewed President Juckett. In respect to the meeting with Juckett, Coonley's undisputed testimony is as follows:

I made my business known to Mr. Juckett that I was the representative of the International Association of Machinists representing a majority of their employees by virtue of the signatures we have obtained from the workers; that I was in there in the interest of the reinstatement of Mr. Whan, Mr. Billetdoux and Mr. Dineen and Mr. Burns and I advised him they were discharged in violation of the National Labor Relations Act for union and organizing activities.

Juckett told Coonley that the discharged four employees had come to him and requested recognition, but he had refused to recognize them as representatives of the employees. He also told Coonley that these employees had no right to join the Union as they were only common laborers. He refused to reinstate the four above-named employees. On the following day, however, Dineen was reinstated, and made whole for lost pay. Dineen was not a complainant in these proceedings. Billetdoux was reinstated September 20, 1943, but was not made whole for lost wages. Neither Burns nor Whan have been reinstated. Burns desires reinstatement; Whan does not.

⁶ These findings are based upon the undenied and credible testimony of Burns, Billetdoux and Whan. Dineen did not testify. Juckett testified at the hearing, but he was not questioned in regard to this meeting.

2. Conclusions as to the discriminatory discharges

George Billetdoux was first employed by the respondent in June 1941. At that time, employees were not required to execute application forms for employment.⁶ In 1938, Billetdoux pleaded guilty to a charge of second degree arson at Hudson Falls, and was sentenced to prison for a term of 1 to 2 years. This fact was well known to the respondent at the time Billetdoux was hired. He had then completed his parole period. After about 6 months, Billetdoux was assigned to cleaning up the yard and looking after the fire protection facilities. He continued in this work until he was discharged on November 6, 1942. On April 23, 1942, he executed the required application for employment, the details of his conviction were included in this document. When his application for employment was executed, as required by the War Department, no objection was raised by the War Department or any other government agency to his continuing as an employee of the respondent, although the respondent was then engaged in the manufacture of war material. He was never laid off and there were no complaints about his work.

Within a few minutes after the above described meeting with Juckett, Billetdoux was given his pay by Superintendent Pratt who told him that Juckett was laying him off by orders from the Navy.⁷ Billetdoux was immediately given a release by the respondent which stated "To whom it may concern: This is to certify that George T. Billetdoux has been released from our employ. Signed S. L. Foster, Production Manager." Billetdoux secured a job in Schenectady, New York, which is about 55 miles from Hudson Falls, where Billetdoux lived. Billetdoux continued in this employment until he was reinstated by the respondent on September 20, 1943.

Edward Burns was employed by the respondent in July 1942, as a laborer. He continued in this work until his discharge on November 6, 1942. After the meeting with Juckett, he returned to work but was soon told by Foreman Richards to go to the office and get his pay. Burns proceeded to the office and got his pay, and also a release similar to the one given to Billetdoux. On November 10, Burns went to work in Schenectady, New York. He now has to travel approximately 110 miles a day, to and from Schenectady.

Virgil Whan was employed by the respondent in March 1942. For the first few days, he checked in-coming material, and then he was assigned to the storeroom to receive and deliver stock material. He began work for the respondent at 50 cents an hour, which was increased to 53 cents in July and 60 cents in September 1942.⁸ Whan was active in the discussions among the employees in regard to higher wages and better working conditions in the Fall of 1942. He signed the petition in respect to the formation of a union, and was one of the committee that met with Juckett. After the meeting with Juckett, Whan went back to work, and about one half an hour later, Superintendent Pratt handed him his check and told him he was through. A few days thereafter he secured a local job as truck driver. Whan testified that he did not desire reinstatement by the respondent, because he had a better job.

⁶ In April 1942, at the request of the United States Army, all employees then working in the plant and all new employees engaged after that date, were required to fill out written applications for employment.

⁷ Billetdoux testified that Pratt told him that he was being laid off by order of the Navy. Pratt testified as a respondent's witness, but was asked no questions in reference to Billetdoux's discharge.

⁸ The first increase was a general increase of 3 cents to all employees. The second raise of 7 cents was an individual increase to Whan only.

The respondent averred in its answer that "If George Billetdoux, Edward Burns, and Virgil Whan were discharged, as alleged in the complaint, paragraph 6, the same was justifiable and due to their misconduct and incompetence." The respondent offered no evidence whatsoever in support of this contention. It produced no evidence to support the statement made by Pratt to the employee that he was being laid off upon order from the Navy. Nor did it offer any evidence in respect to the discharges. The service records of Burns and Whan, introduced into evidence by the Board, contained the notation "Discharged November 6, 1942, work for which he was hired having been completed."⁹ Accountant Liedike testified that he placed the notation on Whan's service record from a memorandum received from the personnel department. Liedike did not explain how the notation got on Burns' service record. The record does not show that either Burns or Whan had been hired for any specific time or particular work. In the absence of any evidence by the respondent that these notations reflect the true reasons why Burns and Whan were discharged, the undersigned finds no merit in them.

According to Liedike, during the period from November 6 to December 31, 1943, the respondent hired 112 employees, exclusive of office employees. Of those hired, 106 were new employees. During the same period 55 employees were released for the following reasons: 22 quit; 19 due to closing down the foundry;¹⁰ 6 inducted into the armed services; 1 on account of illness; and 7 discharged. The 7 discharged include Billetdoux, Burns, Whan and Dineen. The respondent did not carry out the threat of President Juckett, made to the committee on November 6, 1942, that he was going to lay off 25 employees, but it promptly executed that part of Juckett's threat that the 4 committeemen would be the first to go. They were discharged within a half hour after the threat had been made. The respondent introduced no evidence in explanation or justification of the discharges of these committeemen.

In summary, the undersigned concludes and finds that the respondent discharged George Billetdoux, Edward Burns and Virgil Whan because they assisted in the formation of a labor organization and engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection; thereby discouraging membership in a labor organization, and that by such acts, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B Interference, restraint and coercion following the above described discharges

On November 24, 1942, William H. Bradt, another I. A. M. Grand Lodge representative, took over the organizational activities of I. A. M. in the plant. Bradt formed an organizing committee among the respondent's employees and a number of meetings were held at Hudson Falls. At the time of the hearing no I. A. M. local had as yet been set up for the respondent's employees.

According to his undenied and credible testimony, employee Leon Benard distributed application cards and solicited membership in I. A. M. both during and after working hours. On one occasion early in November, while at work, he was told by Foreman Waters that he should not pass out I. A. M. cards to the employees. There is no evidence in the record that this was contrary to the respondent's rules. Waters admitted that there had been some talk around the plant about I. A. M. organizing and that his attention had been called to an

⁹ The service record of employee Dineen contained the same notation, with the additional notation "Re-employed November 10, 1942."

¹⁰ Six of these employees were afterwards reemployed.

article in a local newspaper concerning it. He did not deny having said this to Benard.

Machinists Benjamin F. Donovan assisted I. A. M. in its organizational campaign by distributing I. A. M. cards and soliciting membership. He kept a supply of these cards in the tool box of his brother, who was also a machinist in the plant. On one occasion in November or December 1942, Foreman Waters approached and began talking to him. During the conversation, Donovan, in a spirit of fun, asked Waters if he wished to sign an I. A. M. application card. Waters replied that if I. A. M. succeeded in getting into the plant the hours would be reduced to 40 a week and the employees who joined I. A. M. would be the first to be laid off. Waters also talked about the money I. A. M. would get out of the employees.¹¹

Employee George Donovan, brother of Benjamin F. Donovan, also solicited membership in I. A. M. among the employees. He kept the signed application cards in his tool box¹² until they could be delivered to an I. A. M. representative. According to Donovan's testimony, on one occasion in December 1942, while Foreman Waters and several employees were standing at his machine, some one made a remark about the Union. Waters then spoke up and said, among other things, that it was a waste of money to join a union and that those who joined would be the first to be laid off. Waters made a general denial that he had ever had a conversation with Donovan about unions or organizing a union. He made no specific denial of having made the above statement to the employees gathered at Donovan's machine. For reasons already expressed the undersigned does not credit this general denial of Waters, and finds that he made the statement substantially as testified to by Donovan. According to Donovan, on another occasion Waters came to his machine and accused him of having I. A. M. membership cards in his tool box. Donovan had been previously informed that someone had reported to Waters that he kept I. A. M. cards in his tool box, and therefore, just a few minutes before Waters accused him, had taken the cards out of his box. He gave Waters the key to the box and Waters unlocked it; but found no cards. Waters returned the key to Donovan with the remark "I know there was union slips in there." In respect to this incident, Waters testified that in December 1942, they were having trouble with some frames they were then making and that Donovan called him over to his machine to see what the trouble was with the one he was making; that he asked Donovan for a scale and Donovan said it was in his tool box; that when he pulled open the drawer of the tool box there was "some kind of a pad there." Waters denied that Donovan gave him the key to the box or that he unlocked the box. The undersigned does not accept this denial of Waters and finds that the incident occurred substantially as testified to by Donovan.

On October 21, 1943, a representative of the Regional Office in New York City, wrote Billetdoux with reference to arranging a meeting with him and also with Burns and Whan. Billetdoux was also asked in this letter to advise the writer the date he joined I. A. M. Billetdoux promptly showed the letter to Phillip J. Reilly, the respondent's treasurer, whom Billetdoux had known for 35 years. He asked Reilly what he should do about it. Reilly replied "You ought to wash your hands of the whole darn business. It is a lot of nonsense. You are back here. I will typewrite a letter and you can copy it and send it back." Reilly then asked

¹¹ Waters denied having said to Donovan that if the union came in the hours would be reduced to 40 or that the union members would be laid off. As previously stated, the undersigned was not favorably impressed with the testimony of Waters and does not consider him a credible witness. His denial is not accepted as true.

¹² This tool box was the personal property of the employee and could be used for any purpose he saw fit. It was located at the foot of his machine.

him if he were ever a member of I. A. M. Billetdoux answered in the negative. Reilly then gave Billetdoux a typewritten letter reading as follows:

NATIONAL LABOR RELATIONS BOARD,
120 Wall Street, New York, N. Y.

DEAR SIRs:

Your letter asking questions has been received. I am now working for The Sandy Hill Iron & Brass Works, and I have a good job doing the work I like. After I left the Brass Works I hired out with another company in town, and finally quit. I went to work in Schenectady, General Electric, leaving there about two months ago. The Brass Works gave me a good job at good wages, so I am satisfied. I was never a member of International Association of Machinists.

Billetdoux made a copy of this letter in his own handwriting, as instructed by Reilly, and mailed it to the Regional Office. In connection with this letter, Reilly testified as follows:

I might say in connection with this that I have been really his guide, because for the last twenty or twenty-five years I have written many letters for George Billetdoux, invariably to get him out of some difficulties. * * * he has been easily misled all his life and he got into a very serious difficulty. He was incarcerated for, I think about a year and a half and through my efforts he was permitted to return to work.

The undersigned concludes and finds that by the above-described conduct and statements of the respondent's supervisory employees, Frank A. Juckett, Phillip J. Reilly and Ernest Waters, the respondent 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

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 have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that the respondent cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondent discharged Edward Burns, George Billetdoux, and Virgil Whan and thereafter refused to reinstate them, except Billetdoux, for the reason that they assisted in the formation of a labor organization, and engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection. It will therefore be recommended that the respondent offer Edward Burns, immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges. Inasmuch as George Billetdoux was reinstated by the respondent on September 20, 1943, to a position substantially equivalent to the position he held prior to his discharge, and inasmuch as Virgil Whan, on December 2, 1943, disclaimed any desire to be reinstated, the undersigned will not recommend that Billetdoux and Whan be offered reinstatement.

It will be further recommended that the respondent make whole Edward Burns, George Billetdoux, and Virgil Whan for any loss of pay they may have suffered by reason of the respondent's discrimination against them. Since George Billetdoux has already been reinstated by the respondent and Virgil Whan has disclaimed any interest he may have had in reinstatement, the undersigned will recommend that the respondent make whole Edward Burns, George Billetdoux, and Virgil Whan in the following manner: (1) by payment to Edward Burns of a sum of money equal to that which he normally would have earned as wages from the date of his discharge to the date of his offer of reinstatement, less his net earnings¹³ during that period; (2) by payment to George Billetdoux of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to September 20, 1943, the date on which he was reinstated, less his net earnings during that period; and (3) by payment to Virgil Whan of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to December 2, 1943, the date on which he testified at the hearing that as of that time he no longer desired reinstatement, less his net earnings during that period.¹⁴

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

CONCLUSIONS OF LAW

1. International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. 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.

3. By discriminating in regard to the hire and tenure of employment of Edward Burns, George Billetdoux, and Virgil Whan, thereby discouraging membership in a labor organization, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) 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.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, The Sandy Hill Iron & Brass Works, Hudson Falls, New York, and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in any labor organization, by discharging, laying off, or refusing to reinstate any of its employees, or in any other manner

¹³ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.* 311 U. S. 7.

¹⁴ *Matter of Borg-Warner Corporation (Warner Division)* and *Cleo Badders, Albert Burns, Walter Lobby and Dewey Ellis*, 44 N. L. R. B. 105.

discriminating in regard to the hire and tenure of employment or any term or condition of employment of its employees.

(b) 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 purposes 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 undersigned finds will effectuate the policies of the Act.

(a) Offer to Edward Burns immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges.

(b) Make whole Edward Burns, George Billefdoux and Virgil Whan for any loss of pay they may have suffered by reason of the respondent's discrimination against them by payment to each of them of a sum of money in the manner set forth in the Section entitled "The Remedy."

(c) Post immediately in conspicuous places throughout the respondent's plant at Hudson Falls, New York, and maintain for a period of at least 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 recommended to cease and desist in paragraph 1 (a) and (b) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of these recommendations; and (3) that the respondent's employees are free to become and remain members of any labor organization they wish to join, and that it will not discriminate against any employee because of membership in, or activity on behalf of, any labor organization;

(d) Notify the Regional Director for the Second Region within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C. an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same, shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

W. P. WEBB,
Trial Examiner.

Dated December 29, 1943