

In the Matter of THE LOCOMOTIVE FINISHED MATERIAL COMPANY *and*
DISTRICT 50, UNITED MINE WORKERS OF AMERICA

Case No. 17-C-1124.—Decided May 25, 1944.

Mr. Clarence D. Musser and Mr. Elmer L. Hunt, for the Board.
Mr. R. A. Brown, Jr., of St. Joseph, Mo., for the respondent.
Mr. Neil Beam, of Kansas City, Mo., for the Union.
Mr. Frederic B. Parkes, 2nd, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon an amended charge duly filed by District 50, United Mine Workers of America, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Seventeenth Region (Kansas City, Missouri), issued its complaint on March 31, 1944, against The Locomotive Finished Material Company, Atchison, Kansas, 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, together with notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that the respondent discriminatorily discharged, on specified dates, William Ralph Clem and Hugo Siebenmorgan, and thereafter refused to reinstate them, because they had joined or assisted the Union and had engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection; (2) that, on or about November 1, 1943, and thereafter, the respondent threatened its employees with loss of earnings or with discharge if they continued their union membership and activities; interrogated its employees concerning their union inclination and the affairs of the Union; made statements to its employees in derogation of the Union, its officers,

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and members; and sought to have its employees except Machine Shop Employees Association of Atchison, Kansas, herein called the Association,¹ by crediting the Association with the accomplishment, through its efforts, of beneficial changes in working conditions; and (3), that, by the said activities, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On April 6 and 8, 1944, respectively, the respondent filed a motion for continuance of hearing and a motion to strike certain allegations of the complaint. The motion for continuance of hearing was denied by the Regional Director on April 6, 1944; the motion to strike was denied by the Trial Examiner on April 8, 1944. On April 8, 1944, the respondent filed its answer to all portions of the complaint, with the exception of paragraph VIII and portions of other paragraphs related thereto, which alleged violations of Section 8 (1) of the Act. In its answer the respondent admitted the allegations of the complaint as to the nature of its business but denied that it had discriminatorily discharged and refused to reinstate William Ralph Clem and Hugo Siebenmorgan.²

Pursuant to notice, a hearing was held from April 19 to 22, 1944, inclusive, at Atchison, Kansas, before R. N. Denham, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the commencement of the hearing, the Trial Examiner granted in part, and denied in part, the respondent's motion to make the complaint more definite and certain. During the course of the hearing, the Trial Examiner made numerous rulings on other motions and objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner made during the course of the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On April 22, 1944, following the conclusion of the Board's case, the respondent, the Union, and counsel for the Board entered into a stipulation agreeing upon a statement of facts, supplemental to the record theretofore made, to serve as the basis for our Decision and Order

¹The Association was found to be company dominated within the meaning of Section 8 (2) of the Act and was ordered disestablished in a Decision and Order issued by the Board on September 29, 1943. See *Matter of The Locomotive Finished Material Company*, 52 N. L. R. B. 922.

²Thereafter, on April 20, 1944, the respondent filed its Supplemental Answer in which it denied the remaining allegations of unfair labor practices contained in the complaint, which had not been denied in its original answer.

herein and expressly waiving further hearing or other procedure before the Board. The stipulation provides as follows:

It is hereby stipulated and agreed by and between The Locomotive Finished Material Company, its officers, agents, successors and assigns, District 50, United Mine Workers of America, and Elmer L. Hunt, Associate Attorney, National Labor Relations Board, Seventeenth Region, as follows:

I

1. On charges and amended charges duly filed by District 50, United Mine Workers of America, the National Labor Relations Board, through Hugh E. Sperry, Regional Director, Seventeenth Region, agent of the National Labor Relations Board, acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, approved July 5, 1935, and acting pursuant to its rules and regulations, Series 3, Article IV, Section 1, issued its complaint and notice of hearing on March 31, 1944, against respondent herein.

2. (a) Respondent hereby acknowledges service of copy of aforesaid complaint and notice of hearing.

(b) Respondent entered its appearance by its attorney, R. A. Brown, Jr., and testimony was taken and heard by R. N. Denham, Trial Examiner of the National Labor Relations Board, at a hearing conducted in the District Courthouse in Atchison, Kans.

(c) Respondent withdraws its answer heretofore filed as to paragraph 8 of said complaint and expressly waives its right to file answer to said paragraph 8 of said complaint and other pleadings, waives its right to further hearing on the complaint and notice of hearing, or other procedure before the Board to which it may be entitled under the National Labor Relations Act or the rules and regulations of the Board, and expressly stipulates that the charges, amended charges, complaint, notice of hearing, and this stipulation, and the transcript of evidence thus far taken, together with such exhibits as have been admitted into evidence, shall constitute the record in this matter.

(d) Respondent expressly consents to the issuance by the National Labor Relations Board of a decision and order based upon this stipulation and the record above as hereinafter set out.

II

1. The Locomotive Finished Material Company is and has been at all times a Kansas corporation, organized and existing by virtue of the laws of the State of Kansas, and is admitted, qualified, and

engaged in transacting business in the State of Kansas. Its principal place of business is at Atchison, Kans., and in addition, it owns, operates, and directs a plant at St. Joseph, Mo.

The respondent is now and has been continuously engaged in the manufacture and sale of parts and replacements for railroad locomotives and the manufacture and sale of supplies for the prosecution of the war and supplies essential to the war effort of the United States Government.

For the year 1943 the respondent purchased raw materials, partly processed articles, machine parts and equipment, of a value in excess of \$1,000,000, and manufactured and processed these materials into finished articles and equipment amounting to a value of in excess of \$5,000,000. Approximately 90 percent of the raw materials, articles and equipment used in the manufacture, fashioning and processing of its products was procured from points and places without the State of Kansas, and it caused the same to be transported in interstate commerce through States other than the State of Kansas to its place of business in Atchison, Kans., and it caused approximately 80 percent of the products it manufactured, fashioned, processed or assembled in its plant at Atchison, Kans., to be sold, distributed, shipped, and transported in interstate commerce from its plant in Atchison, Kans., into and through the States of the United States other than the State of Kansas.

2. The respondent further agrees that the operations of the respondent have a close, intimate and substantial relation to trade, traffic, and commerce among the several States, and that the company has engaged in interstate commerce within the meaning of Section 2 (6) and (7) of the National Labor Relations Board. (Sic).

III

1. District 50, United Mine Workers of America is a labor organization within the meaning of Section 2 (5) of the Act.

IV

It is hereby further stipulated that the record as above described is and may be accepted by the Board as a statement of facts with respect to the unfair labor practices of the respondent and that from them the National Labor Relations Board may enter its finding and conclusion that the respondent has engaged in unfair labor practices within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act.

V

It is further stipulated that that portion of the complaint referring to the alleged discriminatory discharges of William Ralph Clem and Hugo Siebenmorgan shall be dismissed with prejudice. * * *

On May 2, 1944, the Board, acting pursuant to Article II, Section 36 (a) of National Labor Relations Board Rules and Regulations—Series 3, ordered that the proceeding be transferred to and continued before the Board. The above stipulation is hereby approved and made part of the record in the case.

Upon the above stipulation and the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Locomotive Finished Material Company, a Kansas corporation, is engaged in the manufacture and sale of parts and replacements for railroad locomotives. Its principal place of business is at Atchison, Kansas. In addition, the respondent owns and operates a plant at St. Joseph, Missouri, which is not involved in the instant proceeding. During 1943, the respondent purchased raw materials, partly processed articles, machine parts, and equipment valued in excess of \$1,000,000, of which amount approximately 90 percent was procured from points outside the State of Kansas. During the same period, the respondent manufactured and sold finished articles and equipment valued in excess of \$5,000,000 of which amount approximately 80 percent was sold and shipped to points outside the State of Kansas.

The respondent admits that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

District 50, United Mine Workers of America is a labor organization, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

About September 1, 1943, the Union commenced its organizational campaign among the respondent's employees. By December 15, 1943, more than 300 employees had joined the Union.

³ The stipulation provided at this point for the entering by the Board of an order against the respondent. Our Order, hereinafter set forth, conforms in terms to the stipulation of the parties.

Employee Charles High testified that about October 23, 1943, C. A. Trapp, foreman of the pattern shop in which High was then employed, asked High if he had attended a union meeting and had affiliated with the Union. According to High, Trapp further stated, "You can answer me if you want to, and if you don't, you don't have to . . . What have you got to say?" High refused to answer. Louis F. Hays and Frank Hundley, Jr., who were both employed in the pattern shop under the supervision of Foreman Trapp, also testified to similar colloquies with Trapp. According to Hays' testimony, he was informed by Trapp in October or November 1943, that there had been rumors in the plant that Hays and other employees had joined the Union, adding, "Of course, it's your business, now. You don't have to tell me, or you can. It's up to you." Hundley testified that "before Christmas sometime . . . Trapp came to me and said there was a rumor going around the shop that I had went up to the union meeting and signed up with them. He said I didn't have to say either way, it was my business. And I told him I hadn't signed up."* Although in each of these three conversations Trapp stated that an answer to his inquiry was not necessary and although shortly before, or at the time of, the commencement of the Union's organizational activities at the respondent's plant, Trapp had informed the employees that the respondent's policy with regard to the organization of its employees was one of absolute neutrality, we are of the opinion that Trapp's interrogation concerning the union membership of these employees, who were his subordinates, constitutes unlawful interference with the free exercise of the right to self-organization guaranteed by the Act.

Coy Lindsey, an employee, testified that about November 11, 1943, the day following a union meeting which he had attended, Foreman Kenneth Wallace, who at that time was Lindsey's supervisor, asked him how many employees had attended the union meeting the previous evening. According to Lindsey, Wallace further said, "The union's no good . . . Sometime you might come in kind of late some morning, and you are subject to finding a little flaw in your work, and you are subject to getting fired . . . I wouldn't work for the union." Lindsey testified that about December 3, 1943, he had another conversation with Wallace concerning the union, in which Wallace said, "Coy, I understand you was at the meeting last night. You oughtn't to be working for that union. It won't do you no good. It ain't no good for you colored boys . . . I understand they've made you a steward." Lindsey further testified that, following the December conversation, Wallace had inquired "once or twice" as to the size of the

*The testimony with regard to the respondent's alleged interference, restraint, and coercion is uncontroverted and we find it to be credible.

attendance at the union meetings, and the progress of the union. Lindsey's testimony was not denied.

William Ralph Clem, employed by the respondent from February to December 16, 1943, testified that on December 5, 1943, his immediate foreman, Bishop, asked him to step outside the shop and said, "I hear you are agitating for the union . . . Let me tell you something. You have a wife and two children—a family. If you want a job after the war is over, you had better take care of yourself and quit looking out for the union, because all the union is after is your money and they don't give a damn about you. When they've got your money and the war is over, you'll be gone just like that." Clem's testimony was not denied.

Trapp, Wallace, and Bishop were foremen with authority to recommend the discharge of their subordinates. We accordingly find that the above statements and activities of Trapp, Wallace, and Bishop are attributable to the respondent. We conclude and find that by the statements and activities of Foremen Trapp, Wallace, and Bishop, as set forth above, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. *The alleged discriminatory discharges*

In accordance with the stipulation of the parties, we find that the respondent has not discriminated with regard to the hire and tenure of employment of William Ralph Clem and Hugo Siebenmorgan.

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 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

We have found that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. We shall, therefore, order the respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Since we have found that the respondent did not discriminate with respect to the hire and tenure of employment of William Ralph Clem

and Hugo Siebenmorgan, we shall order that the complaint be dismissed as to them.

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. District 50, United Mine Workers of America 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. The aforesaid unfair labor practices are unfair labor practices effecting commerce within the meaning of Section 2 (6) and (7) of the Act.

4. The respondent has not discriminated with respect to the hire and tenure of employment of William Ralph Clem and Hugo Siebenmorgan.

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, The Locomotive Finished Material Company, Atchison, Kansas, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of their 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) Post immediately in conspicuous places throughout its plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees in the form set forth in Appendix "A" attached hereto and made a part hereof;

(b) Notify the Regional Director for the Seventeenth Region within twenty (20) days from the date of this Order what steps the respondent has taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed with prejudice insofar as it alleges that the respondent has discriminated in regard to the hire and tenure of employment of William Ralph Clem and Hugo Siebermorgan.

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

Pursuant to an agreement in adjustment of National Labor Relations Board Case No. 17-C-1124 and in order to effectuate the policies of the National Labor Relations Act, all our employees are hereby notified that:

We will not discourage membership in the District 50, United Mine Workers of America, or any other labor organization of our employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment;

We will not in any other manner interfere with, restrain, or coerce our employees in the exercise of their 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.

 (Employer)
 By -----
 (Representative)

 (Title)

Dated -----