In the Matter of NORTH AMERICAN AVIATION, INC. *and* UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (C. I. O.)

Case No. 16-C-935.—Decided May 26, 1944

Mr. Bliss Daffan, for the Board.

Mr. Paul Carrington and *Mr. J. H. Baylis*, of Dallas, Tex., for the respondent.

Mr. George Clifton Edwards, of Dallas, Tex., and *Mr. Joseph L. Sayen*, of Grand Prairie, Tex., for the Union.

Mr. George J. Hadjinoff, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a charge duly filed by United Automobile, Aircraft and Agricultural Implement Workers of America (C. I. O.), herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint, dated September 17, 1943, against North American Aviation, Inc., Grand Prairie, Texas, 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 the Union.

In respect to the unfair labor practices, the complaint alleged in substance that the respondent: (1) on or about March 13, 1943, discharged, and thereafter failed to reinstate, Floris Schick because he had joined or assisted the Union or had engaged in other concerted activities for the purpose of collective bargaining; and (2) since about November 1, 1941, has interfered with, restrained, and coerced its employees by the promulgation and enforcement of certain plant rules, and by soliciting and receiving reports from employees regarding violations of said rules insofar as they applied to union activity so

that employees engaging in such activity could be discriminatorily disciplined. In its answer, the respondent denied that it had engaged in any unfair labor practices.

Pursuant to notice, a hearing was held at Fort Worth, Texas, on October 18 and 19, and at Dallas, Texas, on October 20 and 21, 1943, before James R. Hemingway, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented 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 close of the hearing, counsel for the Board and the respondent moved that their pleadings be conformed to the proof as to formal matters. These motions were granted by the Trial Examiner. During the course of the hearing, the Trial Examiner made rulings on other motions and on objections to the admission 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. After the hearing, the respondent filed a brief with the Trial Examiner.

On November 26, 1943, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties, in which he found that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act, and recommended that the respondent cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. Oral argument was held before the Board at Washington, D. C., on February 1, 1944.

The Board has considered the exceptions and briefs filed by the respondent and finds the exceptions to be without merit insofar as they are inconsistent with the findings, conclusions, and order set forth below.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

North American Aviation, Inc., is a Delaware corporation which operates and maintains plants in various parts of the United States. The present proceeding involves only the respondent's plant located in Dallas County, Texas, adjacent to the city of Grand Prairie, hereinafter called the plant, where it is engaged in the manufacture of airplanes and related products. The respondent annually purchases, for use in the plant, raw materials valued at more than $100,000, over

20 percent of which is shipped from points outside the State of Texas. The respondent annually manufactures at the plant products valued at more than $100,000, over 20 percent of which is shipped to points outside the State of Texas. The respondent admits that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

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

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

Since approximately November 1941, the respondent has distributed to its new employees at the plant a handbook which contains, among other things, a list of rules to be observed by the employees. Violation of any of these rules is declared therein to be "sufficient grounds for disciplinary action ranging from a warning to immediate discharge, depending upon the seriousness of the offense in the judgment of management." Among the activities proscribed by such rules are the following:

21. Distributing literature, written or printed matter of any description on Company premises [hereinafter referred to as Rule 21].

38. Agitating on Company time or property [hereinafter referred to as Rule 38].

20. Vending, soliciting or collecting contributions for any purpose whatsoever on the premises at any time [hereinafter referred to as Rule 20].

Counsel for the Board contends that these three rules are *per se* violative of the Act in that they improperly restrict the rights of the employees to engage in union activities at the plant on their own time, and, further, that such rules have been discriminatorily enforced by the respondent. These three rules will be considered *seriatim.*

Rule 21. One of the reasons assigned by the respondent for the promulgation of Rule 21 is its desire to maintain plant cleanliness. We accordingly see no objection to that rule. As stated by us in *Matter of Tabin-Picker & Co.*,[1] which involved an identical prohibition:

> In the interest of keeping the plant clean and orderly it is not unreasonable for an employer to prohibit the distribution of literature on plant premises at all times.

[1] 50 N. L. R B 928.

Nor, upon the entire record, do we find that Rule 21 has been enforced discriminatorily.

Rule 38. No evidence was adduced at the hearing on the reasons which prompted the promulgation of this rule, and we cannot say that, on its face, it constituted a restraint on legitimate union activity during the employees' own time. Nor is there any showing that this rule has been enforced discriminatorily.

Rule 20. While we are not convinced that this rule has been enforced discriminatorily, it is clear, and we find, contrary to the conclusion of the Trial Examiner, that it is *per se* violative of the Act. Insofar as it prohibits "soliciting or collecting contributions for any purpose whatsoever" on company property during the employees' own time, it is unduly restrictive.[2] As we have held in several recent cases,[3] in the absence of special circumstances, rules which have the effect of prohibiting union activities on company property during the employees' own time, constitute unreasonable impediments to employees' rights to self-organization. No special circumstances which would justify Rule 20 in this regard have been shown to exist herein.

In defense of Rule 20, the respondent contends that it is virtually impossible to formulate a rule which would contain a precise definition of proscribed and permissible activities. We perceive no such difficulty. A simple exception to the present rule which would permit union actiivties at the plant of the character enumerated in the rule on the employees' own time, would meet the requirements of the Act. Nor do we find merit in the respondent's contention that Rule 20 must be construed in a manner consistent with the Act and therefore is not to be interpreted as applicable to union activities during the employees' own time. Such a contention is predicated on the unwarranted assumption that employees are likely to read curative exceptions into a rule which explicitly and unambiguously proscribes "soliciting or collecting contributions for any purpose whatsoever . . . on the premises at anytime" and assume the risk of disciplinary action, in-

[2] Counsel for the Board contended that Rule 20 was violative of the Act because, among other things, it prohibited union activities at the plant during rest periods. On March 24, 1943, the respondent and the Union, as exclusive representative of the employees at the plant, entered into a contract which provided, among other things, that "there shall be no solicitation of employees for union membership or dues on company time." Prior thereto, the Union was aware of the respondent's position that rest periods constituted company time because paid for by the respondent Consequently, when the Union assented to the afore-mentioned provision, without reservation, it in effect agreed that there was to be no solicitation for union membership or dues during rest periods In view of this circumstance, and so long as the contractual provision in question remains in effect, the respondent's application of Rule 20 to rest periods is not to be regarded as improper. We find it unnecessary at this time to determine whether, absent such provision, Rule 20, as applied to rest periods, would be violative of the Act.

[3] *Matter of Peyton Packing Company, Inc.*, 49 N. L. R B 828; *Matter of Scullin Steel Company*, 49 N. L R. B 405; *Matter of Carter Carburetor Corporation*, 48 N. L R. B 354, enf'd, 140 F. (2d) 714 (C. C. A. 8); *Matter of Republic Aviation Corporation*, 51 N. L. R. B. 1186, enf'd, 142 F. (2d) 193 (C. C. A. 2), 14 L. R. R. 140.

cluding "immediate discharge," for violation of the rule. The fallacy of the respondent's contention is made even more apparent by the fact that the respondent itself, in a notice to employees dated July 7, 1942,[4] construed Rule 20 as prohibiting the solicitation of union memberships on company property during the employees' own time. The respondent urges that the construction of Rule 20 contained in that notice was in effect altered by the provision in the contract entered into between it and the Union on March 24, 1943, that "there shall be no solicitation of employees for union membership or dues on company time." However, nothing is said in the contract concerning the right of the employees to engage in such activities *on company property* on their own time, and, while such right may be said to be implicitly declared in the afore-mentioned provision, we do not believe that a matter so vital to the employees' exercise of their right to self-organization should be left open to construction. Moreover, it does not appear that the respondent's practice of distributing its handbook containing Rule 20 to new employees was discontinued subsequent to the execution of the afore-mentioned contract. In the absence of a clear and unambiguous rescission by the respondent of its rule prohibiting union activities at the plant on the employees' own time, that rule, so far as the employees are concerned, must be regarded as still in effect.[5] Nor are we persuaded by the contention of the respondent that the employees understood that they were permitted to engage in union activities at the plant on their own time because some of them in fact did so and were not reprimanded or disciplined. We cannot say that the coercive effect of Rule 20 upon the employees as a whole was removed by the fact that some of them were permitted to violate the rule.

Upon the entire record, we find that Rule 20 has constituted an unreasonable impediment to the self-organization of the respondent's employees, and that by the promulgation of such rule 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 discharge of Floris Schick*

The complaint alleges that on or about March 13, 1943, Schick was discriminatorily discharged. The respondent urges that he was discharged because of repeated violations of its rules.

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[4] This notice, which was posted on the respondent's bulletin boards, provided:

> And under these rules, it certainly is a violation of the rules of the Company for any employee to go over the plant to solicit membership in any union or to make such solicitation on the property of the Company. * * * *When employees are not at work and are not on company property,* they have full freedom to act with reference to any of these matters as they see fit [italics supplied].

[5] Even if we were to assume, which we do not, that Rule 20 was changed by the contractual provision in question, it is clear that the rule, prior to the alleged change, was violative of the Act.

The record discloses that on January 5, 1942, Schick was given a "written warning notice" [6] for violation of the respondent's rule prohibiting the assignment of wages. Schick did not deny having violated that rule. Around July 1942, Schick became active at the plant on behalf of the Union, which had commenced its organizational drive in the early part of that year. In the latter part of August 1942, the respondent, having reason to believe that Schick was distributing union literature during working hours, issued a "written warning notice" to Schick for violation of Rule 21.[7] According to the uncontradicted testimony of Foreman Curtis and General Foreman Drake, which we credit, complaints had been made by foremen at various times concerning Schick's failure to "stay on the job" assigned to him and his habit of "wandering around" the plant during his working hours, in violation of the plant rules, and after repeated warnings, the respondent, in the middle of February 1943, found it necessary to transfer Schick from work in which he alone was engaged, to work in a unit consisting of a number of employees. The next violation by Schick of the respondent's rules occurred on March 8, 1943, when he went to the washroom for the purpose of washing his hands, without first obtaining permission. When Foreman Curtis handed him a warning notice for this violation, Schick remarked to Curtis that the respondent "could keep writing tickets but he was going to wash his hands when they got dirty." This remark was noted on the warning notice. The following day, Schick again washed his hands without first obtaining permission. When Curtis indicated his displeasure with Schick's conduct in this respect, Schick assured him that "he would watch it from then on."

According to the testimony of General Foreman Drake, which we credit, prior to March 13, 1943, reports were received by him that Schick was violating the rule against smoking; that on one occasion Schick admitted to him that he smoked in the toilets, in violation of the plant rules, and that Schick was warned by Drake against such future violations. Schick himself admitted that he had on occasions smoked in the toilets, but that he "never did get caught at it" and that he "outsmarted them there." On March 13, 1943, Assistant Foreman Claude H. Dill and Leadman George H. Rudd reported to Drake that Schick on that day smoked in a prohibited area, and, further, that on the same occasion he collected union dues during the rest period, in violation of Rule 20, which Schick knew had been

[6] When an employee violates a rule, he is warned verbally or is given a "written warning notice." Copies of the latter appear in the employees' personnel file. Whether an employee is warned verbally or is given a written warning notice depends essentially upon the nature of the violation and the reaction thereto of the employee's superior.

[7] While it is not entirely clear that Schick had in fact been guilty of such a violation, we are convinced that the respondent had sufficient reason to believe that he was.

interpreted by the respondent as applicable to rest periods.[8] Drake thereupon filled out a "Termination Request" form in which he stated that he wished to discharge Schick for "consistent violation of shop rules." Drake then sought Assistant Superintendent Stolz's approval. Stolz, who had been apprised of Schick's past violations of the respondent's rules, as well as his conduct on March 13, endorsed Drake's decision, whereupon Schick was discharged.[9]

The Trial Examiner found that the respondent's application of Rule 20 to Schick's collection of union dues during the rest period was violative of the Act, and that since the discharge was motivated in part by this incident, it was in violation of Section 8 (3). We do not agree with the Trial Examiner's conclusion that the discharge was discriminatory. We do not find it necessary to determine the validity of the respondent's application of Rule 20 to Schick's union activity during the rest period,[10] for we are convinced that Schick would have been discharged even if he had not engaged in such activity. In this connection, we credit the testimony of Drake that because of Schick's violation on March 13, 1943, of the rule against smoking, as well as his past violations of that and other rules, he would have been discharged on March 13 even if he had not collected union dues during the rest period. That the discharge of Schick was not discriminatory is further evidenced by the fact that between February and October 1943, 36 other employees were discharged for repeated violations of the respondent's rules, including the no-smoking rule, among others, in the case of 5 of the employees.

Upon the entire record, we find that Schick's discharge was not discriminatory. We shall, accordingly, dismiss the complaint insofar as it alleges that the discharge was violative of Section 8 (3) 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 close, intimate, and substan-

[8] While Schick admitted that he collected some union dues on the occasion in question, he denied smoking in a prohibited area However, in view of the testimony of Dill and Rudd, who were present on that occasion, that Schick did smoke in the restricted zone, as well as Schick's admission that he had violated the no-smoking rule on prior occasions, we do not credit Schick's denial.

[9] Shortly before the discharge, Schick was given a written warning notice for collecting dues during the rest period No such notice was issued for his violation of the no-smoking rule on that same occasion. However, the respondent followed no fixed policy with respect to the giving of written warning notices for violation of the no-smoking rule, and Schick himself had on a prior occasion received merely a verbal warning for violation of that rule.

[10] It will be noted that Schick's union activity during the rest period, which was regarded by the respondent as company time because paid for by it, antedated the execution of the contract between the respondent and the Union which prohibited the "solicitation of employees for union membership or dues on company time."

tial 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 unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action which we find necessary to effectuate the policies of the Act.

We have found that Rule 20 promulgated by the respondent was violative of the Act insofar as it prohibited union activities at the plant of the character therein enumerated on the employees' own time. We shall accordingly order the respondent to rescind the rule to that extent and to post notices of such rescission at the plant.

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. United Automobile, Aircraft and Agricultural Implement Workers of America (C. I. O.) 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 affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

4. The respondent has not discriminated in regard to the hire or tenure of employment of Floris Schick, within the meaning of Section 8 (3) of the Act.

ORDER

Upon the basis of the foregoing 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, North American Aviation, Inc., Grand Prairie, Texas, 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 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) Rescind immediately Rule 20 insofar as it prohibits union activities at the plant of the character therein enumerated on the employees' own time, and immediately post notices of such rescission in conspicuous places at its plant located in Dallas County, Texas, adjacent to the city of Grand Prairie;

(b) Post immediately in conspicuous places at its plant located in Dallas County, Texas, adjacent to the city of Grand Prairie, 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 paragraph 1 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 Sixteenth Region in writing within ten (10) 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 insofar as it alleges that the respondent discriminated in regard to the hire or tenure of employment of Floris Schick.

MR. GERARD D. REILLY, concurring:

I concur in the result of the foregoing Decision.