

In the Matter of BLUE MOUNTAIN MILLS and LUMBER AND SAWMILL
WORKERS UNION LOCAL 2545, A. F. L.

Case No. 19-C-1259.—Decided June 26, 1944

DECISION

AND

ORDER

On April 19, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed. Thereafter the Union filed exceptions to the Intermediate Report and a brief in support of the exceptions. No request for oral argument before the Board was made by any of the parties, and none was held. The Board has considered the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the Union's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon 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 complaint against Blue Mountain Mills, Dayville, Oregon, be, and it hereby is, dismissed.

INTERMEDIATE REPORT

Mr. John E. Hedrick, for the Board.

Mr. John T. Casey, of Portland, Ore., for the respondent.

Mr. Doyle Pearson, of Portland, Ore., and *Mr. D. C. Orendorff*, of Prineville, Ore., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed on October 13, 1943, by Lumber and Sawmill Workers Union Local 2545, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Nineteenth Region (Seattle, Washington), issued its 56 N. L. R. B., No. 298.

complaint on February 26, 1944, against Blue Mountain Mills, Dayville, Oregon, 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 and the charge, 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, that the respondent (1) from about July 1943, disparaged and expressed its disapproval of the Union; (2) urged, persuaded, and warned its employees to refrain from assisting, becoming or remaining members of the Union; (3) urged and warned its employees to cast their votes against the Union at an election which the Board conducted on October 5, 1943; and (4) on October 4, 1943, discharged Mark Gleason, and thereafter refused to reinstate him to his former position, because he was a member, and active on behalf of the Union. At the hearing, the respondent filed an answer admitting all the allegations of the complaint pertaining to the existence of the respondent and the nature, character, and extent of the business transacted by it. The answer denied, however, all the allegations of the complaint with reference to the engagement by the respondent in any unfair labor practices.

Pursuant to notice, a hearing was held on March 13 and 14, 1944, at Prineville, Oregon, before Howard Myers, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, the Union by two representatives. All parties participated in the hearing and full opportunity was afforded them to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. Oral argument, in which all parties participated, was heard at the conclusion of the taking of the evidence and is part of the record. The undersigned advised the parties that they might file briefs with the undersigned on or before March 27, 1944. At the request of respondent, the time to file briefs was extended to and including April 3, 1944. A brief has been received from the respondent's counsel.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Blue Mountain Mills is a copartnership composed of Oscar Welch, Harry Welch, Elwood C. Welch, Jeff D. Welch, T. L. Nye, and John Jarvi, and has its principal office and place of business at Dayville, Oregon, where it is engaged in the processing, manufacture, sale, and distribution of lumber and lumber products.¹ During 1943, the respondent produced at its Dayville plant about 8,000,000 board feet of lumber, 75 percent of which was sold and shipped to points outside the State of Oregon. All the logs cut at the respondent's plants, are obtained from points within the State of Oregon.

II. THE ORGANIZATION INVOLVED

Lumber and Sawmill Workers Union Local 2545, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the respondent.

¹ In the early part of 1944, the respondent purchased and since then has been operating a small sawmill at John Day, Oregon, in addition to its operation at Dayville. This proceeding concerns the employees of the Dayville plant only.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The alleged interference, restraint, and coercion; alleged discriminatory discharge of Mark Gleason

Early in June 1943, the Union started to organize the employees of the respondent's Dayville plant. On June 11 a meeting was held at a public hall in Dayville at which about 20 or 25 of the approximately 75 employees signed membership application cards and officers were elected. Mark Gleason was elected president, Calvin Morrissy, vice president and Wayne Fillmore, secretary.

Sometime during the month of June, Jeff D. Welch, one of the partners and general manager of the Dayville plant, called the employees into his office and told them that he just returned from Portland, Oregon, where he had gone to ascertain the truth of the rumor that the "ceiling prices" on certain grades of lumber had been raised and also the rumor that the wages of hourly paid production employees could properly be raised, that he was reliably informed that the ceiling prices were raised on certain grades of lumber and that the respondent may grant a general wage increase to its hourly paid employees of 7½ cents per hour, but the respondent was not financially able to give more than a 5 cents an hour increase. Richard Mascall testified that after the conclusion of the above related meeting, several employees remained and questioned Welch regarding his opinion of unions, that he, Mascall, stated during this discussion, that he "thought the Union could do a lot of good if it were handled right", and that Welch replied "Well it was [the employees] worries, and not" his, for he, Welch, "didn't know of any that were handled right . . . that the first thing we would know some fellow from Portland, or some place else, would be coming in and telling us what to do. . ." Welch admitted that during this talk with these few employees the question of whether the employees should join the Union was discussed and that he said that it was the employees' "business and none of ours" whether or not they joined. He denied however, that he made the other statements which Mascall attributed to him. The undersigned credits Welch's denial. The record does not reveal any anti-union animus on the part of Welch, or any other official of the respondent. The respondent permitted the adherents of the Union to engage in union activities on company time and property with impunity. Moreover, Board's witness, Morrissy, the vice president of the Union, testified that on several occasions he discussed unions and unionism in general with Welch and that Welch never made any statement to him which was derogatory to unions.

On July 2, the Union held an "open" meeting. Welch's daughter, Jane, a production employee of the box factory² attended, according to Gleason, the president of the Union, the discussion at this meeting was confined, more or less, to the new increase in the price of lumber and to whether the employees should not receive more money for their labor, that those attending were permitted to voice their respective opinions, that Jane Welch, at her request, was granted the "floor", and that she said,

My Daddy told me that the increase in the price of lumber doesn't affect him but very little, because that price was given on just three of the upper grades, which he cuts very little of, and he couldn't possibly afford to give an increase in wages. She also said that her Daddy worked hard to build up this organization, and that if we joined the Union and tried to demand this money, that can't be paid, it will just work to tear down the business that he has built up, instead of trying to help him.

² The Dayville plant consists of a sawmill and a box factory.

Mascall testified that he attended the July 2 meeting and that Jane Welch made the following remarks:

Miss Welch asked if she could have the floor for a moment, which was granted, and she explained to us there about [what] her Daddy had told her the night before about the increase in the ceiling price on lumber, but that it was such a small percent on the cuts in that mill on those grades that had been increased that he couldn't afford to raise any higher wages.

By Mr. HEDRICK:³

Q. What else was said?

A. After she got through telling us about that, she went on to say that she hated to see—that her Daddy had worked hard to build up this lumber business, and she hated to see anything like a labor organization come in and tear it down.

Q. What else was said?

A. Oh she enlarged on the price of lumber, and the cuts, etc., but that is the gist of her speech.

Morrissy's version of what was said by Jane Welch at that meeting is substantially in accord with Mascall's version. Board's counsel contended at the hearing that Jane Welch's statements could leave no doubts "in the minds of ordinary people" that her "Daddy doesn't want a union" in the plant. Welch admitted that he discussed the new prices of certain grades of lumber with his daughter; but denied that he ever told her that he was opposed to the unionization of the respondent's employees or had ever authorized her to so inform the employees. The undersigned can not concur in the contention of Board's counsel and finds that Jane Welch was a non-supervisory employee and was not speaking at that meeting on behalf of the respondent. Moreover, Gleason admitted that he considered Jane Welch's statements to be nothing more than the expression of her own personal views.

About a week or 10 days after the above related meeting, according to Gleason's testimony, Welch called him into his office and that Welch opened the conversation by saying, "Mark, I want to talk to you about the Union. I don't want you to think that I am trying to tell you what to do, or anything, but I can't understand how a Union would help you"; that he told Welch that, in his opinion, the Union would be very beneficial because the employees and the respondent would thereby be able to work in "closer cooperation" by means of a grievance committee; and that Welch then, to use Gleason's words, "explained to me that unions always were demanding so many things" I told him, "Yes, they probably will expect more, and probably think that they will get more than they ever do get, but they could work with closer cooperation with the management . . ." [then] he said, "Yes, that is true. You should try to dissuade the boys from joining a union, instead of trying to organize one." Welch denied he made the statements attributed to him by Gleason. The undersigned accepts Welch's denial. Gleason was not an honest and forthright witness. Welch was. In several instances Gleason attempted to conceal the true facts by giving evasive answers to questions propounded to him.

Sometime in July, 1943, Welch increased Gleason's wages from \$250 to \$350 per month. This increase was granted pursuant to an understanding, according to Welch, that Welch had with Gleason with respect to certain additional duties Gleason was to perform. In June 1942, Gleason had been hired as a saw filer at the salary of \$250 per month. At that time, the only saws that Gleason had

³ Board's attorney.

to file were in the sawmill which was then working only one shift. During July and August of that year, the sawmill worked on a two-shift basis, and Gleason was paid \$350 each of those months for filing the saws on both shifts. Sometime in February 1943, the respondent started operating a box factory as an adjunct to its sawmill. Welch then requested Gleason to file the box factory saws as well as those in the sawmill. This Gleason did. In April, the respondent purchased and installed in the sawmill a re-saw. When Welch requested Gleason to file the re-saw along with his other duties, Gleason refused unless he received additional compensation. Welch then agreed to pay Gleason an additional \$100 per month, to begin when all three operations⁴ were in full operation. It was not until July that all three were in full operation, and then Welch told Gleason that his salary, as of July 1, would be \$350 per month. When Gleason received his check on July 25, it did not reflect the promised increase. Gleason testified as follows: "I told the boys at the mill that I was either going to receive [the promised increase in wages] or get me another job." Gleason then went to the sawyer and said that he would not "be here to-morrow, Mr. Moulton; I am going to lay off because I didn't get the [extra] money that [Welch] has been promising me since April." The next day Gleason did not report for work. That evening, Oscar Welch, a member of the partnership, located Gleason in town and gave him the \$100 due. The following day Gleason returned to the plant. On July 29, Welch came to where Gleason was working. Gleason's testimony regarding the conversation that ensued is:

"Mark, I am getting tired of arguing with you about these box factory saws." I said, "Oh, what did you come for, to pay a visit?" He said, "No, I didn't come to visit." He said, "We are going to have to have you file the box factory saws, or get somebody that can do it." I said, "Well, don't argue with me about it, if you are not satisfied with my work, why give me my release." I said, "I don't want you to argue with me any more about the box factory saws, because I am not capable of doing all that work." We argued and talked a little bit there, and that was the last that was ever said about the work. I continued to work then.

By Mr. HEDRICK:

Q. In this conversation, did he make any reply about giving you a release?

A. No—well, he did say that he didn't want to give me a release, but if it was absolutely necessary he would. He asked me, he said, "If you are not satisfied with your work, why don't you quit." I told him that I didn't want to quit, that I was satisfied with my work, with the sawmill and the re-saw, but that I couldn't be satisfied with trying to do the sawmill, the re-saw and the box factory.⁵

The record is clear that the respondent gave Gleason the extra \$100 per month with the understanding that Gleason was to file the box factory saws, as well

⁴ The sawmill, re-saw, and box factory.

⁵ Under cross-examination Gleason testified as follows regarding Welch's understanding why the respondent granted the increase in wages:

Q. Then in July, 1943, you had a conference with Mr. Jeff Welch about the handling of these different departments?

A. Yes.

Q. And at that time you were given \$100 00 a month increase, to bring your basic salary to \$350.00 a month?

A. Yes.

Q. Now then at that time when you received \$100 00 a month increase, was it not understood that you were, for that additional compensation, to file the three departments?

A. He asked me to, but I did not agree to.

as those of the sawmill and the re-saw and that Gleason so understood that arrangement. Gleason, however, continued to refuse to file the box factory saws. Because of his inability to induce Gleason to file the box factory saws, Welch, himself, at least on one occasion, was compelled to do this work.

On the evening of October 3, two Field Examiners of the Board called upon Gleason at his home and there discussed with him the petition for an election which the Union had filed on July 13. During the conference that ensued, Gleason executed a consent election agreement and agreed to have the election held on October 5.

On the following day, October 4, the Field Examiners conferred with Welch. Welch stated that any date the Union selected for the election was acceptable to the respondent, but added, that, in his opinion, the employees who worked in the woods should be included in the unit.⁶

Around mid-afternoon on October 4, Lloyd Urquhart, the respondent's time-keeper and bookkeeper,⁷ saw Gleason at the log pond, where the latter was aiding employee McKenna with some logs, and went over to Gleason and informed Gleason that some of the employees had asked him whether it was necessary for them to join the Union in order to keep their jobs. Gleason replied that was not a fact. According to Gleason, the following between them then ensued:

He (Urquhart) said, "A lot of people have asked me that question." He said, "That seems to be the talk going around the plant." I said, "Well, I knew that has never been said in the local Union." I said, "I never did say it." I said, "I really believe that if anything like that was started, it would have been started by—in the main office, not in the local Union." So he said that he just wanted to ask me several questions about the Union. He said, "I do not know anything about a Union." I said, "I don't know much about it, but I won't tell you anything that I wouldn't want you to know." Well, he said he didn't see that the Union was doing any good there. He said, "The I. W. W. at one time did a little bit of good, that the 'Four L's' had made quite a few accomplishments, cleaning out mining and lumber camps, making them clean up their camps"—things like that he mentioned. I told him that I thought the Lumber and Sawmill Workers Union was better than that, and he said, "Well, what do you want with a union here." I told him, "I thought we could get closer [cooperation] with the management with the Union than without it." He said, well he didn't think so, but he said, "If you are not satisfied with the job, why don't you quit instead of trying to organize a Union." I told him, "I wasn't figuring on quitting, and wasn't going to quit. I had already told Jeff that if he was dissatisfied with my work why to give me a release, but I said, I am not going to quit." He said, "Jeff has got a lot of good points, but of course everybody has got some bad ones." I said, "Yes, I know, Jeff Welch has his share of the bad ones too, along with the worst ones." He explained to me that he didn't think it was fair that just two weeks before that men in the sawmill had just walked off the job and went hunting. He said that he didn't think that was fair, because they didn't contact Mr. Welch. I told him that that wasn't any of the Union's business when they did that, but I said, "I do not think Mr. Welch could kick because the year before the boys all asked Mr. Welch for two days off to go hunting, the last two days of the hunting season. He refused to give them time to go hunting, and then the day after the hunting season

⁶ At the time of the filing of the petition on July 13, the persons who worked in the woods were not employees of the respondent. Sometime subsequent to that date, they did become employees of the respondent.

⁷ The evidence clearly shows that Urquhart is a non-supervisory employee.

closed he shut the mill down for four months, and they couldn't go." I said, "That stuck in the boys' craw, and that is why they did that." So he said, "I do not believe that you ever did tell Jeff about your release." I said, "Yes, I told him that." He said, "If you had of told Jeff that, he would give you a release right now." I said, "Well, I did tell Jeff that."

Urquhart testified to substantially the same effect, except that he said that Gleason also said that the employees lost too much time because the respondent was "haywire" and that Welch was a "two-faced bastard." The undersigned finds that Gleason, in his conversation with Urquhart, requested his release. The undersigned finds that in that conversation, Gleason referred to Welch as a "two-faced bastard" and stated that the respondent was "haywire."

Urquhart also testified that after leaving Gleason, he went to the office where the following conversation between him and Welch took place:

"Jeff, has Mark Gleason ever asked you for a termination?" He looked at me, and he said, "Yes, he has. Why do you ask?" I said, "Well he told me down there that he had asked you for a termination several times, but you wouldn't grant it." He said, "That is correct, but if he wants a termination now I will give it to him, so you make out his termination with time in full."

Welch's version of what was said by him and Urquhart during that conversation is substantially the same as that given by Urquhart. The undersigned credits their version as being substantially in accord with the facts.

Welch also testified that despite the fact that Gleason refused to file the box factory saws, he was anxious to retain his services because saw flers are very difficult to replace,⁸ but when it came to his attention that Gleason considered him "two faced" and that Gleason was telling other employees that he refused to give Gleason a release when Gleason wanted one, he decided, then and there, to release Gleason, and instructed Urquhart to prepare the usual notice of termination and he signed it. Welch further testified that at the conclusion of the shift that day, he told Gleason to come up to the office and there Urquhart handed Gleason his copy of the termination notice and a check for his salary to date, that Gleason then demanded that the respondent pay him for a half month's salary to which, under the Oregon law, a discharged employee is entitled, that he said to Gleason, "I didn't fire you, and your termination slip will show you that I didn't, but I won't argue with you about the pay,"⁹ that he then instructed Urquhart to draw a new check to include Gleason's salary up to and including October 15, and that the new check was then signed by him and handed to Gleason, who then left the plant. Gleason admitted that when he demanded to be paid for a half month's wages, Welch told him that he was not discharged, but was being given a release because he had asked for it on "numerous occasions" and that Welch said that it had been brought to Welch's attention that he had that day again asked for it.

At the hearing, Board's counsel contended that Welch discharged Gleason the day before the election because Welch well knew that by such action the Union would lose the election.¹⁰ This contention is not supported by the record. The credible evidence clearly shows that Gleason requested and accepted his release and that the respondent did not discharge him. There is no credible evidence in

⁸ The evidence shows that even during normal times there is a scarcity of available saw flers.

⁹ The reason given on the termination notice for Gleason's termination is "Asked for release Dissatisfied with Job."

¹⁰ Of the 102 eligible voters only 84 voted. The ballot of one voter was challenged and his vote not counted. It will be recalled that the unit was enlarged to include the 25 or 30 persons then employed in the woods. The Union lost the election by 17 votes.

the record from which an inference can be drawn that Welch, or any of his partners, was averse to having the employees join the Union. The record, on the contrary, shows that the respondent did not interfere with the employees' union activities. The record further shows that an employee's membership in the Union did not in any way affect his tenure of employment, for on September 25, Morrissy, the vice-president of the Union, quit his job and left the plant before the end of his shift because he did not like the foreman under whom he worked. That evening, although the respondent then knew of Morrissy's official position in the Union, one of the partners sought out Morrissy, asked him to return to the plant, and gave him another job which pays a higher salary. Moreover, on October 5, before the election was held, the Board's Field Examiners and Gleason conferred with Welch regarding the possibility of Gleason returning to work. Welch was willing, provided Gleason would file the sawmill saws, the re-saw and the box factory saws. Gleason refused. Gleason thus refused to return under conditions of employment for which he had contracted in July.

The undersigned finds that the evidence does not sustain the allegations of the complaint. The undersigned will accordingly recommend that the complaint be dismissed.

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

CONCLUSIONS OF LAW

1. The operations of the respondent, Blue Mountain Mills, Dayville, Oregon, occur in commerce, within the meaning of Section 2 (6) of the Act.
2. Lumber and Sawmill Workers Union Local 2545, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.
3. The respondent has not engaged in unfair labor practices as alleged in the complaint within the meaning of Section 8 (1) and (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the complaint be dismissed.

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 within ten (10) days from the date of the order transferring the case to the Board.

HOWARD MYERS,
Trial Examiner.

Dated April 19, 1944.