

In the Matter of BRANICK MANUFACTURING COMPANY AND C. E. BRANICK DOING BUSINESS AS BRANICK COMPANY and INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS, LOCAL 824, A. F. OF L.

Cases Nos. 18-C-1025, 18-R-811 and 18-R-824 respectively

DECISION

AND

ORDER

July 13, 1944

Pursuant to a Decision and Direction of Election of the Board,¹ an election was held on February 14, 1944, among the employees of the respondent at Fargo, North Dakota, to determine whether or not International Union, United Automobile Workers, Local 824, A. F. of L., herein called the Union, was the majority representative of the employees for the purposes of collective bargaining. Having lost the election, the Union on February 17, 1944, filed Objections with the Regional Director, alleging that the respondents had engaged in certain unfair labor practices which had affected the outcome of the election. The Regional Director investigated the Objections, reported to the Board that they raised substantial and material issues; and recommended that a hearing be held. On March 24, 1944, the Union filed an amended charge with the Board alleging that the respondents had engaged in unfair labor practices.² On March 9, 1944, the Board issued an Order consolidating the above proceedings and directing that a hearing on the Objections and on the charges of unfair labor practices be held. On May 22, 1944, the Trial Examiner issued his Intermediate Report, finding that the respondents had engaged in and were engaging in unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action as set out in the copy of the Intermediate Report attached hereto. The respondents did not file any exceptions to the Intermediate Report. No request for oral argument before the Board at Washington, D. C., was made by any of the parties.

¹ 54 N. L. R. B. 979

² The original charge was filed by the Union on February 25, 1944.

57 N. L. R. B., No. 39.

The Board has considered the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

Since the record establishes that the respondents engaged in unfair labor practices prior to the election, we find that the election was not an expression of the free will of an uncoerced majority and therefore should be set aside, and we shall so order. We shall not, however, direct a further election until such time as the Regional Director advises us that the effects of the unfair labor practices have been dissipated.

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 respondents, Branick Manufacturing Company and C. E. Branick, doing business as Branick Company, Fargo, North Dakota, and their officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Union, United Automobile Workers, Local 824, A. F. of L., or any other labor organization, 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) Post immediately in conspicuous places throughout their plants at Fargo, North Dakota, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to their employees stating that the respondents will not engage in the conduct from which they are ordered to cease and desist in paragraph 1 of this Order:

- (b) Notify the Regional Director for the Eighteenth Region in writing, within ten (10) days from the date of this Order, what steps the respondents have taken to comply herewith.

AND IT IS FURTHER ORDERED that the election held on February 14, 1944, among the employees of Branick Manufacturing Company, and C. E. Branick, doing business as Branick Company, of Fargo, North Dakota, be, and it hereby is, set aside.

INTERMEDIATE REPORT

Mr. Clarence A. Meter, for the Board.

Mr. Franklin J. Van Osdel, of Fargo, N. Dak., for the respondents.

Mr. W. W. Murrey, of Fargo, N. Dak., for the Union

STATEMENT OF THE CASE

Upon a charge duly filed on March 24, 1944, by International Union, United Automobile Workers, Local 824 (A F of L), herein called the Union, the National Labor Relations Board, herein called the Board by its Regional Director for the Eighteenth Region (Minneapolis, Minnesota), issued its complaint dated March 25, 1944, against Branick Manufacturing Company, herein called the Corporation, and C. E. Branick, doing business as Branick Company herein called Branick, alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, the charge and consolidated notice of hearing thereon were duly served upon the respondents and the Union.¹

With respect to unfair labor practices, the complaint alleged in substance: (1) that from about September 1, 1943, and at various times thereafter to the date of the complaint, the respondents advised, urged, and warned their employees to cease their activities on behalf of the Union; (2) questioned their employees concerning their union activities and affiliation; (3) advised, urged, and warned their employees to refrain from engaging in concerted activity for the purposes of collective bargaining and other mutual aid and protection; (4) advised, urged, and warned their employees to vote against the Union at an election conducted by the National Labor Relations Board on February 14, 1944; (5) made threats that the respondents might cease operations if the Union became the bargaining agent for their employees; (6) made statements derogatory to the Union, its members, and its leaders, and (7) by the aforesaid acts has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

On April 4, 1944, the respondents filed their answer to the complaint denying that they had engaged in the unfair labor practices alleged.

Pursuant to notice a hearing was held in Fargo, North Dakota, on April 6, 1944, before Peter F. Ward, the Trial Examiner duly designated by the Chief

¹ On September 9 and November 23, 1943, the Union filed with the Regional Director for the Eighteenth Region amended petitions alleging that a question had arisen concerning the representation of employees of the respondents, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On November 11, 1943, the Regional Director issued a Notice of Hearing on said petitions, giving notice of hearing thereon to be held on December 6, 1943. Pursuant to such notice a hearing was held at the time and place designated. On January 28, 1944, the Board issued its Decision and Direction of Election. Pursuant thereto, an election was held on February 14, 1944. The "Tally of Ballots" disclosed that a majority of the employees in the appropriate unit had voted against the participating union. On February 17, 1944, the Union filed with the Regional Director, a "Protest of the Election" alleging that the respondents had committed certain acts of interference in connection with the election. On February 18, 1944, the Regional Director, by letter, advised the respondents of the Union's protest of the election and of the fact that an investigation would be handled by a Field Examiner for the Board. Following such investigation the Regional Director issued a Report on Objections dated February 28, 1944, finding in effect that the protest of election raised substantial and material issues with respect to the conduct of the ballot and recommending that the Board direct a hearing on such objections. On or about March 2, 1944, counsel for the respondents filed exceptions to the Report on Objections. Thereafter, on March 9, 1944, the Board ordered a hearing on the "Objections to Election" and further ordered that the representation proceedings and the unfair labor practice proceeding be consolidated.

Trial Examiner. The Board and the respondents were represented by counsel, and the Union was represented by an organizer. All 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 Board's case, the respondents moved for a dismissal of the complaint. The motion was denied. The motion was renewed at the close of the hearing, at which time the undersigned reserved ruling on the motion and now, for reasons set forth below, denies the motion. At the close of the hearing oral argument was had before the undersigned and included in the transcript of proceedings herein.

From 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 RESPONDENTS

The respondent, Branick Manufacturing Company is a North Dakota corporation with its principal office and place of business in Fargo, North Dakota, where it is engaged in the manufacture of tire spreaders for use in the repairing and inspection of tires. During the calendar year 1942, the corporation purchased raw materials consisting principally of steel and gray iron castings, amounting in value to approximately \$45,000, of which in excess of 90 percent was shipped to it from points outside the State of North Dakota. During the same period, the finished products amounted in value to approximately \$145,000, of which approximately 90 percent was shipped to points outside the State of North Dakota. C. E. Branick is president and general manager of the corporation.

C. E. Branick, an individual, doing business as Branick Company, is engaged at Fargo, North Dakota, in the sale of tires and tubes, belting, tire vulcanizing and repair materials, tire accessories, batteries, and used electric motors. He is also engaged in vulcanizing and tire repair service. During the calendar year 1942, Branick purchased raw materials consisting of rubber compounds, cord fabric, and tire and vulcanizing accessories, amounting in value to approximately \$60,000, of which approximately 85 percent was shipped to him from points outside the State of North Dakota. During the same period, sales amounted to approximately \$60,000, of which from 10 to 15 percent was made to customers outside the State of North Dakota. Also for the same period, the value of the vulcanizing and tire repair services rendered by Branick amounted in value to approximately \$60,000, of which from 10 to 15 percent was performed for customers outside the State of North Dakota.²

At the time of the election, above referred to, there were 14 employees in the appropriate unit which embraced employees of both respondents engaged in adjoining plants in Fargo, North Dakota.

II. THE ORGANIZATION INVOLVED

International Union, United Automobile Workers, Local 824, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the respondents.

² The findings found in this section are based upon a stipulation of the parties to the effect that the facts upon which the Board based its findings of the business of the same "Companies" in its Decision and Direction of Election in Cases Nos. 18-R-811 and 18-R-824, issued January 28, 1944, remain substantially the same as they were at the time the Board issued said Decision and Direction of Election.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

The Union began organizational activity among the respondents' employees during July, 1943, and succeeded in securing a substantial number of signed applications for membership. On August 10, 1943, the Union informed Branick that the employees had organized, and requested a meeting with him for the purpose of negotiating for a contract. On or about August 21, 1943, Branick accosted employee Lt.³ Hamm and asked him what he thought about the Union. Hamm replied that he "had not given it very much thought." Branick then asked Hamm if he was with him (Branick) or with the Union, to which Hamm responded that he would be for whichever he figured would do him the most good. During this conversation Branick stated to Hamm that the Unions were, as a rule, no good, in that they always stepped in between the employer and employees and caused trouble. As they parted Branick told Hamm that when he had made up his mind the way he would vote to let him know.⁴ Hamm was discharged on September 11, 1943.

Also during August Branick discussed the Union with employee Rudolph Bener while that latter was at work in the machine shop and asked him what he thought of the Union. Bener replied that it was Branick's own fault that the Union was in the plant because he had "promised an increase in wage and never come through with it." Branick replied that he had tried hard but that the War Labor Board would not permit him to increase wages. He asked Bener how he was going to vote at the union election. Bener replied, "Earl (Branick), I will do the same thing as you would if you was in my place." Branick then stated that he did not blame Bener but added that the Union would not do him any good.⁵

During September, 1943, Branick called employee Carl Schmidt, to his office and asked him what he "thought about the Union." Schmidt stated that he "had not given it much thought." Branick then asked how he would vote and Schmidt replied that he had not made up his mind. On February 12, 1944, 2 days before the election above referred to, Branick talked to Schmidt at the latter's machine, asking him what he thought of "the big election" and telling him how he had started "from scratch" and worked his way up in business. Branick then referred to union leaders, in substance as out-of-town people, and a bunch of roughnecks; he stated that they took no interest in Schmidt or the local community; and that all they wanted was his money. Schmidt countered by stating that business men organized and that he believed the Union would work out at the plant. Branick replied that "it wouldn't work out." Schmidt stated that what he liked about union and seniority rights was that the employees could not be laid off without reason. Branick replied that he would not lay an employee off without "just reason" and advised Schmidt that if he did not like it there, he "could punch the card any time" and get his check.⁶

³ Hamm testified that his christian name was so spelled

⁴ These findings are based upon the credible testimony of Hamm. Branick denied that he asked Hamm how he was going to vote, but admitted that he had asked the employee "how he felt about" the Union and that Hamm had agreed to talk to him about it later.

⁵ These findings are based upon Bener's credible testimony. Branick denied telling Bener that the Union was "no good" and that he had asked any employee how he would vote but admitted the interview and that he had told Bener that in the matter of wages the Union could do no more for the employees than he could.

⁶ These findings are based on Schmidt's credible testimony. Branick admitted questioning Schmidt on the subject, and admitted telling Schmidt that the Union, being outsiders, had no interest in the business, and the other fellows in here.

On February 12 Branick asked employee Henry A. Wigtil to call at his office after working hours, at which time he discussed the election that was to be held the following Monday, and stated, "I hope you won't vote in favor of the Union." Branick then described the manner in which he had started from a small beginning and worked up to his then present place in business. He added, however, that if business would get "too tough, one doesn't feel like going on."⁷

Also on February 12, 1944, George Dingman, the foreman of the vulcanizing department, talked to Ocar C. Johnson, an employee who worked under him, and stated: "I suppose you know there is going to be an election on the Union." When Johnson replied in the affirmative, Dingman stated:

I am not going to tell you how to vote, but I would appreciate it very much if you would vote against it, and I know the "Skipper" would. . . . I would hate to see any outsider come in here and tell us how to run the business⁸

Dingman canvassed all of the vulcanizing plant employees shortly before the election under instructions from Branick, and, according to the foreman's own admission, told about half of them: "we would rather, if you could see fit, to vote favorably for the shop."

Although Branick denied, at the hearing, that he instructed Dingman to "influence" the employees, he admitted telling his foreman: ". . . ask them what you want to. If you think it's possible, see how they feel about" the Union.

Branick is admittedly opposed to having his employees represented by any union. In this connection he testified:

Q (By Mr. Meter) I understand on direct examination that you admitted having conversations with the employees who testified, on or about the times when they testified to that those conversations occurred?

A. Yes.

Q And you admitted that you talked to Mr Schmidt and asked him how he felt about the Union?

A. Right.

Q And you also talked with other employees and asked them how they felt about the Union?

A. Yes, sir.

Q Asked them what they thought the Union would do for them?

A. That is right.

Q What was the purpose of those conversations, Mr. Branick?

A. Well, I was born and raised in North Dakota, out in the west on a ranch. I have never had any union experience. When this thing came on us last summer it kind of dumbfounded me. I have seen a lot of union activity in the East and South and experienced it, and I say it sort of surprised me, and I didn't think that a little organization of our kind, with so few men, would ever consider the need of anything of that sort. In my talking with these fellows I tried my darndest to get something that would sell myself on the idea, to get their opinions, and I asked them questions about it in that respect, to see what their reasoning was.

Q In other words, you testify you felt that with a small establishment like yours, a union was not necessary?

A. No.

⁷ This finding is based upon Wigtil's credible testimony. Branick admitted summoning Wigtil to his office, and that he told the employee that "if the Union came in here it would be a tougher thing to handle . . . The situation is now hard enough, without making it worse."

⁸ These findings are based on Johnson's credible testimony, which, in the main, was corroborated by Dingman.

TRIAL EXAMINER WARD: Read the question and answer.

(Last question and answer read)

A. The Union is not necessary, that is my answer.

Q. (By Mr. Meter) Did you feel that the Union coming in would disrupt the previous good relationship you had had with your employees, was that your point?

A. Yes, that enough outside interference in the plant, others to tell us what to do and how to do it, and I couldn't see for the life of me, when these men could come in there and talk to me any day or any minute they wanted to, or stop me in the shop and talk to me and ask questions, why they wanted some outsider to represent them.

Q. And that is the primary reason why you yourself personally contacted the employees and talked about the Union?

A. Yes, see what I could learn, what their line of reasoning was, why they thought it would be beneficial to them under the circumstances, with the salary freeze, and I still don't understand it. It is still a conundrum to me. I would like to know.

CONCLUSIONS

From the above the undersigned finds that by and through the acts and conduct of Branick: (1) in questioning Hamm concerning the Union; by telling him that unions were, as a rule, no good; by asking him whether he was for the Union or for the respondents; by telling him that when he made up his mind the way he was going to vote to inform Branick; (2) by questioning Bener during August concerning the union; by asking him how he intended to vote, and by telling Bener that the Union would not do him any good; (3) by calling Schmidt to his office during September and questioning him concerning the union, by asking Schmidt on February 12, 1944, what he thought of "the big election" and telling him that union leaders were roughnecks, who took no interest in Schmidt or in the community in which he lived, that all they wanted was Schmidt's money, and that "he could punch the card at any time"; (4) by on February 12, 1944, calling Wigtil to his office after working hours and discussing the election to be held 2 days later and telling him, "I hope you won't vote in favor of the Union"; by advising Wigtil in effect that if the Union won the election the respondents would discontinue their business; (5) by instructing and causing foreman Dingman to interview all employees working under him shortly before the election and to request them to vote against the union and in favor of the "shop"; and by the acts and conduct of Dingman in following said instructions in the manner described above, the respondents have interfered with, restrained, and coerced their 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 respondents set forth in Section III, above, occurring in connection with the operations of the respondents described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that respondents have engaged in certain unfair labor practices, the undersigned will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the above findings of fact and the entire record, the undersigned makes the following:

CONCLUSIONS OF LAW

1. International Union, United Automobile Workers, Local 824, 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 employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are 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 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 respondents, Branick Manufacturing Company and C. E. Branick, doing business as Branick Company, and their officers, agents, successors, and assigns shall:

1. Cease and desist from:

Discouraging membership in International Union, United Automobile Workers, Local 824, affiliated with the American Federation of Labor, by interviewing their employees with reference to their union affiliations and activities; by advising their employees to vote in favor of the respondents and against the Union at any election that may be hereafter held for the purpose of choosing a bargaining representative for their employees or in any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form, join, or assist labor organization, to bargain collectively through representatives of their own choosing, or 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) Post immediately in conspicuous places in and about their Fargo, North Dakota, plants and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to their employees stating: (1) that the respondents will not engage in the conduct from which it is recommended that they cease and desist in paragraph 1 of these recommendations; (2) that they will take the affirmative action set forth in paragraph 2 of these recommendations; and (3) that the respondents' employees are free to become or remain members of International Union, United Automobile Workers, Local 824, affiliated with the American Federation of Labor; and that the respondents will not discriminate against any employee because of membership or activity on behalf of that or any other labor organization.

(b) Notify the Regional Director for the Eighteenth Region in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondents have taken to comply therewith.

It is further recommended that, unless on or before ten (10) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents 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.

PETER F. WARD,
Trial Examiner.

Dated May 22, 1944.