

In the Matter of THE GOODYEAR AIRCRAFT CORPORATION and INTERNATIONAL ASSOCIATION OF MACHINISTS

Case No. 8-C-1597.—Decided July 21, 1944

*Mr. Russell Packard and Mr. William O. Murdock*, for the Board.

*Mr. Walter DeBruin*, of Akron, Ohio, for the respondent.

*Mr. D. C. Brown*, of Akron, Ohio, and *Mr. Carl Huhndorff*, of Washington, D. C., for the I. A. M.

*Mr. Glenn L. Moller*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a charge duly filed on December 9, 1943, by International Association of Machinists, herein called the I. A. M., the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated March 8, 1944, against The Goodyear Aircraft Corporation, 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 notice of hearing thereon were duly served upon the respondent and the I. A. M.

On March 18, 1944, the respondent filed an answer admitting the allegations of the complaint as to the nature of its business, but denying that it had engaged in any unfair labor practice. In its answer the respondent admitted that it had discharged Eileen Blackburn and Lillian Blubaugh, employees named in the complaint, and asserted that they were discharged because of frequent violations, after due warning, of a company rule forbidding the distribution of "literature, pamphlets or printed matter" on company property.

Pursuant to notice, a hearing was held on March 20 and 21, 1944, at Akron, Ohio, before J. J. Fitzpatrick, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent

57 N. L. R. B., No. 91.

were represented by counsel; the I. A. M., by its representative. All parties participated in the hearing and were granted full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. During the course of the hearing, the Trial Examiner made various rulings on motions and on objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial error was committed. The rulings are hereby affirmed. At the conclusion of the hearing, a motion by counsel for the Board to conform the pleadings to the proof with respect to formal matters was granted without objection.

On April 15, 1944, the Trial Examiner issued his Intermediate Report, copies of which were served upon the respondent and the I. A. M., finding 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 Act. The Trial Examiner found that although Blackburn and Blubaugh were discharged for repeated violations of the respondent's so-called "no-distribution" rule, the respondent had applied the rule to Blackburn and Blubaugh in a discriminatory manner, and that the purpose of the discharges was to discourage membership in the I. A. M. The Trial Examiner recommended that the respondent cease and desist from the aforesaid unfair labor practices, and, *inter alia*, offer reinstatement and pay back pay to the discharged employees.

The respondent filed exceptions to the Intermediate Report, together with a supporting brief. On June 13, 1944, the respondent and the I. A. M. participated through counsel in oral argument before the Board in Washington, D. C. The Board has considered the brief and exceptions filed by the respondent, and finds that the exceptions have merit.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The respondent, a Delaware corporation with its principal place of business at Akron, Ohio, is engaged in the manufacture, sale, and distribution of aircraft and aircraft parts. During the calendar year 1943, the respondent purchased duralumin steel tubing and rubber fabric valued in excess of \$5,000,000, of which a substantial amount was delivered to the respondent's plant at Akron, Ohio, from points outside the State of Ohio. During the same period the respondent completed products valued in excess of \$10,000,000, of which a substantial portion was sold and delivered from the Akron plant to points outside the State of Ohio.

## II. THE ORGANIZATION INVOLVED

International Association of Machinists is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

1. *Chronology of events*

The respondent, a subsidiary of The Goodyear Tire and Rubber Company, began business in 1941. Shortly thereafter, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., herein called the C. I. O., commenced organizational activities at the plant and, in January 1942, established itself as the exclusive bargaining representative of the respondent's employees, obtaining at that time a 1-year collective bargaining contract. Successive annual contracts have been executed by the parties since that time, so that, at all times since January 1942, the C. I. O. has acted as the exclusive bargaining representative of the respondent's employees. In October 1943, the I. A. M. began organizational activities at the respondent's plant, and during the month of November became increasingly active in its efforts to win the support of the respondent's employees. On the night of Wednesday, December 1, 1943, Eileen Blackburn and Lillian Blubaugh, members of the I. A. M., during the half-hour period preceding the commencement of their shift, passed out at a clock-card rack in the plant, I. A. M. authorization cards to all employees who would accept them.<sup>1</sup> The following night they stood at a clock-card rack adjoining the department in which one of them worked and again distributed I. A. M. cards.<sup>2</sup> On this occasion Alva L. Jarvis, the shift superintendent, told them that they were violating company rules, and ordered them to cease distributing cards. Blackburn protested that the C. I. O. had been permitted to distribute cards and that, therefore, she and Blubaugh had an equal right to engage in such activity. She also insisted that, independently of the respondent's indulgence with respect to the C. I. O., they had a legal right to distribute cards. Jarvis indicated that he would discuss the matter with the respondent's plant superintendent. The two employees ceased their distribution activities and went to their jobs. The following night, December 3, Blackburn and Blubaugh stationed themselves next to the clock-card racks adjoining one of the depart-

<sup>1</sup> On this occasion the two employees distributed more than 100 cards.

<sup>2</sup> The clock-card racks referred to are located in aisles separating the various production departments. Most of the production departments are not partitioned and are separated from other departments only by the aisles and by railings, benches, and other partial barriers, rather than by wall partitions.

ments and again distributed I. A. M. cards. Jarvis ordered them to cease. They again insisted that they had a right to engage in such activity and stated that they did not intend to cease; whereupon Jarvis sent them home. The following day, Blackburn called at the plant upon L. E. Miller, the plant superintendent, who reiterated the position previously taken by Jarvis. At the request of Blackburn, two I. A. M. committeemen, Foltz and Tudor, were called and participated in the discussion which ensued. Blackburn again insisted that she had a legal right to distribute union cards. Miller then stated that he would discuss the matter with Nelson Ball, the assistant personnel manager, who was out of town and not expected to return until the following week. Saturday was Blackburn's night off. On Sunday, Blackburn and Blubaugh again distributed cards in the plant, this time unmolested.<sup>3</sup> On Monday night they again passed out cards at the clock-card racks and were again sent home. The following day, Tuesday, December 7, the two I. A. M. committeemen met with the respondent's representative to discuss the matter. In the course of the discussion, Ball stated that he could not permit the two employees to continue their distribution activities because such conduct violated company rules and because the C. I. O. was demanding the same privilege. Tudor and Foltz stated that they saw his "point of view"; they agreed to present the matter to the International officer, and to talk to the two employees. Thereafter, on the same day, Foltz advised Miller that the I. A. M. committeemen had talked to the International officer and to Blackburn and Blubaugh; that the International officer had indicated that the International could not and would not attempt to control the distribution activities of the two employees. In talking to Miller, Foltz also admitted that he was unable to control them.<sup>4</sup> The same night, Tuesday, the two employees resumed their distribution activities at the plant and they were again sent home. The following night, Wednesday, December 8, upon their return to the plant, they were discharged. On the next day, December 9, 1943, the I. A. M. filed the charge which gives rise to this proceeding.

## 2. *The alleged discriminatory application of the no-distribution rule*

The respondent has had in effect, since it commenced operations, certain rules of conduct which have long been in force at the plants of its parent company. One of these rules, as set forth above, forbids

<sup>3</sup> Sunday night was Jarvis' night off.

<sup>4</sup> The findings above with respect to the conversations between management and union representatives on December 7 are based upon the testimony of Miller and Ball, whom we credit. Foltz, when questioned about these statements, did not deny them; he admitted some and, as to others, stated that he did not remember. Tudor did not appear as a witness.

"distributing or circulating literature, petitions, written or printed matter," while another forbids "soliciting or collecting contributions." The respondent urges that it has at no time enforced the rule against solicitation, insofar as union activity is concerned, but insists that it has made a reasonable effort to enforce the rule against distribution of literature.<sup>5</sup> So far as appears, the respondent adopted its no-distribution rule in an "effort to keep the premises free of advertising material and political literature which might litter the premises of any company during the periods of election of public officials or balloting upon controversial issues." The I. A. M. contends, and the Trial Examiner found, that the respondent had not enforced its rule against distribution of literature in instances involving distribution of C. I. O. literature, and that the enforcement of the rule against Blackburn and Blubaugh, involving, as it did, distribution of authorization cards on behalf of the I. A. M., was therefore discriminatory and hence a violation of the Act.

The Trial Examiner's finding that the respondent had permitted the C. I. O. to distribute its authorization cards and other printed matter rests upon testimony of several Board witnesses, including Blackburn, an erstwhile C. I. O. member and one of the dischargees, that they had openly, during their free time, and covertly, on company time, solicited members for the C. I. O. in various locations in the plant, and that, in the course of such solicitation, they had distributed authorization cards; upon the fact that pursuant to permission obtained from the respondent as the result of collective bargaining, the C. I. O. had placed its newspaper in boxes or racks in the plant, which the respondent had provided for the distribution of its own regular publication to employees; and upon the fact that sample ballots for C. I. O. elections and cards dealing with a proposal for vacation pay were distributed by the C. I. O. in the plant without interference from the respondent.<sup>6</sup>

The Trial Examiner concluded that, having permitted the use by the C. I. O. of authorization and membership cards in the course of soliciting membership in that labor organization, the respondent could not, without discriminating, forbid the kind of conduct here engaged in by Blackburn and Blubaugh. We do not agree. The record reveals that as long as the I. A. M. used the same organizational tactics as have been used by the C. I. O., the respondent did not inter-

<sup>5</sup> The respondent's contract with the C. I. O. contains the following clause: "Neither party will permit solicitation of employees for any purpose on Company time in a manner which interferes with production."

<sup>6</sup> The Trial Examiner also found that the respondent did not enforce its no-distribution rule insofar as it applied to solicitation or advertising in connection with various patriotic and charitable causes, and with respect to social affairs directly or indirectly sponsored by management. We do not consider significant the respondent's indulgence in this regard in view of our finding hereinafter that the respondent did not discriminate with respect to the enforcement of its no-distribution rule as between the C. I. O. and the I. A. M.

here in any way.<sup>7</sup> Not until the activities of Blackburn and Blubaugh went beyond distribution of printed matter incidental to isolated instances of solicitation of membership in the I. A. M. and entered the field of indiscriminate and wholesale distribution of authorization cards, did the respondent object. There is undenied testimony, which we credit, that, on a number of prior occasions, the C. I. O. had requested permission to distribute literature and that the respondent had uniformly denied such requests. It is significant that when Blackburn and Blubaugh undertook to pass out cards at the clock racks to anyone who would accept them, the C. I. O. promptly communicated with the respondent and demanded the same privilege. If, previously, the C. I. O. had been permitted to engage in such activity, obviously it would have had no occasion to seek permission from the respondent to continue. Moreover, the respondent again denied the request of the C. I. O.

Similarly, in our opinion, the fact that the respondent permitted the C. I. O., the exclusive bargaining representative of its employees, to distribute ballots in the plant and to use company facilities for the distribution of the C. I. O. newspaper does not establish that the respondent, in discharging Blackburn and Blubaugh, discriminated as between the C. I. O. and the I. A. M. in respect to the precise activities in which the two employees had engaged.<sup>8</sup>

We find that the respondent did not adopt its no-distribution rule for the purpose of discouraging union organization or for any other

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<sup>7</sup> Blackburn, when questioned concerning her previous organizational activity on behalf of the I. A. M., testified as follows:

Q. Was that [December 1] the first night on which you had passed these cards out at the clock racks?

A. At the clock racks; yes.

Q. So your activity up until that time in regard to solicitation of members for the I. A. M. had not been at the clock racks, but within the department?

A. It had been in the cafeteria. It may have been in isolated instances at the clock racks.

Q. Yes; but you never started your broad program of broadcasting these cards at the clock racks until December 1? Isn't that right?

A. That is right.

<sup>8</sup> In the conference between Assistant Personnel Manager Ball and the two I. A. M. committeemen, Ball stated, as he testified: "I pointed out to the two gentlemen that it was definitely a violation of rules, and it was something we had to put a stop to. We could not continue it. That, as far as the girls being sent home and losing a day of work, I indicated to them that I thought we could probably arrange that matter to everybody's satisfaction, providing this particular offense was discontinued. I pointed out to them the danger that lay in a continuation of this thing, inasmuch as the contracted (sic) union, that is, the regular bargaining agency, insisted, rightfully, that they be given the same permission; and noted to these gentlemen that by doing that we were developing a situation there that might lead to grave consequences, and jeopardizing the production of that particular plant. Since the production of the plant is related to combat aircraft for the United States Navy, we naturally were extremely anxious that there be no kind of labor disturbance, particularly inter-union jurisdictional fights." We do not agree with the Trial Examiner's inference drawn from Ball's statement that the respondent thereby indicated a purpose to favor the C. I. O. and to prejudice the I. A. M. in their union rivalry for the support of the respondent's employees.

objective proscribed by the Act; and that the respondent, in discharging Blackburn and Blubaugh, after repeated warnings to desist from the conduct in which they engaged, did not enforce such rule in a discriminatory manner within the meaning of the Act. We conclude that, unless the rule against distribution of literature was *per se* an unreasonable restraint upon the exercise of the rights guaranteed by the Act, the respondent has not violated the Act as alleged in the complaint.

### 3. *The validity of the no-distribution rule*

As stated above, the respondent advances as justification for its no-distribution rule its desire to maintain plant cleanliness. We accordingly see no objection to such rule. An employer has a legitimate interest in keeping his plant clean and, as we have held, in the absence of exceptional circumstances, to protect such interest he may prohibit the distribution of literature within his plant, where production is being carried on, at all times.<sup>9</sup> We are not convinced that, under the circumstances disclosed here, the protection of the respondent's interest in maintaining plant cleanliness is outweighed by the interest of its employees in engaging in the type of activity banned by the respondent as a tactic in union organization. We are of the opinion and find that the respondent's rule against distribution of literature, as interpreted and applied by the respondent, is not an unreasonable impediment to self-organization and that the respondent was justified in demanding that its employees respect the rule, and in discharging Blackburn and Blubaugh for violation thereof.

Since we find that the respondent has not discriminated with respect to the hire and tenure of employment of Blackburn and Blubaugh, we shall order that the complaint be dismissed.

### CONCLUSIONS OF LAW

1. International Association of Machinists, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the Act.
2. The operations of the respondent, The Goodyear Aircraft Corporation, Akron, Ohio, occur in commerce, within the meaning of Section 2 (6) and (7) of the Act.
3. The respondent has not engaged in unfair labor practices, within the meaning of Section 8 (1) and (3) of the Act.

<sup>9</sup> *Matter of Tabin-Picker & Co.*, 50 N. L. R. B. 928; *Matter of North American Aviation, Inc.*, 56 N. L. R. B. 959.

**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 complaint against The Goodyear Aircraft Corporation, be, and it hereby is, dismissed.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.