

In the Matter of AMERICAN BAKERIES COMPANY and BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION, LOCAL No. 42, A. F. L.

Case No. 10-C-1456.—Decided August 4, 1944

DECISION

AND

ORDER

On May 6, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and that it had not engaged in certain other unfair labor practices, and recommending that it cease and desist from the unfair labor practices found and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the attorney for the Board filed exceptions to the Intermediate Report and a supporting brief. The Union also filed a brief. Oral argument in which the respondent and the Union participated was held before the Board at Washington, D. C., on July 6, 1944.

The Board has reviewed 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 exceptions and briefs of the parties and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

The Trial Examiner found that the respondent, by threats, interrogations, coercive statements to union members, and by surveillance of a union meeting, violated the Act. Counsel for the respondent conceded at the oral argument before the Board that the respondent had engaged in conduct violative of Section 8 (1) of the Act. Like the Trial Examiner, we find that by the above-mentioned activities, detailed in the Intermediate Report, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby violating Section 8 (1) of the Act.

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 orders that the respondent, American Bakeries Company, do and cause to be done that which is herein required of it, and that it pay to the Union, Bakery and Confectionery Workers International Union, Local No. 42, A. F. L., the sum of \$100.00 as costs of the proceeding.

57 N. L. R. B., No. 147.

Board hereby orders that the respondent, American Bakeries Company, Atlanta, Georgia, 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 rights to self-organization, to form labor organizations, to join or assist Bakery and Confectionery Workers International Union, Local No. 42, A. F. 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 its plant at Atlanta, Georgia, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraph 1 of this Order;

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

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondent has engaged in unfair labor practices by the discharge of Ralph Fowler, be, and it hereby is, dismissed.

INTERMEDIATE REPORT

Mr. T. Lowry Whittaker, for the Board.

Mr. Alexander E. Wilson, Jr., of Atlanta, Ga., for the respondent.

Mr. L. M. Hatcher, of Atlanta, Ga., for the Union.

STATEMENT OF THE CASE

Upon an amended charge duly filed on March 29, 1944, by Bakery and Confectionery Workers International Union, Local No. 42, 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 Tenth Region (Atlanta, Georgia) issued its complaint dated March 29, 1944, against American Bakeries Company, Atlanta, Georgia, herein called the respondent, alleging 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 National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing thereon were duly served on the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that the respondent on or about January 28, 1944, discriminatorily discharged employee Ralph Fowler and has since that date refused to reinstate Fowler because of his membership and activities in the Union or for engaging in concerted activities with other employees of the respondent for the purposes of collective bargaining and other mutual aid and protection; (2) that the respondent from

on or about September 1, 1943, engaged in certain coercive conduct¹ and (3) that by the above acts the respondent interfered with, restrained, and coerced its employees in the exercise of their rights as guaranteed in Section 7 of the Act.

On April 5, 1944, the respondent filed its answer. The answer, as amended, admitted the jurisdictional allegation of the complaint, denied the commission of the unfair labor practices alleged and pleaded affirmatively that Fowler was discharged for insubordination.

Pursuant to notice, a hearing was held on April 10, 11 and 12, 1944, at Atlanta, Georgia, before Henry J. Kent, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, the Union by its representatives, and all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all of the parties.

At the opening of the hearing a motion by the counsel for the Board was granted to amend the complaint by striking out "Mississippi," named therein as one of the States in which the respondent operated a plant. Also at this time, after a motion made by counsel for the Board asking for further particulars on the averment in the answer that Fowler was discharged "for cause," the respondent amended its answer to aver that Fowler was discharged for insubordination and violation of his instructions. At the close of the hearing, counsel for the Board moved to conform the pleadings to the proof with respect to dates and spelling of names, which motion was granted without objection. The parties were afforded an opportunity to present oral argument but all of them waived the privilege. The undersigned then informed them they might file briefs with him within 5 days from the close of the hearing. A brief as been received from the counsel for the respondent.

¹ (a) Statements and conversations discouraging activities on the part of respondent's employees for the purposes of collective bargaining and other mutual aid and protection and discouraging membership and activities among respondent's employees in the Union;

(b) Engaging in surveillance and spying on union members, activities, meetings and business;

(c) Inquiring, questioning and interrogating its employees about their union membership and activities and about their union meetings, members, activities and business;

(d) Threatening, warning, advising and exhorting its employees not to become nor remain members of the Union and not to associate with the Union in any wise;

(e) Threatening, warning, advising and exhorting its employees not to become nor remain members of the Union in any wise at the peril of losing their jobs or being demoted therein;

(f) Promising and assuring some of its employees that if they would refrain from and renounce the Union and union activities they would receive better jobs and increases in pay.

(g) Keeping and purporting to keep a secret record of all union members, business, activities and meetings, and notifying its employees of the respondent's keeping of said record;

(h) Prohibiting, advising against and threatening discharge for, any union activity on respondent's property, and stating that any union activity on respondent's property was a violation of law and threatening its employees with calling the police;

(i) Advising, warning and threatening its employees of respondent's determination to defeat the Union and prevent the Union's organizing the plant;

(j) Boasting, bragging, gloating and exulting to its employees of having beaten the Union in the *Matter of American Bakeries Company and Bakery and Confectionery Workers International Union, Local No 42, affiliated with the American Federation of Labor*, Case No C-2651, and of beating the Union in any new case the Union might bring against respondent before the Board;

(k) Boasting and bragging to its employees, although falsely, that this regional office of the Board had disclosed to respondent the Union's membership cards and that said cards were insufficient, and

(l) Disparaging and discrediting the Union and its national affiliation

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

American Bakeries Company, the respondent herein, is a Florida corporation, with its principal offices and place of business in Atlanta, Georgia. It is engaged in the manufacture, sale and distribution of bread, cake and related products at plants in Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina, Tennessee and Virginia, but the present proceeding concerns only the respondent's plant in Atlanta, Georgia.

At the Atlanta plant the respondent purchases annually raw materials, including flour and other ingredients, valued in excess of \$100,000, of which approximately 80 percent is purchased and transported to the respondent's Atlanta plant from States of the United States other than Georgia. The respondent produces annually at its Atlanta, Georgia, plant processed products, including bread, cake and related products, valued in excess of \$200,000, approximately 10 per cent of which is sold and distributed in interstate commerce to and through States of the United States other than Georgia. The respondent presently employs approximately 245 employees in the Atlanta, Georgia, plant. The respondent admits that it is engaged in commerce within the meaning of the Act.²

II. THE ORGANIZATION INVOLVED

Baking and Confectionery Workers International Union, Local No. 42, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. Background

In 1936 the Union failed in an effort to organize the employees in the respondent's Atlanta plant. In 1941 the Union renewed its efforts to organize these employees and since that time has conducted several campaigns. On January 15, 1943, the Union filed charges alleging violations by the respondent of Sections 8 (1) and (3) of the Act. On January 30, 1943, the Union withdrew the charges with prejudice and entered into a consent election agreement with the respondent.³ On February 2, 1943, the election was held but the record fails to show the result of the poll. On May 14, 1943, the Union again filed charges alleging violation, by the respondent, of Section 8 (1) and (3) of the Act. On May 15, 1943, the Regional Director for the Tenth Region issued a complaint. A hearing was held on June 3, 4, and 5, 1943, and thereafter, on July 31, 1943, the Board issued its decision dismissing the complaint.⁴

In September 1943, the Union commenced another drive to organize these employees. The allegations in the complaint herein are substantially based upon alleged unfair labor practices of the respondent committed since the opening of this campaign by the Union.

² The above findings are all based upon a stipulation entered into by and between the parties.

³ See *Matter of American Bakeries Company and Bakery and Confectionery Workers International Union Local No. 42*, 51 N. L. R. B. 937.

⁴ See footnote 3 *supra*

*B. Interference, restraint and coercion***1. Threats and the interrogation of employees respecting their membership in the Union**

In September 1943 Superintendent Ralph Latham⁵ and employee Leonard Barnes engaged in a conversation in the plant. According to Barnes one of them brought up the subject of the Union and Barnes told Latham that he was in favor of the Union. Latham then told Barnes, "he would fight this Union as long as he could."⁶

On a Thursday night in September, 1943, employees L. C. Roberts and James Howe were working in the bread mixing room. While Howe was waiting for his mixing machine to mix a batch of dough, he was sitting on a desk in the room. While sliding off of the desk his trousers were torn on a projecting nail. Howe obtained a hammer and drove the nail down. Parker Turner, night bread foreman, came into the room while Howe was driving the nail. Turner left the room and about 20 minutes later Latham appeared, unlocked a drawer in the desk and removed a gray bound book. After examining it, Latham asked Roberts for a page which Latham thought had been removed from it. Roberts denied having any knowledge respecting the book, whereupon Latham remarked that "the Union would give a thousand dollars to get hold of that book," but that it never would, because it contained private and personal information.⁷ Roberts was ill and did not work on Friday night, but went in and worked the following Saturday night. Latham again appeared in the mixing room about 9 o'clock Saturday night and complained to Roberts that he did not check his stock properly. Roberts replied that he believed the criticism captious and told him that he believed that he was coming at him like that "on account of the Union." Latham replied, "Well, you have, you are playing a pretty good part," in it.⁸ Just before Latham left the plant he told Roberts that, "he [Latham] was an American Bakeries man, and he wanted every one to know that, and he had fought the Union for 9 years, and intended to fight it as long as he had anything to do with it." Roberts voluntarily left his employment in March 1944.

Latham admitted that in September or October 1943, during a conversation with employee J. C. Fields in the basement of the plant, he asked Fields if he belonged to the Union, but that Fields refused to commit himself.⁹ Latham then said, according to Fields, that "The Union was not going in there [the plant] as long as there was a breath in him."¹⁰ During this conversation Latham also told

⁵ R. C. Hicks, plant manager, testified that Latham had authority to hire and discharge employees

⁶ Although Latham denied that he made this statement to Barnes, employees Roberts and Fields testified, which testimony is discussed below, that Latham made similar statements to them. The undersigned has found below in the Section of the report entitled "Surveillance of Union meetings" that Latham gave false testimony. Based upon his observation of the witnesses and all other evidence in the record, the undersigned accepts the testimony of Barnes, Roberts and Fields respecting Latham's threat to fight the Union

⁷ According to Latham's uncontradicted testimony, the book contained a list of job classifications, rates of pay of all employees, the respondent's formulas and processes for manufacturing bread. He said he suspected at the time that the book had been taken out of the desk, because he found the top of the desk was loose when he lifted it up.

⁸ During this conversation, according to Roberts' uncontradicted testimony, Latham admitted that one of the female employees had handed him a union card given to her in the plant by Roberts. In view of Latham's admission, the respondent obviously had knowledge of Roberts' union activities in the plant.

⁹ Fields testified that he told Latham he did not care to answer him, because he did not wish to hurt himself or any of the other employees.

¹⁰ Although Latham denied making this last statement, the undersigned finds he did make it. See note 6, above.

Fields that the respondent contemplated making some changes in the cake department in which Fields was employed. He also said at the time that while he had no authority over that department, he hoped Fields would be promoted when the changes were effected.¹¹ Fields later secured a better job with a slight increase in pay, but on March 20, 1944, he terminated his employment because of ill health.

In the fall of 1943 employee John Cochran, who operated a wrapping machine, injured one of his fingers. Cochran testified without contradiction that Latham asked him if he was in favor of the Union. Cochran denied that he was, although at the time he was a member. Latham then told Cochran that the Union was not what the employees believed it to be and said Cochran would earn more money if he kept out of the Union. On November 6, 1943, Cochran attended the first meeting of the Union during its current drive for membership. He testified, also without contradiction, that shortly after the meeting Latham inquired of him, "Did you go to the meeting?" and that he replied "Yes". Latham then asked "Who all was up there," but he refused to tell him. About this time Ray Rutherford, foreman of the day shift in the bread department, came up to them with a gray bound book.¹² Rutherford, in Latham's presence, started to read the names of employees from the book and asked Cochran to tell him which of the employees, whose names Rutherford read from the book, attended the meeting. Cochran refused to tell him the names of any of the employees at the meeting.

Ralph Fowler testified without contradiction that employees Dorsey Parsons and Marjorie Minck told him that forelady Inez Byers¹³ asked them if they had signed union cards. Later on the same day, Fowler told Byers that she should not interfere with the union activities of other employees. Byers then stated to him, "You also told those girls that they could get [sign] an affidavit against me" and said she was not afraid because she had faced similar charges during the prior hearing before the Board.

Employee Dorothy Reed testified without contradiction that she overheard Forelady Byers ask employees Chaffin, McWilliams, and Haley if they had joined the Union.

¹¹ Thomas Ralph Fowler called Ralph Fowler in the complaint, testified that Latham had followed him down to the men's room on that day and while he, Fowler, was in the men's room he overheard Latham tell Fields that "the whole mixing room in the cake department was going to be changed around, and he [Fields] had a great opportunity if he would just cut out his "foolishness". Fields in his testimony, however, failed to say that any prospective advancement was contingent upon his cutting out his "foolishness" and Fields' version of the incident, which corresponds with Latham's, is accepted as being more credible.

¹² Obviously this was the same "gray book" referred to in Roberts' testimony and which Latham said contained the classifications, rates of pay and names of all the respondent's employees.

¹³ Manager Hicks testified that Byers is in charge of about 40 wrapping girls and makes recommendations to the superintendent concerning employees working under her supervision. She is still employed as forelady in the plant, but she was not called by the respondent to refute Fowler's testimony. Fowler also testified, which testimony was denied, that before Gus Kirk quit in March 1943 (the complaint filed in the prior hearing 51 N. L. R. B. 937 alleged Kirk had been discriminatorily discharged on March 5, 1943, but as noted above, the complaint was dismissed) he had conspired with Latham to pick a fight with Kirk in order that the respondent might have an excuse to discharge Kirk. Fowler also testified he had solicited fellow employees at that time to join the Union although he did not join it himself. Fowler is the sole 8 (3) dischargee in the present case. He testified to several more flagrant acts respecting interference, restraint and coercion than any of the other witnesses. In view of Fowler's admitted willingness to aid in a conspiracy to effectuate a wrongful discharge of a fellow employee the undersigned has doubts respecting Fowler's veracity and has not based findings on testimony given by Fowler when uncorroborated and contradicted by other testimony.

Employee Marjorie Minck also testified without contradiction, that about Christmas time in 1943, Forelady Byers told her she should not have signed a union card. Byers also said at the time that an earlier attempt to have a union in the plant had failed.¹⁴

Myrtle George, a shipping room employee, testified without contradiction that Forelady Byers told her Latham had informed Byers after the December 3, 1943, meeting of the Union, that George was the only female employee attending the meeting at which colored employees were present. At about the same time, Ray Clonts, superintendent of the shipping department and her boss, also told her that she was lowering her standards by attending meetings with colored men. Subsequently George told Latham that if he had anything to say concerning her, he should take the matter up directly with her.

The respondent offered evidence tending to show that its general manager, Vice President Roberts had instructed all supervisors on several occasions, not to interfere with the union activities of the employees. The record shows that some general instructions of this nature were given.

2 Surveillance of union meetings and spying on union members

On the night of December 3, 1943, the Union held a meeting in a hall located in an office building on Ivy Street, Atlanta. Before the meeting, while Fowler and L. M. Hatcher, the president of Local No. 42 of the Union, were standing outside of the entrance to the building, they saw Jack Hoyard, superintendent of the respondent's cake department, sitting in his parked automobile on Ivy Street about 175 feet away from the office building entrance. Fowler went over to Howard's automobile and invited him to come to the meeting. Howard told them he was only waiting there until the radiator on his automobile was repaired.¹⁵ Thereafter and shortly before the meeting opened they saw Ray Clonts, superintendent of the respondent's stock department, drive by the entrance of the building in his automobile. R. H. Hamilton, a former departmental superintendent in the plant,¹⁶ and Latham were in the automobile with Clonts. Within a few minutes the automobile passed three times by the entrance of the building in which the meeting was to be held. Clonts testified that he asked Latham and Howard earlier that week to attend wrestling matches at the Auditorium in Atlanta that night and that they agreed to go. Latham testified that he invited Hamilton to go with them. He said that Hamilton met him at the plant and that Clonts drove them down to meet Howard at an automobile radiator repair shop on Ivy Street. Howard testified that he was parked on Ivy Street in front of the Dixie Radiator Supply Company from about 6:15 to 8:30 o'clock that night while waiting for repairs to be made on his automobile radiator.

According to Latham's testimony when they first saw Howard on Ivy Street about 8:15 that night the repair job had not been completed. They then drove around the block about three times, while waiting for Howard to come along with them to the wrestling matches. Howard, Latham, and Clonts all testified that together with Hamilton, they all went to the wrestling matches at the Auditorium. Hamilton testified that he met Latham at the plant. He said that

¹⁴ Minck commenced her employment in the plant in September 1943. Consequently, she was not working in the plant during earlier periods when the Union tried to organize the respondent's employees. Reed and Minck were employed in the cake icing department under Forelady Byers' immediate supervision.

¹⁵ Howard testified that the radiator had been repaired four or five weeks earlier at the Dixie Radiator Supply Company on Ivy Street, but that it needed additional repairs and he brought his automobile to the shop that night to have it attended to.

¹⁶ See *Matter of American Bakeries Company*, 51 N. L. R. B. 937.

about 6:30 o'clock that evening Clonts and Latham met him near the entrance of Rich's department store where he is presently working. Latham jokingly asked him if he had told Lela Bryant to attend the union meeting and he replied in a joking manner "yes". According to Hamilton's version, after the three of them had dinner at a restaurant, Clonts drove them around a block bounded on one side by Ivy Street about three times. While driving on Ivy Street he saw Hatcher and Fowler. Hamilton denied that he went to the wrestling matches with Clonts, Latham and Howard, but said that after leaving Ivy Street, Clonts and Latham drove him to his home and that he arrived there about 9:00 o'clock that evening. William Bishop, the service man in charge of the Ivy Street radiator repair shop testified that he remembered talking to Howard the night of the union meeting. However, he stated that no repair had been made on Howard's radiator that night. He said it had been repaired several weeks before then and that neither he nor his only assistant in the shop had done any work on Howard's car that night. He said his assistant only worked on repair jobs that he, Bishop, assigned to him.

A consideration of the above testimony, in conjunction with all of the other evidence and with his observation of the witnesses, convinces the undersigned that the testimony of Hamilton and the radiator shop repairman respecting the happenings on the night of the union meeting is both credible and true. Howard, Latham, and Clonts were evasive and uncertain when testifying respecting these events of comparatively recent occurrence. Hamilton, who was obviously a personal friend of Latham's was called by the Board in rebuttal. While he apparently was reluctant to give testimony concerning the matter, the undersigned is convinced that his version of the incident on the night of December 3, 1943, was both credible and true. Also Hamilton's testimony, in part, was corroborated by the testimony of Bishop, who said that no repairs were made on Howard's car that night. The undersigned finds that the testimony of Latham, Howard and Clonts respecting this incident was false.

In October, 1943, according to Fowler's uncontradicted testimony, employee Genevieve Mullins came up to the mixing room in the plant while he was working and asked him for a Union card. He gave her a card and she returned to her department. About 15 minutes later she returned to the mixing room and gave him the signed card. Plant Manager Hicks and Superintendent Latham came up to the mixing room shortly after Mullins returned the card to Fowler. Hicks remained for a considerable period and Latham stayed there most of that day and the following day to "watch" Fowler, according to Fowler's testimony. Mullins came upstairs again during Latham's absence. She was weeping and came over and asked Fowler to return the card she signed. Fowler said he told her that he could not return it then because Hicks was upstairs watching him. Mullins went into the ladies restroom and was still weeping when she came out. Fowler walked over to her, tore up her card, and threw the pieces into the trash box in the presence of Latham who had returned to the mixing room. After that, Latham remained in the mixing room for the rest of the day. The next morning Latham continued to watch him and followed him when he went down to the men's dressing room in the basement.

3. Conclusions

The respondent contends that because its supervisors were instructed not to interfere with the union activities of its employees, it is not responsible for any violations of the said instructions and that any violations of the said instructions merely constituted an expression of the personal opinions of the supervisors. On all of the evidence in this case, the undersigned concludes and finds

that this contention is without merit. To find otherwise would permit employers to merely give lip service to the prohibitions imposed on them in the Act, respecting interference with the rights guaranteed employees within the meaning of Section 7 of the Act.

The respondent, by stating to its employees that it would fight the efforts of the Union to organize its employees, by interrogating its employees respecting their membership in or their activities on behalf of the Union, by telling them that if they would not join the Union they would earn more wages, has interfered with, restrained and coerced the employees in the exercise of the rights guaranteed in Section 7 of the Act.

The explanation offered by the respondent's 3 superintendents respecting the reason for their presence on December 3, 1943, in the vicinity of the building on Ivy Street before the Union meeting fails to convince the undersigned that it was merely an accidental coincidence that they were present there at or about the time the meeting was scheduled to begin. He concludes and finds that their testimony was false. The only reasonable explanation for their presence in the vicinity is that they went there to ascertain who among the respondent's employees attended the Union meeting or to discourage the employees from joining the Union. By such activities the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

However, the respondent committed no unfair labor practice by watching Fowler after it presumably learned in some manner that he engaged in union activities while he was supposed to be working. Although it is conceivable that the respondent may have asked Mullins where and how she got the card in the first place there is no evidence in the record to support such a conclusion. If the respondent by proper means learned that Fowler was taking time away from his work to engage in union activities, it was justified in "watching" him in order to keep him at work. The Board has recently held that "working time is for work".¹⁷

C. The discharge of Fowler

The complaint alleged that the respondent discriminatorily discharged Ralph Fowler on January 28, 1944, and has since refused to reinstate him. The respondent contends that Fowler was discharged for insubordination and refusal to obey instructions.

Fowler started to work for the respondent in 1940. He commenced to work for 35 cents an hour but thereafter received several wage increases and at the time of his discharge was earning 80 cents an hour. The respondent admitted that he was a competent employee. As noted above, Fowler testified he had solicited other employees to join the Union prior to March 1943 during an earlier organization drive by the Union, but he did not join it at that time. During the recent drive, which began in September 1943, Fowler was the leading union organizer among the respondent's employees. The respondent knew that Fowler had solicited employees to join the Union in the plant during working hours.

For a long period before January 28, 1944, Fowler had been working as a bread mixer in the mixing room of the plant. On that morning the conveyor elevator which carries the flour from the basement to the third floor in the plant was out of order.¹⁸ Francis Bray, the head mixer who was a minor supervisor

¹⁷ *Matter of Peyton Packing Company, Inc.*, 49 N L R B 828

¹⁸ There are two elevator conveyors in the plant which may be separately operated. One carries up flour from the basement to bins on the third floor and the other carries flour from the bins on the third floor to the mixing machines on this floor. The basement to third floor elevator had stopped running because tags and twine from flour bags had fallen

in charge of the mixing room, reported it to Cecil Jenkins, the respondent's mechanic and then told Fowler and Lee Grindle, a mixing helper, not to use the basement elevator until it was repaired. Fowler testified, that shortly after that he obtained Latham's permission to use the third floor elevator,¹⁹ and that he pushed the lever on the side of the switch box in the "down" position, started the motor and drew flour from the third floor. Bray testified that he saw Fowler go over to the switchboard, throw the lever to the "up" position and start the motor. Bray then went over to the switchboard, pulled the lever "down" and told Fowler not to operate the elevator because men were working on it. It is undisputed that Fowler reversed the position of the lever after Bray turned on the motor.²⁰ Fowler then seized the lever and pulled it in the reverse direction and while doing this he said, "Bray, why don't you learn some damn sense about running this mixing room?" . . . "I'm drawing it from that box over there," obviously meaning the third floor bin. Bray replied; "I have heard enough out of you" and again pulled the lever in the opposite direction.²¹ Shortly after this Bray went downstairs to report the matter to Latham. Bray testified without substantial contradiction that when he came back upstairs he went over to help Fowler remove the dough from his mixer and that Fowler told him "to get the hell away, he was running this mixer." After Bray reported the elevator incident to Latham, the latter informed Manager Hicks. Hicks said in view of the prior hearing and because he also knew that Fowler was a union member, he asked Latham to wait until he called the respondent's counsel Attorney Alex Wilson to advise him respecting the incident. Hicks said he told Wilson what Fowler had done and that Wilson told him that, if the facts were as stated, Fowler should be discharged. Hicks then told Latham to discharge Fowler. Latham called Fowler downstairs and told him that he was discharged and took him to the office to get his pay check.

Unquestionably, the testimony of Bray, Fowler, Jenkins and Grindle respecting the actions of Fowler and Bray on the morning of January 28, 1944 in connection with the elevator incident creates doubt as to whether or not Fowler started the basement elevator when the mechanic's helper was working in the gear box. However, a fair inference arises that Bray in good faith believed that he did so

into the gear housing and become lodged between the edge of the revolving worm feed gear and its housing. It became necessary to stop operating this elevator in order that the mechanics could remove the foreign objects from the gear housing in the basement without danger. This operation does not interfere with the use of the third floor elevator.

¹⁹ Latham denied that Fowler had asked permission to operate the third floor elevator. His denial is credited, because it is customary practice to operate one elevator when the other is out of order and it seems unlikely that Fowler would have sought permission to use it under the circumstances.

²⁰ When this lever which projects from one side of the switchboard, is set at the "up" position the basement elevator may be operated and when it is set on the "down" position, the third floor elevator may be used. A push button electric switch on the opposite side of the switchboard starts the motor.

²¹ Grindle testified that he saw Fowler pull the lever down that morning and that Bray pushed it up whereupon Fowler pulled it down again and Bray again pushed it up, which testimony tends to corroborate Fowler's version of the incident. On the other hand Jenkins, the mechanic who was on the third floor at the time, working on the basement elevator, testified that after he saw Fowler go over to the switchboard the basement elevator started to operate. He said Bray ran over to the switchboard and it stopped running. Jenkins then went to the basement to learn if his helper had been injured. While he was talking to his helper in the basement, the elevator started again just after his helper pulled his arm out of the gear box. Both men then went upstairs to learn who turned it on and Grindle told them that Bray had given him permission to use it. Fowler on cross-examination testified that he kept pulling the lever "up" and Bray kept pulling it down. Fowler, however, subsequently changed his testimony and said Bray pulled it up and that he pulled it down.

and the undersigned does not deem it necessary to resolve the doubt, because Fowler's subsequent conduct at the switchboard clearly constituted insubordination and a refusal to follow Head Mixer Bray's instructions. The reversal of the switchboard lever by Bray unquestionably was an order to Fowler not to use the elevator, which instruction Fowler immediately disregarded. Fowler's subsequent remark to Bray on that morning, when he told Bray "to get the hell away, he was running this mixer" adds support to the above finding that Fowler was insubordinate. In view of the fact that Fowler was outstanding as a union leader and was admittedly a competent workman, the case is not free of doubt, but the undersigned concludes and finds that the evidence fails to sustain the allegations in the complaint that Fowler was discriminatorily discharged because of his union activities.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The undersigned finds that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce

V. THE REMEDY

Having found that the respondent has engaged in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act and to restore as nearly as possible the status quo existing prior to the commission of the unfair labor practices

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

CONCLUSIONS OF LAW

1. Bakery and Confectionery Workers International Union, Local No. 42, 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 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 engaged in unfair labor practices within the meaning of Section 8 (3) of the Act with respect to Ralph Fowler.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law the undersigned recommends that the respondent, American Bakeries Company, Atlanta, Georgia, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) In any manner interfering with, restraining, or coercing its employees in the exercise of the rights 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 undersigned finds will effectuate the policies of the Act:

(a) Post immediately in conspicuous places throughout its plant at Atlanta, Georgia, and maintain for a period of not less than sixty (60) days from the date of posting, notices to its employees, stating that the respondent will not engage in the conduct from which it is recommended to cease and desist in paragraph 1 (a) of these recommendations;

(b) Notify the Regional Director for the Tenth Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

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

It is further recommended that the complaint be dismissed insofar as it alleges that the respondent has engaged in unfair labor practices by the discharge of Ralph Fowler.

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.

HENRY J. KENT,
Trial Examiner.

Dated May 6, 1944.