

In the Matter of MERCHANTS MOTOR FREIGHT, INC., and INTERNATIONAL
ASSOCIATION OF MACHINISTS, DISTRICT 77, A. F. OF L.

Case No. 18-C-1034.—Decided August 15, 1944

DECISION

AND

ORDER

On May 24, 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 recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief. None of the parties has requested a hearing before the Board for the purpose of oral argument, and none has been held.

The Board has considered the rulings of 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 respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications:

The incident of February 1942, involving the exclusion of a union organizer from company premises by the respondent's operating manager, as related in the Intermediate Report in the section captioned "Background," is treated by the Trial Examiner as evidencing an attitude of union hostility on the part of the respondent. We do not agree. We take no exception to a non-discriminatory application of an employer requirement that a union organizer seek permission of management as a condition to entry upon company premises for the purpose of soliciting employees to join a labor organization. However, we agree with the Trial Examiner's conclusion that Manager Judd's statement to the union organizer that "he (Judd) didn't need any union to handle the labor relations" indicated a feeling of hostility on the part of the respondent toward labor organizations. In any event, since the time of the incident antedates March 1, 1944, the date alleged in the complaint as the date on or about which the respondent

began its unfair labor practices, we, like the Trial Examiner, regard the incident only as background material for the purpose of evaluating the respondent's acts and statements falling within the scope of the complaint.

The respondent has excepted to the failure of the Trial Examiner to credit the versions of its witnesses as to conversations of its supervisors with employees Rawlings and Linde, who, as witnesses for the Board, testified in substance, that the respondent's supervisors questioned them about union activities and issued warnings that union organization would result in lesser earnings for the employees. The respondent's foreman, Ira Mueller, admitted in testimony that he interrogated Rawlings and Linde concerning their union activity while he was investigating the cause of "slow-downs" in the shop. The Trial Examiner heard the witnesses testify and observed their demeanor on the stand. We see no reason to disturb his resolution of the conflicting testimony. The respondent argues that even if Foreman Mueller and Manager Judd told Rawlings and Linde, as they testified, that earnings would be lessened by unionization, such observations are expressions of opinion rather than threats, and therefore privileged as free speech. We hold to the contrary. When Mueller and Judd informed Rawlings and Linde that union organization of the respondent's employees would result in shortened hours and correspondingly lowered earnings, they thereby expressed opposition to the organizational efforts of the Union, coupled with a threat of economic reprisal to the employees in the event of the Union's success. We agree with the Trial Examiner that such statements constitute a violation of Section 8 (1) of the Act.¹

The Trial Examiner found that Ray Purdy, an inspector and assistant to Foreman Mueller, made similar statements to Rawlings and attributed Purdy's statements to the respondent. We find it unnecessary to determine whether the respondent is responsible for Purdy's statements and make no findings based upon such statements.

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 respondent, Merchants Motor Freight, Inc., St. Paul, Minnesota, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form labor organizations, to join or assist International

¹ See, for example, *Peter J. Schweitzer, Incorporated v. N. L. R. B.* 144 F (2d) 520 (C A D C.).

Association of Machinists, District 77, 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 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 Board finds will effectuate the policies of the Act:

(a) Post immediately in conspicuous places in its shop at St. Paul, Minnesota, and maintain for a period of not less than 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 Eighteenth Region, in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Mr. Francis X. Helgesen, for the Board.

Mr. George E. Ward, of St. Paul, Minn., for the respondent.

Mr. Stephen Fischer, of St. Paul, Minn., for the Union

STATEMENT OF THE CASE

Upon a charge duly filed on March 30, 1944, by International Association of Machinists, District 77, A. F. of L., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighteenth Region (Minneapolis, Minnesota), issued its complaint dated April 29, 1944, against Merchants Motor Freight, Inc., St. Paul, Minnesota, 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 Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that from about March 1, 1944, the respondent, by its officers, agents, and representatives, warned and discouraged its employees against affiliation with, or activities on behalf of, the Union; questioned its employees in regard to their union affiliations; offered them wage increases for the purpose of influencing them to abandon their union membership and activity; made disparaging and derogatory statements about the Union; and advised its employees that they would not receive any benefits through collective bargaining; and (2) that by the foregoing acts the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Pursuant to notice, a hearing was held on May 11, 1944, at Minneapolis, Minnesota, before W. P. Webb, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and the Union by its business representative. All parties 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.

During the course of the hearing, the respondent filed its answer, in which it admitted certain allegations of the complaint in regard to its business, and that the Union was a labor organization, within the meaning of Section 2 (5) of the Act, but denied all material averments of the complaint relative to the unfair labor practices.

At the close of the Board's case, a motion by Board's counsel to conform the pleadings to the proof in respect to minor inaccuracies in regard to dates, the spelling of names, and other matters not related to the fundamental issues, was granted by the Trial Examiner without objection.

Opportunity to file briefs with the Trial Examiner was waived by the parties. At the conclusion of the hearing, counsel for the Board, and counsel for the respondent argued orally, on the record, before the Trial Examiner.

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

The respondent, Merchants Motor Freight, Inc., is a Minnesota corporation, having its principal office and place of business in St. Paul, Minnesota. It is engaged in transporting and delivering goods, wares, merchandise, and general commodities by motor vehicles in and through the States of Minnesota, Illinois, Indiana, Iowa, Nebraska, Missouri, and Colorado. It operates as a common carrier under permits issued to it by the Interstate Commerce Commission. It maintains and operates various branch offices, terminals, and depots within the aforesaid States, including its main office terminal and shop for repairing the respondent's trucks, located at 2625 Territorial Road, St Paul, Minnesota.¹ During the calendar year 1943 the respondent's gross revenue, derived from the aforesaid business, was in excess of \$1,000,000, of which more than 50 percent was received from haulage in interstate commerce. About 70 percent of the freight hauled is for war purposes. The respondent admits, for the purposes of the instant proceedings, that it is engaged in commerce within the meaning of the Act.

II THE ORGANIZATION INVOLVED

International Association of Machinists, District 77, A. F. of L., affiliated with the American Federation of Labor, is a labor organization, admitting to membership employees of the respondent.²

III. THE UNFAIR LABOR PRACTICES

A Background

Prior to 1942, the respondent's shop employees, consisting of mechanics, greasers and tire men, were unorganized.³ In February, 1942, Stephen Fischer, business agent of Local 459, which is under the jurisdiction of District 77, called at

¹ The instant proceeding is concerned only with the employees in the St Paul shop.

² District 77 covers all the locals in the St Paul area. Local 459 covers the respondent's employees.

³ The drivers, warehouse and stock employees were organized at that time.

the respondent's main office in St. Paul, at noon time, and began to talk to the respondent's employees in the shop. He was soon approached by Foreman Herbert Hanson. After informing Hanson that he was business agent of the Union and that he wished to talk to the shop employees, he was told that he would have to get permission from the office. Hanson took him to the office of Vincent Judd, the respondent's vice-president and operating manager. In respect to his interview with Judd, Fischer's testimony, which is credited by the undersigned, was as follows:

I went into the office and told Mr. Judd who I was, and he says, "I handle all the labor relations. We don't need no union to handle the labor relations. Furthermore, you have got to have a permit from the office before you can go in there." I asked Mr. Judd whether he would give me the permission to talk to the men during the noon hour, if I asked him for one. He said, he replied again he was well capable of handling his labor relations and he didn't need any union to handle the labor relations, and I told him, "Then if I would ask you for permission, you wouldn't give me any permission anyway. If I go in without permission I have a few minutes to talk before you come and throw me out." He began showing me the door. He said, "Out this way," pointing to the front door. I told him I had my car parked on the other side of the garage and that is where I would go. He says, "This way out." He was determined "This way out through the front door." I told him I had my car in back and that is where I intended to go, so I went through the back door. Just before I started going, why he says, "I got a couple of house detectives here." I replied to him, "Don't worry, I won't bother your house detectives" and I went on through the shop again and went to my car. That was the end of the conversation.

The Union made no further effort to organize the shop employees until March 1944, at which time Fischer was informed by employee Glenn Dorsey that the shop employees were dissatisfied and would be willing to join the Union. There were 17 or 18 employees at the St. Paul shop at that time who were eligible for membership in the Union. On or about March 13, the Union held an organizational meeting for the respondent's shop employees. Six of them attended and joined the Union. Another such meeting was held on March 17. Two or three weeks later, a third meeting of the Union was arranged, but the attendance of the shop employees was negligible.

B. *Interference, restraint, and coercion*

Douglas Rawlings was a mechanic and welder in the respondent's shop from September 1943 to April 17, 1944. On March 19 or 20, 1944, Foreman Ira Mueller⁴ told Rawlings that he had heard some of the employees were trying to organize the shop, and he asked Rawlings what he thought of the union coming in. He also told Rawlings that if the Union got in, the work-week would be cut from 54 to 40 hours, which would mean a cut in pay. Mueller also asked Rawlings if in the event his pay was raised to \$1.00 an hour, he would be satisfied and forget about the Union.⁵

⁴ The respondent admitted that Mueller was a foreman in the respondent's St. Paul shop.

⁵ The findings as to this interview rest upon Rawlings' credible testimony. The foreman admitted that he called the employee to his office and that he queried him about the Union. He also admitted promising Rawlings a raise.

In the latter part of March Ray Purdy, an inspector and assistant to Mueller, told Rawlings that if the Union came in, the employees would be cut down to 40 hours a week, as the respondent would not let them work more than 40 hours a week.⁶

About March 18 Foreman Mueller asked Robert Linde, a greaser in the shop, what he thought of the Union. Linde replied that he understood, if the Union came in, the employees would get time and a half for all work over 40 hours a week, whereas they were then working 54 hours a week and getting only straight time. Mueller replied "Well, if the union gets in, you will only get 40 hours . . . You will make less money so you won't be gaining anything."⁷

In the latter part of March, Linde was told by Foreman Mueller that Manager Judd wanted to see him in the office. Upon arriving at the office, he was told by Judd "I understand you are involved with the union." Linde replied in the affirmative. Judd then said "How long has this been going on? . . . Are any of the boys signed up or anything?" Linde replied that quite a few of them had signed up. Judd said, "Well, I don't think you will gain anything by it because you are working 54 hours now, and if the union gets in you will work only 40 hours, and you won't get no 40—no time and a half for over 40 hours because you will only work 40 hours." Judd further asked Linde what interest he had in the Union, and if he had any grievances that would cause him to join the Union. Judd further said to Linde "I don't think the Union will have much of a chance because it took the drivers three years to organize the union and they got a union down in Des Moines that only works 40 hours, and they are more strict down there, and in St. Paul they are more lenient because we are non-union."⁸

Concluding Findings

The respondent's hostility toward the Union organizing the St. Paul shop dates from the initial effort of the Union in the spring of 1942. Fischer, the Union's representative, was not permitted to enter the shop and talk to the employees. He was informed by Manager Judd that he was quite capable of handling labor relations and that he did not need any union in the shop. The Union ceased its efforts to organize the shop employees and no further effort was made until about 2 years later. Due to the conditions then existing in the plant, as detailed by employee Linde, such as a 54-hour week at straight time, too many bosses, discrimination in assigning the work, and Sunday and night work with no overtime, some of the shop employees became dissatisfied and in March, 1944, signified their desire to join the Union. The respondent through its manager and

⁶ This finding is based upon the undenied testimony of Rawlings. Purdy did not testify at the hearing. The record shows and the undersigned finds that in the latter part of March 1944, Purdy was an inspector in the St. Paul shop, and, in the absence of Foreman Mueller, acted as foreman. He assigned men to various jobs. When not inspecting work done by other employees, or acting as foreman, Purdy sometimes worked in the shop the same as other mechanics. He was one of the oldest employees in seniority. Mueller admitted that Purdy reported to him as to the conduct of employees. The undersigned finds that Purdy exercised supervisory powers.

⁷ This finding rests upon Linde's credible testimony. Mueller denied that he made disparaging remarks about the Union to Linde or that he advised the employee no benefits would be received "from collective bargaining," but did not deny having asked the employee what he thought about the Union or the specific remarks attributed to him by Linde. He admitted asking Linde what he knew about the Union organizing.

⁸ These findings are based upon the credible testimony of employee Linde. Judd admitted having questioned the employee after Mueller had told him Linde was involved in organizing the Union.

supervisors, promptly pointed out to certain shop employees that they would not be benefited by joining the Union, queried them as to the extent of the union organization in the shop, and by other remarks endeavored to discourage membership in the Union.

In summary, the undersigned concludes and finds that by the aforesaid statements and acts of Manager Judd, Foreman Mueller, and Inspector Purdy, the respondent interfered with, restrained, and coerced its 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 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

Since it has been found that the respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act:

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 International Association of Machinists, District 77, A. F. of L., 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.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Merchants Motor Freight, Inc., St. Paul, Minnesota, 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 of 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 purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations 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 its shop at St. Paul, Minnesota, and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notice to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 of these recommendations;

(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 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.

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 or exception 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.

W. P. WEBB,
Trial Examiner.

Dated May 24, 1944.