

In the Matter of THE TIMKEN ROLLER BEARING COMPANY and UNITED
STEELWORKERS OF AMERICA (CIO)

Case No. 9-C-2032.—Decided February 23, 1945

DECISION

AND

ORDER

On October 14, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed. Thereafter, the attorney for the Board filed exceptions to the Intermediate Report and a brief. No request for oral argument before the Board was made by any of the parties, and none was held. The Board has considered the rulings made by the Trial Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed.

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

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint against The Timken Roller Bearing Company, Columbus, Ohio, be, and it hereby is, dismissed.

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

INTERMEDIATE REPORT

Mr. James A. Shaw, for the Board.
Messrs. John G. Ketterer and *G. H. Turner*, of Canton, Ohio, for the respondent.
Mr. Philip M. Curran, of Pittsburgh, Pa., and *Mr. Spratley*, of Columbus, Ohio, for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed on April 22, 1944, by the United Steelworkers of America, CIO, herein called the Union, the National Labor Relations Board, 60 N. L. R. B., No. 143.

herein called the Board, by its Regional Director for the Ninth Region (Cincinnati, Ohio), issued its complaint dated August 12, 1944, against The Timken Roller Bearing Company,¹ 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, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent on or about December 15, 1943, and again on or about April 17, 1944, refused to hire one Ralph McDonald because of his membership in, activity on behalf of, and sympathy for the Union, in order to discourage membership in the Union.

The answer of the respondent, dated August 19, 1944, admitted the refusal to rehire said McDonald but denied that its refusal was because of his membership in, activity on behalf of, or sympathy for the Union, or for the purpose of discouraging membership in the Union; and affirmatively the answer averred that the respondent had refused to rehire McDonald because he had quit the employ of respondent without notice on or about August 23, 1941, had had a poor production record with respondent, had a bad absentee record, and had been disciplined because of his absentee record and because of certain acts of insubordination.

Pursuant to notice, a hearing was held at Columbus, Ohio, on September 5, 6, and 7, 1944, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by its representatives. 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 hearing the respondent's counsel moved to dismiss the complaint. Ruling thereon was reserved. The motion is disposed of in the findings, conclusions, and recommendation hereinafter set forth. At the same time, Board's counsel moved to amend the complaint to conform to the proof with respect to names, dates, and places. This motion was granted. Counsel for the Board and the respondent argued orally. The respondent has filed a brief.

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 is an Ohio corporation having its principal offices and place of business in Canton, Ohio, with manufacturing plants in Canton, Newton Falls, Wooster, Mt. Vernon, Zanesville, and Columbus, all in the State of Ohio,² where it is engaged in the manufacture, sale, and distribution of tapered roller bearings and steel and detachable rock bits. During the 12 months immediately preceding the hearing, the respondent purchased raw materials whose value exceeded \$1,000,000, of which 90 percent was purchased and imported from points outside the State of Ohio. During the same period of time, the respondent sold and distributed finished products in excess of \$1,000,000, of which 90 percent was

¹ The complaint was amended to add "The" to the respondent's name

² The charges herein involve only the Columbus plant.

shipped to points outside the State of Ohio. The respondent admits that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The refusal to reemploy McDonald*

Ralph McDonald was hired by the respondent in 1935 as a trucker in its Columbus plant, hereinafter called the plant, but after a few months he was transferred to a grinding machine. Except for one period during a general lay-off in 1938, McDonald was employed steadily as a grinder until August 1941, when he voluntarily terminated his employment.

In 1939, McDonald initiated organization of a local of the Union at the plant and it was granted a charter in December 1939, at which time McDonald became its financial secretary and a member of the grievance committee, positions which he retained until he left the respondent's employ in August 1941. At this time, the respondent already had a corporation-wide contract with the Union for members only, and it then likewise recognized the new local for members only. As a member of the grievance committee, McDonald was quite active, but took many liberties which the respondent did not accord him. He went all over the plant, leaving his department without the requisite permission of his foreman³ to consult employees about grievances,⁴ and he was totally absent from work frequently without notifying his foreman or explaining the cause for his absence.⁵ During many of his absences McDonald was engaged in work on behalf of the Union, although he did not so notify his foreman. These absences resulted in a warning and later a lay-off as a disciplinary measure. McDonald did not protest these measures nor seek to have them adjusted as a grievance.

On August 26, 1941, McDonald notified his foreman, Otto Hand, that he was leaving to take another job. Hand made out a termination slip which McDonald signed. On the next day, Hand received a report of the production of the men in his department, and, from this, noticed that McDonald's production was low. At this time Hand added to the termination slip the comment, under the reason given for separation, "Low in production." Hand had previously known that

³ McDonald testified on cross-examination that he had procured permission to do this from Robert Hagen, industrial relations director. Hagen denied this. Because McDonald's memory proved in many respects to be faulty and because the undersigned was impressed with Hagen's candid demeanor and testimony, the undersigned credits the latter's testimony.

⁴ The Union's 1941 "members only" contract with the respondent, which succeeded one of 1937, provided that the foreman of an employee who was presenting a grievance should, if requested by the aggrieved employee, arrange for the presence of the Union grievance committeeman, and it provided for time off for members of the grievance committee in certain instances. McDonald did not limit his absences from the department on grievance matters to the instances covered by the contract and he did not as a rule punch out before going to another department.

⁵ McDonald testified that he "practically always" made a written excuse for his absence and handed it to his foreman, Hand, or his assistant foreman, Farris. Hand testified that it was not customary to turn in a written excuse unless a man was absent for two or three days or more and that McDonald gave no written excuses that he knew of. From all the evidence, the undersigned believes that McDonald did not, as a practice, turn in written excuses.

McDonald's production was "a little below average." However, McDonald's average earnings for the final period were appreciably below his prior average.⁶

During the year following his quitting at the plant, McDonald worked as a grinder in three or four different places about the country until he was inducted into the Army. He received his discharge therefrom on November 30, 1943, and returned to Columbus. On application to the United States Employment Service, he was given a referral to the respondent. On December 10, 1943, he went to the respondent's employment office. Here he was interrogated by an interviewer, and he filled out an application blank. On this blank he listed the respondent as one of his former employers. When the interviewer saw this, he got out McDonald's employment file and took it to Noble Smith, personnel director, who looked through the file. In the file, Smith saw (1) the separation notice, above described, which bore the comment, "Low in production";⁷ (2) a disciplinary report dated April 30, 1940, relating an instance when McDonald had refused to regrind some rejected bearing cones; (3) a disciplinary report dated June 13, 1941, warning McDonald that he had been laying off too much without excuse and without notifying his foreman; (4) a disciplinary report dated June 17, 1941, reprimanding McDonald for refusing to work without good cause; and (5) a disciplinary report dated July 26, 1941, giving McDonald a 3-day lay-off because of his being absent too often.⁸

Because of the foregoing, Smith decided not to rehire McDonald, despite the fact that the respondent needed grinders and seldom had applications from experienced grinders.⁹ The interviewer returned and told McDonald that the respondent could not use him.

On April 17, 1944, McDonald again applied for and received from the U. S. E. S. a referral to the respondent, again made application for reemployment, and again was refused.¹⁰

⁶ During the period from January 1941, to the time McDonald quit, the respondent's records indicated that McDonald's average hourly earnings were about 91 cents and that during the final period in August his hourly earnings were 72½ cents. The undersigned interprets these figures as the earnings for the time he was shown by the time clock to be working. If McDonald left his machine to investigate grievances without punching the time clock, his average would have been accordingly reduced. The undersigned has considered the possibility that Hand might, because of McDonald's union activities, have made this comment to prevent McDonald's reemployment, but concludes that the evidence does not bear this out.

⁷ On this form is a line reading: "Recommend for employment: Yes No ." McDonald's separation notice was received in evidence as a respondent's exhibit. In the box following "Yes" there appeared a fairly heavy impression of a check mark. A lighter impression of a check mark appeared in the box following "No" and a vague line, running from the words "Low in production," extended up toward the "No" box. All of these marks appeared to have been erased. After close inspection, the undersigned finds that they have been erased. The respondent, not conceding that there were erasures, offered no evidence to show who made the erasures or why. Smith did not recall that any recommendation appeared on the form when he saw it, and he testified that it was not unusual that a foreman would not check either recommendation on the form. The undersigned was favorably impressed with Smith's demeanor on the stand and with his straight-forward testimony and is convinced that Smith knew nothing about the erasures.

⁸ The use of disciplinary reports, in triplicate, one copy going to the offending employee, one to the employment department, and one being retained by the foreman making the report, was begun in 1940. Previous disciplinary action respecting McDonald was not in his employment file and is therefore not related here.

⁹ The circumstances giving rise to the issuance of such disciplinary reports in McDonald's case were gone into at the hearing. While McDonald's side of the case was not entirely devoid of merit, Smith did not have the original facts presented to him to see if there were mitigating circumstances; he saw only the reports.

¹⁰ At the same time that it was refusing McDonald's application, the respondent was accepting that of an inexperienced woman as a grinder.

The Board's theory was that, since McDonald's record had apparently not been bad enough to result in his discharge, and since the respondent needed and was hiring inexperienced grinders for want of experienced grinders, an inference should be drawn that McDonald was refused reemployment because of his union activities. However, it is clear that Smith alone made the decision not to re-employ McDonald and that he made it on the basis of the information in the employment file and not on McDonald's record or activities independent thereof. The undersigned finds, therefore, that McDonald was refused employment because of his record and not because of his union membership or activities.¹¹ In reaching this conclusion the undersigned has considered all the possibilities inferable from the erasures on McDonald's separation notice.

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

CONCLUSIONS OF LAW

1. The operations of the respondent, The Timken Roller Bearing Company, constitute a continuous flow of trade, traffic, and commerce among the several States, within the meaning of Section 2 (6) of the Act.
2. United Steelworkers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act
3. The respondent has not violated Section 8 (1) and (3) of the Act as alleged in the complaint.

RECOMMENDATION

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in the case, the undersigned recommends that the complaint against the respondent, The Timken Roller Bearing Company, be dismissed.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, 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.

JAMES R. HEMINGWAY
Trial Examiner.

Dated October 14, 1944

¹¹ There was no allegation in the complaint and no showing that the respondent had any animosity toward the Union. On the contrary, the absence of any independent 8 (1) evidence and the respondent's ready recognition of the local as the representative of its members indicate otherwise.