

In the Matter of R. L. POLK & Co. and RUTH N. FILLEBROWN

In the Matter of R. L. POLK & Co. and EVELYN LARAMORE

Cases Nos. 4-C-1743 and 4-C-1744, respectively.—Decided July 2, 1948

Miss Helen F. Humphrey, and Mr. Sidney Grossman, for the Board.
Mr. Frank E. Cooper, of Detroit, Mich., for the Respondent.

DECISION

AND

ORDER

On August 21, 1947, Trial Examiner C. W. Whittemore 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, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, counsel for the Board filed exceptions to the Intermediate Report and briefs in support of their exceptions. The Respondent filed exceptions to certain of the Trial Examiner's conclusions not dispositive of the ultimate issues; in addition, it filed a brief in support of the Trial Examiner's conclusions of law and recommendations, and a brief in reply to arguments adduced in the brief of counsel for the Board.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and finds the exceptions to be without merit insofar as they relate to the issue of whether the Respondent has violated the Act. The Trial Examiner's conclusions rest principally upon his findings as to the credibility of witnesses. These findings are supported by the record and appear to be sound. Accordingly, we hereby adopt the findings, conclusions, and recommendations of the Trial Examiner.

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members [Houston, Murdock, and Gray].

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein against R. J. Polk & Co., Trenton, New Jersey, be, and it hereby is, dismissed.

INTERMEDIATE REPORT

Miss Helen F. Humphrey, for the Board.

Mr. Frank E. Cooper, of Detroit, Mich., for the respondent.

STATEMENT OF THE CASE

An amended charge was filed May 14, 1947, by Ruth N. Fillebrown, an individual, in Case No. 4-C-1743. An amended charge was filed May 14, 1947, by Evelyn Laramore, an individual, in Case No. 4-C-1744. An Order Consolidating Cases Nos. 4-C-1743 and 1744 was issued May 28, 1947, by the National Labor Relations Board, herein called the Board. Upon the aforesaid charges, and pursuant to the aforesaid Order, the Board, by its Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued its complaint dated May 29, 1947, against R. L. Polk & Co., Trenton, New Jersey, herein called the respondent. The complaint alleged 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, the charges, and a notice of hearing were served upon the respondent, Ruth N. Fillebrown, and Evelyn Laramore.

With respect to unfair labor practices the complaint alleged in substance: (1) that the respondent violated Section 8 (1) and (3) of the Act by discriminatorily discharging and refusing to reinstate Ruth N. Fillebrown and Evelyn Laramore, in November 1946, because they joined or assisted the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and (2) that the respondent violated Section 8 (1) of the Act by urging, warning, and threatening its employees not to become or to remain members of the Union.

In its answer, dated June 12, 1947, the respondent denied generally its commission of the unfair labor practices alleged in the complaint, and affirmatively alleged that Fillebrown and Laramore had been discharged and refused reinstatement because of unsatisfactory conduct and work records.

Pursuant to notice, a hearing was held in Trenton, New Jersey, on July 10 and 11, 1947, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent appeared by counsel. Both parties participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues.

At the opening of the hearing, in response to a motion of counsel for the respondent seeking more specific particulars as to 8 (1) allegations, counsel for the Board moved, and the motion was granted, to amend the complaint in certain respects. Also at the opening of the hearing the Examiner denied motions by counsel for the respondent to dismiss the complaint: (1) because

"the Civil Service Commission has not properly, in accordance with the provisions of Section 11 of the Federal Administrative Procedure Act, provided for the appointment of a trial examiner"; and (2) because the complaint is "insufficient under the terms of Section 5-A of the Federal Administrative Procedure Act." At the close of the hearing both counsel joined in a motion to conform the pleadings to the proof in minor matters, such as spelling of names, dates, etc. The motion was granted. Ruling was reserved upon a motion by counsel for the respondent that the complaint be dismissed because of failure of the evidence to sustain allegations of unfair labor practices. Disposition of this motion is made hereinafter.

The hearing was closed after oral argument before the Examiner by counsel for the Board and for the respondent. Opportunity was afforded to both counsel for the filing with the Examiner of briefs and proposed findings of fact and conclusions of law. A brief from counsel for the respondent has been received.

Since the close of the hearing a "Stipulation for Correction of Transcript" has been received from counsel for the Board and for the respondent. The proposed corrections are hereby approved; the stipulation is hereby made a part of the record; and the corrections shall be made upon the face of the transcript by the Docket Clerk.

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

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT

The respondent, R. L. Polk & Co., is a Delaware corporation having its principal office and place of business in Detroit, Michigan, and branch offices located in Trenton, New Jersey; Chicago, Illinois; St. Louis, Missouri; New York, New York; and Philadelphia, Pennsylvania. At its Trenton, New Jersey, branch office the respondent is engaged exclusively in the business of direct mail advertising.

During the past 6 months the respondent, in the course of its operations at its Trenton branch, caused a substantial amount of raw materials, consisting principally of paper, valued at more than \$25,000, to be purchased, delivered, and transported in interstate commerce from and through States of the United States other than the State of New Jersey, to its Trenton branch. In connection with such operations, the respondent sells advertising services to numerous clients, most of which are located outside the State of New Jersey, and prepares and distributes advertising materials, which it causes and has continuously caused to be distributed in interstate commerce to States of the United States other than the State of New Jersey. During the past 6 months, the business of the respondent at its Trenton branch amounted to more than \$150,000 in value, about 95 percent of which dollar value was shipped to points outside the State of New Jersey.

The respondent concedes that it is engaged in commerce within the meaning of the Act

II THE ORGANIZATION INVOLVED

Office Employees International Union, AFL, hereinafter called the Union, is a labor organization admitting to membership employees of the respondent at its Trenton branch.

III THE ALLEGED UNFAIR LABOR PRACTICES

A. *The issues and related, undisputed events*

Due to expiration of a lease sometime in 1946, the respondent closed its direct mail branch in New York City and transferred these operations to Trenton, New Jersey. The Trenton branch was opened and began functioning in October 1946. Since then top supervision, locally, has been in the hands of Manager Elmer J. Jantz, although he has been and is responsible to higher officials at the Detroit office, particularly as to administration of the respondent's labor relations policies. Before assuming his new position at Trenton, and except for his period of war service, Jantz had been connected with the Detroit office since 1933.

Upon opening the Trenton office, early in October, Jantz hired as his secretary Jean Palus, who had previously served as personnel manager for another Trenton firm. He assigned to Palus the employing of typists. During the latter part of October Agnes Cousins joined the managerial staff as personnel manager, and thereafter the hiring of new employees became her responsibility.

Within a short time after the branch opened, about 30 girls were employed for work in the typing department. Howard Galyon, who also had been connected with the Detroit plant for many years, was transferred to Trenton to serve as manager of this department. Sofie Foreman served under Galyon as supervisor.

During October and November, according to the testimony of Manager Jantz, the typists "were working under the most adverse conditions possible." Three departments were then crowded on one floor, and all girls shared a single wash-room. Also, according to Jantz, "we had girls sitting at small kitchen tables and sitting on . . . straight-backed chairs."

Among the typists hired in October were Ruth Fillebrown and Evelyn Laramore. The major issues of these proceedings arise from the discharging of these two girls a few weeks after they were employed. It is the Board's contention that they were discriminatorily discharged because of their union activities or their concerted activities "for the purposes of collective bargaining or other mutual aid or protection." The respondent denies these allegations, and claims that the two girls were discharged for reasons not violative of the Act.

B *Relevant events in dispute*

1. Fillebrown's previous employment

Ruth Fillebrown filled out an employment application blank for Palus on October 22, 1946. Among other inquiries, the blank contained a section calling for the listing of the "last four jobs" the applicant had held. In executing the application Fillebrown cited four previously held jobs, but failed to include the two positions held by her just before applying for work with the respondent. One of the two positions was with the Baron Mace Corporation, a Trenton concern, where she had worked in June and July 1946. Two points of dispute arise from the incompleteness of her application blank, both possess an unavoidable bearing upon the credibility of Fillebrown's testimony as to her discharge by the respondent.

According to Fillebrown's testimony, in filling in the four spaces provided on the application form for the listing of her last four jobs, she "began to run out of room for putting the dates and names of places" where she had previously worked, and so she asked Palus if it was necessary to put down "short time

employments." Also according to Fillebrown's testimony, Palus told her that inclusion of such jobs was unnecessary. Palus, on the other hand, denied (1) that Fillebrown had asked for assistance in filling in the form, and (2) that she had ever told any applicant to omit "recent jobs of short duration."

As to the other point of dispute, Fillebrown testified that she left her employment with the Baron Mace Corporation voluntarily and denied flatly that she had been discharged. On the other hand, Arthur Wessel, president of that corporation, testified that Fillebrown did not quit but was "laid off" because she was "bad morale" for the other girls, keeping them from their work and spending too much time in the ladies' room. Following this testimony by Wessel, counsel for the Board introduced into evidence an open letter dated December 9, 1946, bearing the signature of Barney Khaner, then production manager at the Baron Mace plant. The text of the letter states, in substance, that Fillebrown had left that company of her own volition and that "we found no fault with her character." Wessel explained, as a witness, that Khaner had informed him of the circumstances of giving Fillebrown this letter sometime after the event, telling him that Fillebrown had come to the plant asking for "something to clear herself and get a recommendation," in order to get another job. Also, according to Wessel's testimony, he accepted Khaner's explanation as "perfectly all right," although he would not have rehired her.

Khaner was not a witness. Fillebrown did not testify as to the circumstances under which she obtained the letter from Khaner. Wessel's testimony as to Fillebrown's deportment as an employee, observed by himself, is undisputed.

The uncontradicted portions of Wessel's testimony and certain logical improbabilities inherent in Fillebrown's testimony as to why she neglected to list Baron Mace as a previous employer resolve both of the disputed points against her. As noted above, Fillebrown testified that she did not ask advice from Palus as to omitting short-period positions until she ran "out of room" on the form. In the absence of any other explanation it must be assumed that she meant she did not raise the question, if it was raised, until all or most of the four spaces, under the specific instruction to list the "last four jobs," had been filled in by her. The first entry appearing on the form, in evidence, covers a period from August 1944 to September 1945. The other three entries list jobs held, in reverse chronology, from 1944 to 1940. It is unreasonable to believe that Fillebrown, whose listed previous jobs indicate that in each she had been a supervisor, raised any question about the propriety of including jobs held in 1946, when the course she had been pursuing had already retraced the details of her employment from 1945 to 1940.

The Examiner finds, contrary to her testimony: (1) that Fillebrown was discharged from the Baron Mace Corporation; and (2) that she was not advised by Palus to omit the listing of this or any other job from the application blank.

2. The employment and discharge by the respondent of Ruth Fillebrown and Evelyn Laramore

Evelyn Laramore began work for the respondent on October 21, Fillebrown on October 23. Laramore was an experienced typist, Fillebrown had done little of this sort of work before. Other inexperienced girls were being hired during this period of operations, since management was trying to complete a special order within a contract period. Both Fillebrown and Laramore worked under the immediate supervision of Sofie Foreman.

On a morning early in November, as the girls came into the typing department to work, they were asked by Foreman not to hang their coats on nails in the wall, as they had been doing, but to use racks provided for that purpose at the end of the building. Foreman explained that she was making this request upon instructions from the department manager, Galyon. Fillebrown, according to her own testimony, protested against Foreman's request, declaring that the racks were crowded and that she preferred to have Galyon give his instructions in person. Apparently a heated dispute arose. A number of the girls stopped, or did not begin, working, including Fillebrown and Laramore. They remained at their desks, with coats on or hung over the back of their chairs. In about an hour Jantz was called into the department. Upon learning of the reason for the work stoppage Jantz urged the girls to have patience during the difficult period of starting operations, and said he realized that better equipment and lighting conditions were needed. A number of girls made comments, but according to their own testimony, Fillebrown and Laramore served as the leading spokesmen for the group. Fillebrown told Jantz, according to her testimony:

that I wasn't as well qualified to speak as some of the other people, but from my first day at the company, in their employ, I had heard repeated complaints regarding the working conditions and the wages and everything else, and having been there a short time it was beginning to get on my nerves. I knew it was effecting my feeling toward the company, and I knew it was effecting my working ability, and that if something wasn't done pretty soon it wasn't worth the effort it took to work there, that I would much rather call the whole thing off than to work under the setup as it was at this time.

Laramore complained about the lighting, and stated that the girls did not think it fair "to be pushed and have a different set of rules, such as hanging our coats in the back of the room when there were not proper facilities."

During the week end following the brief, above-described work stoppage, Fillebrown, Laramore and a number of other girls decided to approach some "national" union with a view of organizing a local. Fillebrown reported to many of the girls on Monday, November 11, that she had made inquiries and had found a union which would admit them to membership. The girls authorized her to arrange for a meeting with its representatives. Fillebrown pursued the matter but was informed that a meeting would be delayed a few days until a union representative could reach Trenton. On November 16, before a meeting date had been set, Fillebrown and Laramore signed applications for membership in the Union at a Trenton labor newspaper office. Thereafter Fillebrown reported her action to the girls and, according to her testimony, "led discussions about the things we felt we should ask for from the Company in the way of working conditions and wages . . ." Also according to her own testimony, these discussions took place "daily, and on some particular occasions several times a day," in the washroom, in both the typing and assembly departments, and outside the plant. She further testified that she went to the washroom some days as often as once an hour, staying there as long as it took "a cigarette to burn."

A few days before November 16, during working hours, a number of girls gathered in the washroom. One of them was crying. Fillebrown asked what the matter was. The girl replied that she was going to be discharged for low production. Fillebrown urged the girls that if they wanted to protect themselves against discharge that they "get on the phone and call the union." She gave them a telephone number and during the lunch hour Laramore called it. After returning

from lunch she reported to the girls that nothing could be done until the Union representative reached Trenton.¹

Before working hours on November 14 or 15, according to Fillebrown's testimony, a group of girls gathered in the washroom. The girls were discussing with Supervisor Foreman what they apparently considered to have been an inappropriate promotion of another girl the day before. Foreman told them she had not made the promotion and asked them not to hold it against her. Fillebrown commented that she agreed the fault was not Foreman's, but declared that if "the present trend kept up with working conditions and the general dissatisfaction" they were going to have a union. Foreman replied, according to Fillebrown's testimony, that anyone joining a union should have their "God damn head examined," and added that she was not going to pay anyone \$10 a week to ride around in a Packard. Fillebrown told Foreman that she considered it a matter of "personal opinion," and that for her part she had "taken steps to become a union member."² Later the same day, during the rest period, Foreman offered to take up with Galyon any grievances Fillebrown might have. Fillebrown rejected the offer, stating that if she could not stand it until they had "union protection," she would go personally to Jantz.

After October 28, 1946, Agnes Cousins joined the respondent's Trenton staff as personnel manager, and a more selective procedure for hiring experienced typists was adopted. A system of comparative production records for girls already hired was put into effect. In an effort to increase production Cousins began a series of individual interviews with employees whose records were unsatisfactory. Some were discharged for low productivity. Many of the girls, thus interviewed, gave as an excuse for their low production the claim that they had frequently been disturbed and interrupted in their work. From these interviews, from reports received from supervisors, and from her own observations, according to her testimony, Cousins came to the conclusion that Fillebrown was the center of disturbances.

Late in the afternoon of November 19 Fillebrown was called to Cousins' office for an interview on her production record. Fillebrown was told that although she was not in the "low group," but was "average," the personnel manager believed she could do much better if she stayed at her desk and stopped bothering the other girls. The interview, interrupted by the closing hour, was continued the following morning. During the morning interview Cousins told Fillebrown that management had determined that she was the center of disturbances among the girls, and urged her to try to increase her production.³

During the day of November 20 Cousins, Jantz, and Galyon met in conference and discussed the conclusions made by the personnel manager as to her inter-

¹ Fillebrown placed this incident as occurring on November 19, Laramore testified that it was a few days before November 16, when she signed the Union card. The Examiner accepts Laramore's estimate of the date as the more accurate.

² Foreman, on vacation at the time of the hearing, was not a witness.

³ In most major details the testimony of both Cousins and Fillebrown is in general agreement as to the interview of November 19 and 20. Fillebrown testified, however, and Cousins denied, (1) that on November 19 Cousins said "they knew that sooner or later they were going to have to recognize the union"; and (a) that on November 20 Cousins accused her of having another girl telephone to the Union the day before. The Examiner accepts Cousins' testimony as the more credible. The only telephone call referred to in the record was made by Laramore—not on November 19—but according to Laramore's testimony several days before November 16. Furthermore, in her testimony concerning her discharge, Laramore made no claim that Cousins mentioned either the Union or her telephone call.

views with the girls in the typing department. It was decided to discharge Fillebrown.

Just before closing time the same day, Cousins called Fillebrown to her office and told her that because of disturbances she had created in the department the Company "would be very happy without her services." Fillebrown asked to see Jantz. Jantz confirmed the discharge.

During the following week management continued its observation of the typing department. According to the testimony of Cousins, the "disturbances . . . didn't entirely subside" and she noted that Laramore was frequently absent from her desk, in other departments, "keeping and disturbing others from work." Galyon testified that he made similar observations. Both reported to Jantz, and in conference on November 25 it was decided to discharge Laramore. She was discharged on November 26, by Cousins, who told her that this action was being taken because she had caused work interruptions.

On November 29 Fillebrown and Laramore attended the first meeting of the Union, and on December 2 the two girls distributed union leaflets at the plant. On December 9 an official of the Union visited the Trenton office and sought reinstatement for Fillebrown and Laramore. Cousins and Jantz denied the request, stating that the two girls had engaged in disturbances, and that Fillebrown had falsified her application for employment.

Organization among the employees at the Trenton branch continued thereafter. Two days before the opening of the hearing in these proceedings the Union filed with the Board a petition for representation as the collective bargaining agent of the respondent's employees at the Trenton branch. The respondent, on the same date, entered into an agreement with the Union for the holding of an election.

C. Conclusions as to the discharges

Although the testimony of Fillebrown, if believed in its entirety, provides some basis for the inference that management resented her militant leadership in urging union organization and collective action, and therefore discharged her to discourage such activity, there is nothing in the testimony of Laramore to show: (1) that she was at all active in organizational efforts,—until *after* her discharge, or (2) that management knew, before December 2, that she was even interested in the Union.

Fillebrown's misrepresentation of facts, as a witness, concerning her discharge by a previous employer, casts grave doubt upon the accuracy of other uncorroborated portions of her testimony. Her testimony as a whole, thus weakened, fails to support a reasonable inference that she was discharged for union activities.

It is clear from their own testimony that both girls spent an undue amount of time away from their work, during a period when the new personnel manager was trying to speed up production. Credible evidence establishes that Fillebrown had been discharged by another company, but a few months before, for reasons similar to those advanced by this respondent.

And while not determinative, the Examiner cannot ignore in this setting the evidence that the respondent, in its several other plants, has dealt with various unions over a period of many years without having had brought against it any charge of unfair labor practices

As to the alleged coercive remarks by management, even if credence were to be accorded Fillebrown's testimony to the effect that Cousins told her they must sometime recognize a union, the statement would hardly fall within the most

expansive definition of coercion, restraint, or interference. And the comment of Foreman,—that anyone joining a union should have their head examined—was considered by Fillebrown at the time, according to her own testimony, to be an expression of personal opinion. Laramore, the other employee witness for the Board, testified as to but one remark by Foreman. Early in her employment, according to Laramore, in what was apparently a group discussion, Foreman stated that “she didn’t believe in unions.” Laramore made no claim that Cousins voiced any anti-union sentiments.

The Examiner is convinced, and finds, that the evidence does not sustain the allegations of the complaint as to: (1) the discharge and refusal to reinstate Fillebrown and Laramore, and (2) remarks allegedly made by Cousins.

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. R. L. Polk & Co. is engaged in commerce within the meaning of Section 2 (6) of the Act.

2. R. L. Polk & Co. has not engaged in unfair labor practices within the meaning of Section 8 (1) or (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the complaint against the respondent, R. L. Polk & Co., be dismissed in its entirety.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, 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; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, 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. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

C. W. WHITTEMORE,
Trial Examiner.

Dated August 21, 1947.