In the Matter of UNION STARCH & REFINING COMPANY *and* JOHN RALPH, AN INDIVIDUAL

In the Matter of GRAIN PROCESSORS' INDEPENDENT UNION, LOCAL No. 1 *and* JOHN RALPH, AN INDIVIDUAL

Cases Nos. 14–CA–85 and 14–CB–13, respectively.—Decided March 30, 1949

DECISION

AND

ORDER REMANDING CASE TO TRIAL EXAMINER

On December 1, 1948, after a 2-day hearing, Trial Examiner Horace Ruckel dismissed the complaints in the above-entitled matter on the ground that the Board had no jurisdiction of the matter, because the evidence showed that the complaints had been based on charges which he deemed inadequate under the Board's Rules and Regulations, Section 203.11. He made no Report or further order. Thereafter, the General Counsel,[1] and John Ralph together with the International Chemical Workers Union, AFL,[2] filed requests for review of the dismissal by the Trial Examiner. Both Respondents filed memoranda in opposition thereto. The Respondent Company requested oral argument.[3]

Section 203.11 of the Board's Rules and Regulations, Series 5, requires that charges, which initiate complaint proceedings:

> . . . shall be in writing and signed, and shall either be sworn to . . . or shall contain a declaration by the person signing it, under the penalties of the Criminal Code, that its contents are true and correct to the best of his knowledge and belief. . . .

The instant charges, which alleged particular acts of the Respondent company and Respondent Union, involving John Ralph and nine others, to be violative of Sections 8 (a) (1), 8 (a) (3), 8 (b) (1) (A), and 8 (b) (2), appeared to be regular. They were signed by the charging party, subscribed and allegedly sworn to before a Board agent. At the hearing, John Ralph, the charging individual, when

[1] The Respondent Union's contention that the General Counsel lacks authority to file a request for review of a dismissal during hearing is without merit. Board's Rules and Regulations, Sec. 203.27 contemplates such requests from "any party" entitled by Sec. 202.11 (b) to file exceptions to an Intermediate Report.

[2] Subsequent to the dismissal, the Chemical Workers, on the basis of the prior membership in that Union of the discharged employees involved, moved to intervene for the purpose of participating in the request for review. The intervention was properly allowed.

[3] The briefs and memoranda, in our opinion, adequately set forth the positions of the parties; the request for oral argument is hereby denied.

offered as a witness, refused to take an oath or to affirm, saying that his word was limited to "yea, yea; nay, nay, in accordance with Matthew V. 37." He was permitted to testify on these, his words. Under cross-examination Ralph testified that he had neither sworn to nor affirmed the amended charge; all he had done was to read the text of the charge and sign it, unaware of the form of the jurat.[4] On redirect examination, Ralph said he had told the Board agent, when he signed the amended charge, that it was against his religion to swear or to affirm—his word was limited to "yea, yea, according to Matthew V." The agent had then, without comment, signed the jurat which contained the usual statement that the charge had been "subscribed and sworn to" before him.

Under these circumstances, it is reasonable to assume that the Board agent decided, as the Trial Examiner apparently did when the question was whether Ralph was qualified to testify, that the formula of words which Ralph considered binding upon his conscience sufficed for an oath and satisfied the Regulations. In determining the sufficiency of various deviations in form from the traditional oath, the Courts, in order to accommodate differences in religious beliefs, have accepted virtually any formula of words or deeds which can reasonably be construed as impelling a witness to tell the truth.[5] We would not do otherwise. In these circumstances, we regard Ralph's statements made at the time of filing the charges as equivalent to an oath. We therefore find that the charges as made fulfill the formal requirements of Section 203.11.

We accordingly find, contrary to the Trial Examiner, that the complaints were based on charges which conferred jurisdiction upon the Board in this matter. The Trial Examiner erred in dismissing the complaints for that reason. We hereby reverse his order of dismissal.

ORDER

IT IS HEREBY ORDERED that the above-entitled proceeding be, and it hereby is, remanded to the Trial Examiner for the taking of further evidence, for the preparation and issuance of an Intermediate Report, setting forth his findings of fact, conclusions of law, and recommendations with respect to the unfair labor practices alleged in the complaints herein.

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[4] The testimony with respect to the signing of the charge was limited to the amended charge in case 14–CA–85, but the Trial Examiner reasonably assumed it applicable to the amended charge in 14–CB–13. The original charges were not offered in evidence, but the Trial Examiner, without contradiction, properly deemed the evidence equally applicable to the original charges.

[5] 6 *Wigmore on Evidence* (3rd ed.) § 1818, esp. note 2. *State* v. *Dudikoff*, 145 Atl. 655, 109 Conn. 711, found prejudicial error in the action of a trial court which denied the privilege of testifying to another individual who similarly followed only Matthew V. 37.