

In the Matter of JACKSONVILLE MOTORS, INC.¹ AND REDMOND COMPANY,
INC. and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT
AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

Case No. 32-CA-68.—Decided January 18, 1950

DECISION
AND
ORDER

On October 17, 1949, Trial Examiner Louis Plost 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 attached hereto. The Trial Examiner also recommended that the complaint be dismissed insofar as it alleged that the Respondent had engaged in certain other unfair labor practices.² Thereafter the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board³ has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. 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 additions:

1. The Trial Examiner found that the Respondent, by posting notices in its clock house prohibiting solicitation on its property at any time, violated Section 8 (a) (1) of the Act. It is well settled that a notice which prohibits employees from engaging in union activity on the employer's property during their free time constitutes

¹ Jacksonville Motors, Inc., is not involved in this proceeding, and the complaint in this respect was properly dismissed by the Trial Examiner. Only Redmond Company, Inc., will be alluded to herein as the Respondent.

² The Trial Examiner found that employee Loyed was not discriminatorily discharged, as alleged in the complaint. No exceptions were taken to this finding, which we hereby adopt.

³ Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this proceeding to a three-member panel [Chairman Herzog and Members Houston and Murdock].

illegal interference,⁴ in the absence of special circumstances justifying such a prohibition.⁵ The Respondent contends that the notice it posted was aimed at excluding numerous individuals who allegedly came upon its premises to solicit the trade and patronage of its employees, and that this constituted the special circumstance which should take the present case outside the usual rule. Special circumstances justifying the prohibition have been found, however, only when it appeared that any union solicitation on an employer's premises, even during the employees' free time, would have interfered with the employer's business, as when solicitation occurred on the selling floors of a retail store. There is no showing that union solicitation by the Respondent's employees during their free time would have interfered with its business of assembling fractional horsepower motors. Furthermore, although the Respondent maintains that the notices were directed at outside solicitors seeking the employees' trade, it had established safeguards against such solicitors by fencing its property and posting a guard at the gate. Under these circumstances, we find, as did the Trial Examiner, that the notices, to the extent that they prohibited union solicitation on the Respondent's premises by its employees during their free time, constituted a violation of the Act, and we shall accordingly order the rule rescinded to that extent.

2. The Trial Examiner also found that the Respondent violated Section 8 (a) (1) of the Act by interrogating an employee as to the identity of a union organizer and as to whether or not the employee had been solicited to join the Union. In its brief, the Respondent argues that as these questions were not accompanied by threats or anti-union remarks, the questions alone do not constitute coercion. Such inquiries, however, have an inherently restraining effect on employees, and we have consistently held them to be *per se* violations of the Act.⁶

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 Respondent, Redmond Company, Inc., Jacksonville, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Posting notices prohibiting union solicitation on the Respondent's premises by its employees during their free time;

⁴ *Republic Aviation Corporation v. N. L. R. B.*, 324 U. S. 793.

⁵ *N. L. R. B. v. May Department Stores Co.*, 154 F. 2d 533 (C. A. 8, 1946).

⁶ *Standard-Coosa-Thatcher Company*, 85 NLRB 1358.

(b) Interrogating employees regarding union membership or activity.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:⁷

(a) Rescind the solicitation rule to the extent that it prohibits union solicitation on the Respondent's premises by its employees during their free time;

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

(c) Post at its plant in Jacksonville, Arkansas, copies of the notice attached hereto and marked Appendix A.⁸ Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being signed by representatives of the Respondent, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the Respondent discharged James Thomas Loyed because of his union membership or activity, be, and it hereby is, dismissed.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), or any other labor organization, or to refrain from doing so, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the National

⁷ In the Intermediate Report, paragraph 2 (a) and (b) were inadvertently included under paragraph 1.

⁸ In the event this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words, "A DECISION AND ORDER," the words, "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

Labor Relations Act, as amended, by the posting of notices prohibiting union solicitation on our premises by our employees during their free time, or by interrogating our employees regarding union membership or activity.

All our employees are free to become or remain members of the above-mentioned union, or any other labor organization.

REDMOND COMPANY, INC.,

Employer.

By _____
(Representative) (Title)

Dated _____

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT

William P. Alexander, Esq., for the General Counsel.

Leon B. Catlett, Esq., of Little Rock, Ark., for the Respondent.

Mr. Walter H. Harris, of Little Rock, Ark., for the Union.

STATEMENT OF THE CASE

Upon an amended charge filed June 20, 1949, by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued a complaint dated August 19, 1949, against Jacksonville Motors, Inc., and Redmond Company, Inc., of Jacksonville, Arkansas, herein called the Respondents,¹ alleging that the Respondents had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. On August 19, 1949, a copy of the complaint, together with a notice of hearing was served on the Respondents and on August 20, 1949, a copy of the amended charge on which the complaint was based was also served on the Respondents.

With respect to the unfair labor practices the complaint alleged in substance that the Respondents: (a) On or about April 15, 1949, discharged James T. Loyed because of his membership in and activities on behalf of the Union, and have thereafter refused to reinstate him; (b) inquired, questioned, and interrogated employees about their union membership and activities; (c) posted and maintained a notice prohibiting employees from engaging in any activities for the purpose of mutual aid and protection while on the Respondents' property; and (d) that by the above-related conduct the Respondents interfered with, restrained, and coerced, and are interfering with, restraining, and coercing their employees in the exercise of rights guaranteed in Section 7 of the Act, more particularly Section 8 (a) (1) and (3) thereof.

On August 25, 1949, the Respondents filed an answer in which they averred that Jacksonville Motors, Inc., was not a proper party and further denied that they

¹ As will appear at a later point in this report, Redmond Company, Inc., is the only party properly named herein as a respondent, Jacksonville Motors, Inc., not being involved and erroneously named as a respondent.

or either of them had engaged in any of the unfair labor practices alleged in the complaint.

Pursuant to notice a hearing was held at Little Rock, Arkansas, on September 7 and 8, 1949, before Louis Plost, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel, who will hereinafter be referred to in the name of their respective principals, and participated in the hearing. The Union appeared by a representative. Full opportunity was afforded all parties to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the conclusion of the General Counsel's case-in-chief and again at the close of the hearing the Respondent moved to dismiss the complaint. The undersigned reserved ruling on the motions, which are disposed of herein. At the close of the hearing the undersigned granted, without objection, a motion by the General Counsel to conform all the pleadings to the proof with respect to the spelling of names, correction of dates, and like variances not substantive. The parties waived the right afforded them to argue orally on the record. The undersigned set September 23, 1949, for the filing of briefs, proposed findings of fact, and conclusions of law. On the motion of the Respondent, Redmond Company, Inc., made after the close of the hearing, the date for filing briefs was extended to October 10, 1949. Briefs have been received from the General Counsel and the Respondent.

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 parties stipulated that the Respondent, Jacksonville Motors, Inc., was a wholly owned subsidiary of Redmond Company, Inc., organized for the purpose of originally holding title to the land on which Respondent, Redmond Company, Inc., has its plant, that this land has since been conveyed by Jacksonville Motors to Redmond Company, Inc., and that Jacksonville Motors does not have and never did have any other function to perform. The undersigned finds that the Respondent, Jacksonville Motors, Inc., is not a proper party to the instant proceeding and hereby dismisses the complaint as to the Respondent Jacksonville Motors, Inc.

The Respondent, Redmond Company, Inc., is a Michigan corporation operating a plant at Jacksonville, Arkansas, where it is engaged in the manufacture of sub-fractional electric motors. During the period January to August 31, 1949, the Respondent utilized at its Jacksonville, Arkansas, plant, raw materials consisting of steel, copper, and insulating materials having a dollar value of \$1,120,000.

Ninety percent of such raw materials was shipped to the Respondent's Jacksonville plant from points outside the State of Arkansas.

During the same period Respondent sold and shipped from Jacksonville finished motors valued at \$2,800,000. Practically all of these motors were shipped to points outside Arkansas.

II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The alleged discriminatory discharge of James Thomas Loyed*

James Thomas Loyed was first employed by the Respondent, March 10, 1949, and was discharged on April 15, 1949.

Loyed worked in the paint department. His work consisted of removing motor parts from a drying oven through which these parts were passed after having been spray-painted. After removing, or "catching" these parts, Loyed was required to sort them into proper containers for removal to the assembly line. At the time Loyed was employed by the Respondent, three men worked at "catching" on the day shift; there was also a night shift on which one "catcher" was employed.

Leroy R. Tillotson, an organizer for the Union, testified that the first distribution of union leaflets was made March 31,² the first union committee meeting was held April 8, and that Loyed signed an application card for the Union on March 30 and attended the April 8 meeting.

Tillotson further testified that he was the union representative actively assigned to organize the Respondent's employees, that he gave Loyed some application cards to distribute for signatures, and that Loyed obtained some signatures but did not go with Tillotson to visit other employees in order to solicit their membership.

Loyed testified that he got "just a few" employees to sign application cards and that he talked to "15 or 20" employees about the Union.³

Loyed testified that at 4:30 p. m. on April 15, he was told by the paint room foreman, Gus Zimmerman, to report to the office and that upon so reporting the Respondent's personnel director handed him his pay check and:

Well, he told me they was bringing the night crew back on days and didn't need me anymore; and I asked him, did he have anything in the plant anywhere else. He said, no, it was all filled up. I asked him was it my work; and he said, no, my work was satisfactory, he didn't have no kick coming.

Loyed further testified that at the time of his discharge the personnel director "told me he'd give me a ring if he needed me. I haven't gotten any."

All of the above is based on undenied testimony which the undersigned credits.

The record shows that the Respondent's plant began production in January 1949. Prior to April 15, the paint shop had been operating with a night shift as well as the regular day shift. *Fred A. Choquette*, the Respondent's personnel manager, testified that during the week preceding Loyed's discharge, he was informed by Gustave Zimmerman, the paint shop foreman, that the paint shop night shift could be discontinued. It was decided to incorporate the night shift workers into the day shift but as the Respondent was "rescheduling and realigning all departments at that time" it was decided to keep the more efficient employees. Choquette further testified that in making any reduction in force the Respondent was governed by seniority plus ability and that the controlling

² Tillotson also testified that when the first distribution of union literature was made at the plant, a plant guard ordered him not to distribute literature *on the Respondent's premises*, but that no objection was made to such distribution outside the gates *of the premises*. The General Counsel contends that the above-related prohibition constituted an unfair labor practice by the Respondent. Under all the circumstances the undersigned finds no merit in the General Counsel's contentions.

³ At the time the plant employed approximately 500 production workers.

factor in deciding ability was the supervisor's opinion; that Foreman Zimmerman reported to him that Loyed was slow, that he spent too much time away from his work, and that he would not make a good employee in any other department.

Zimmerman corroborated Choquette. Choquette further testified, his testimony being sustained by the Respondent's records, that Loyed had the least seniority of any employee in the paint department; that on the day he was discharged 12 other male employees were discharged and 1 was hired.

Mutually corroborative testimony established the fact that the paint shop night shift was incorporated into the day shift the working day following Loyed's discharge.

Loyed testified that he was never criticized by any of the Respondent's supervisors.

Zimmerman testified that on one occasion he told Loyed that his work was slow, and Zimmerman did not deny testimony of employee Raymond Catlett to the effect that Catlett asked him why Loyed was discharged and received the reply "you're no dummy, you know why."

Choquette admitted that shortly before Loyed was discharged he asked another employee to point out Loyed to him.

The undersigned is persuaded by all the evidence that Loyed was not an outstanding union adherent; his activity consisting merely of signing a card, attending one meeting, mentioning the Union to 15 or 20 fellow employees in as many days, and obtaining "a few" signatures to application cards. There would therefore seem to be no outstanding threat by example in any discharge of Loyed. The record is clear that Loyed had the least seniority in his department, that there was a bona fide abolishment of the paint shop night shift and incorporation of those employees into the day shift, and that Loyed's former job is not now filled, the evidence being that only 2 "catchers" are now required instead of 3.

From all the evidence considered as a whole the undersigned is convinced and finds that the Respondent discharged Loyed for the reasons it advanced and not because of his union membership and activities and will therefore recommend that the complaint be dismissed insofar as it so alleges.

B. *Interference, restraint, and coercion*

Personnel Director Fred A. Choquette admitted that in mid-February 1949, he posted the following notice on the plant bulletin boards:

CLOCK NOTICE

THERE IS TO BE ABSOLUTELY NO SOLICITING

OF ANY KIND ON COMPANY PROPERTY

PERSONNEL DEPARTMENT

Choquette testified that there were three bulletin boards, each in connection with a time clock, the clocks all being in a single clock house through which all production employees were required to pass to and from work. The plant itself is surrounded by a fence, entrance to the premises is through a gate which is guarded by a watchman, the clock house itself is some 50 yards inside the fence, employees carry identification cards, and strangers must consult the gate guard to obtain permission to enter. The watchman has been on the gate since shortly after the plant began operations.

A copy of the notice was placed above each of the three clocks.

The Board has frequently held that notices which prohibit *any and all* solicitations are *per se* discriminatory in that their notices are so broad in scope as

to prohibit any employee from engaging in activity in behalf of a union by soliciting the membership of another employee on his own free time while the solicitor is also on his own free time, both employees being on their employer's premises.⁴

Choquette testified that the notice was posted in order to keep strangers from soliciting business from the employees in the plant and thus interfering with production, however inasmuch as a stranger in order to get into the plant must first have passed through a guarded gate, and moreover presuming that a stranger did pass the guard, it then became necessary to walk into the clock house some 50 yards beyond the gate and stand before a time clock bulletin board in order to see the "no solicitation" notice, as this was the only place it was posted. Under these conditions the undersigned fails to see how the notice in question could have been seen by strangers or how it could have been intended for a stranger's perusal.

Lewis Hamlin, the Respondent's executive vice president, testified as follows:

Q. (By Mr. CATLETT.) Have you ever denied anyone the privilege of soliciting union members there at the plant?

A. No, sir; except by the clock notice. That's the only—

Q. That applies to everyone indiscriminatorily?

A. That's everybody.

The fact that the "no solicitation" notice applied to solicitation other than solicitation of union membership does not remove its illegality. The test would be the tendency of the notice to coerce the Respondent's employees.

Personnel Director Choquette further admitted that he asked employee Clarence Boyd, while the latter was at his work, "who had handed out union cards," and if Boyd "had been offered" a union card.

The Board, with the approval of the courts, has consistently held that inquiries by an employer regarding union affiliation and the identity of employees who are engaging in activity on behalf of a union are violative of the Act.⁵

On the basis of the above findings and on the entire record, the undersigned finds that by the posting of the notice prohibiting all solicitation by employees, thereby prohibiting any and all solicitation for the Union, and by Choquette's inquiry of Clarence Boyd as to who had distributed union cards and if Boyd had been offered such a card, and considering each act in relation to the other, the Respondent has interfered with, restrained, and coerced its employees in the exercise of 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 its operations set forth 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 and is engaging 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.

⁴ See *Republic Aviation Corporation v. N. L. R. B.*, 324 U. S. 793.

⁵ See *Standard-Coosa-Thatcher Company* and *Textile Workers Union of America*, 85 NLRB 1358.

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. The Respondent, Redmond Company, Inc., Jacksonville, Arkansas, is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO) is a labor organization within the meaning of Section 2 (5) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of 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 (a) (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The Respondent has not engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act by discharging James Thomas Loyed.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record herein, the undersigned recommends that the Respondent, Redmond Company, Inc., Jacksonville, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), by interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to join or assist the above-named labor organization, or to refrain from doing so, except to the extent that such right may be affected by an agreement requiring membership in a labor organization or as a condition of employment as authorized by Section 8 (a) (3) of the Act, by the posting of notices prohibiting any and all solicitation, including solicitation for union membership, on the Respondent's premises, by making inquiries of employees regarding the identity of employees soliciting union membership of them generally and by the distribution of union cards;

(b) Post at its plant in Jacksonville, Arkansas, copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, after being signed by representatives of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Fifteenth Region in writing, within twenty (20) days from the receipt of this Intermediate Report, what steps the Respondent has taken to comply herewith.

It is further recommended that, unless the Respondent shall, within twenty (20) days from the receipt of this Intermediate Report, notify 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 203.46 of the Rules and Regulations of the National Labor Relations Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations file with the Board, Washington 25, D. C., an original and six 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 six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 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.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 17th day of October 1949.

LOUIS PLOST,
Trial Examiner.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act as amended, we hereby notify our employees that:

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO) or any other labor organization, or to refrain from doing so, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the National Labor Relations Act as amended, by the posting of notices prohibiting any and all solicitation, including solicitation for union membership on our premises, and by making inquiries of our employees regarding the identity of employees engaged in any activities on behalf of any union, including the distribution of applications for union membership and their response to any such solicitation. All our employees

are free to become or remain members of this union, or any other labor organization.

REDMOND COMPANY, INC.,
Employer.

By -----
(Representative) (Title)

Dated -----

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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