

In the Matter of INDIANAPOLIS GLOVE COMPANY *and* INTERNATIONAL
GLOVE WORKERS UNION OF AMERICA, A. F. L.

Case No. 13-CA-63.—Decided March 9, 1950

DECISION

AND

ORDER REMANDING CASE TO REGIONAL DIRECTOR

Pursuant to notice, a hearing was held in this proceeding at Marion, Indiana, from March 1 to 11, 1949, inclusive, before Louis Plost, the Trial Examiner duly designated by the Chief Trial Examiner. On August 25, 1949, the Trial Examiner issued his Intermediate Report finding, upon the entire record and from his observation of the witnesses, that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Act, and recommending that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. The Trial Examiner further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint, and, with respect to these allegations, recommended that the complaint be dismissed. Thereafter the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Respondent's request for oral argument is hereby denied as the record, exceptions, and briefs, in our opinion, adequately present the issues and the positions of the parties.

In its exceptions and brief, the Respondent contends that the Trial Examiner's conduct of the hearing was arbitrary, capricious, and unreasonable, and that the Trial Examiner was biased and prejudiced. In support of these contentions, the Respondent alleges, in effect, that the Trial Examiner, in one or more instances, cut off attempts of witnesses for the Respondent to explain apparent inconsistencies in their testimony, limited the Respondent's cross-examination of witnesses, and examined witnesses for the Respondent intensively and in a hostile manner in an over-zealous effort to attack their credibility.

We recognize, of course, that a Trial Examiner must make credibility findings as well as findings of fact, and, accordingly, that it is appropriate for him to question witnesses in order to ascertain their credibility or to clarify their testimony. In doing so, however, he must refrain from impeaching or from examining witnesses to the extent that he takes out of the hands of either party the development of its case.¹ It is appropriate also for the Trial Examiner to direct the hearing so that it may be confined to material issues and conducted with all expeditiousness consonant with due process.² Here again, however, the Trial Examiner must guard against expediting a hearing by limiting either party in the full development of its case.

We have carefully examined the portions of the record cited by the Respondent in support of its contentions, and have independently considered the entire record, including the Trial Examiner's Intermediate Report. We find, on the basis of all the Trial Examiner's rulings at the hearing, his findings in the Intermediate Report, and the record as a whole, that the Respondent's contentions that the Trial Examiner was biased and prejudiced and that it suffered legal prejudice from his conduct of the hearing lack sufficient merit. Nevertheless, we feel that it is essential not only to avoid actual partiality and prejudice, and intimidation of witnesses in the conduct of Board proceedings, but also to avoid even the *appearance* of a partisan tribunal.³ Accordingly, although we have found that the rulings and conduct of the Trial Examiner were not necessarily prejudicial as a matter of law, we shall set aside the Intermediate Report and the hearing herein and shall remand this proceeding to the Regional Director for rehearing upon the complaint herein, or for such other disposition as the Regional Director may determine to be advisable under present conditions.

ORDER

IT IS HEREBY ORDERED that the Intermediate Report and the hearing herein be, and they hereby are, set aside, and that the above-entitled proceeding be, and it hereby is, remanded to the Regional Director for the Thirteenth Region for rehearing before a Trial Examiner duly designated by the Chief Trial Examiner, and for the preparation of a new Intermediate Report containing findings of fact, conclusions of

¹ *N. L. R. B. v. May Department Stores Company*, 154 F. 2d 533, 539.

² See in this connection, *Model Code of Evidence, American Law Institute Foreword, Edward M. Morgan*, pp. 13-16.

³ As the Supreme Court counselled us in *N. L. R. B. v. Donnelley Garment Co.*, 330 U. S. 219, 237, "It takes time to avoid even the appearance of grievances. But it is time well spent even though it is not easy to satisfy interested parties, and defeated litigants, no matter how fairly treated, do not always have the feeling that they have received justice." [Emphasis supplied.]

law, and recommendations, with respect to the unfair labor practices alleged in the complaint herein, or for such other disposition as the Regional Director may determine to be advisable under present circumstances.

MEMBER HOUSTON, dissenting in part:

I concur in the finding of the majority that the conduct of the Trial Examiner herein was not prejudicial as a matter of law. That being so I am not convinced that we should send this case back. While the Trial Examiner showed a kind of zealotry which should be cautioned against, I do not believe that the litigants were prevented thereby from having a full and fair hearing. I would pass on the merits of the case.