

In the Matter of THE S. FRIEDER & SONS COMPANY *and* UNITED CANNERY,
AGRICUTURAL, PACKING & ALLIED WORKERS OF AMERICA, CIO

Cases Nos. 4-R-1459 and 4-C-1431.—Decided June 25, 1945

DECISION

AND

ORDER

Pursuant to a "Stipulation for Certification Upon Consent Election," executed June 9, 1944, by the S. Frier & Sons Company, herein called the respondent, and by United Cannery, Agricultural, Packing & Allied Workers of America, CIO, herein called the Union, an election was held on June 23, 1944, among the employees of the respondent at its plant in Wilkes-Barre, Pennsylvania, to determine whether the Union was the majority representative of the respondent's employees for the purposes of collective bargaining. Having lost the election, the Union, on June 26, 1944, filed Objections with the Regional Director for the Fourth Region, alleging that the respondent had engaged in certain unfair labor practices which had affected the outcome of the election. The Regional Director investigated the Objections, reported to the Board that they raised substantial and material issues, and recommended that a hearing be held. On June 26, 1944, the Union filed with the Board a charge alleging that the respondent had engaged in unfair labor practices within the meaning of Section 8 (1) of the Act. On September 7, 1944, the Board issued an Order, consolidating the above proceedings and directing that a hearing be held on the Objections and on the charges of unfair labor practices. On September 21, 1944, a complaint was issued by the Regional Director alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) of the Act. On September 23, 1944, the respondent filed its answer in which it denied the commission of the unfair labor practices alleged. A hearing was held before a Trial Examiner in Wilkes-Barre, Pennsylvania, from October 3, to October 10, 1944, in which the Board, the respondent, and the Union participated by their representatives. During the course of the hearing, the Trial Examiner made rulings on

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motions and on objections to the admission of evidence. The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On November 24, 1944, the Trial Examiner issued his Intermediate Report, finding that the respondent had engaged in and was engaging in 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. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. Oral argument, in which the respondent and the Union participated, was held before the Board in Washington, D. C., on June 5, 1945.

The Board has considered the Intermediate Report, the exceptions and briefs filed by the respondent, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications noted below.

We find that the statements of Foreladies Tillie Kader¹ and Jennie Saia to apprentice mechanic, Harry Andes, on or about May 24, 1944, in substance, that the Union was "no good," that its fees were excessive, and that the employees were throwing their money away, together with the respondent's acquiescence in the anti-union demonstrations, its posting on the day of the election of a notice of approval by the War Labor Board of a vacation plan, and its sponsorship of a party at the conclusion of the election, as set forth more fully in the Intermediate Report, constitute a course of conduct which interfered with, restrained, and coerced the employees in the exercise of rights guaranteed in Section 7 of the Act.²

Since the record establishes that the respondent engaged in unfair labor practices prior to the election, we find that the election was not an expression of the free will of an uncoerced majority; it therefore should be set aside, and we shall so order. We shall not, however, direct another election until such time as the Regional Director advises us that the effects of the unfair labor practices have been dissipated.

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 respondent, The S. Frieder & Sons Company, Wilkes-Barre, Pennsylvania, and its officers, agents, successors, and assigns, shall:

¹ Erroneously called "Hader" in the Intermediate Report.

² Witnesses other than Andes, who testified to the statements of the foreladies referred to above, attributed anti-union statements to various supervisors. The Trial Examiner did not comment upon their testimony, except to reject it generally. Since neither the attorney for the Board nor the Union excepted to the Trial Examiner's treatment of such testimony, we shall not consider whether the respondent engaged in any unfair labor practice by the statements of such supervisors.

1. Cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Cannery, Agricultural, Packing and Allied Workers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engaged in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act

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

(a) Post immediately at its plant in Wilkes-Barre, Pennsylvania, copies of the notice attached hereto, marked "Appendix A" Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by the respondent's representative, 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.

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

AND IT IS FURTHER ORDERED that the election held on June 23, 1944, among the employees of The S. Frieder & Sons Company, Wilkes-Barre, Pennsylvania, be, and it hereby is, set aside

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order

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, 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 United Cannery, Agricultural Packing & Allied Workers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. All our employees are free

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

S FRIEDER & SONS COMPANY (*Employer*)
(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

Mr Herman Lazarus, for the Board

Lichtig & Mossler, by *Mr. Herbert A Mossler*, of New York, New York, for the respondent

Mr. Joseph M Walsh, of Wilkes-Barre, Pa., for the Union

STATEMENT OF THE CASE

Upon a charge duly filed on June 26, 1944, by United Cannery Agricultural, Packing and Allied Workers of America, CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued its complaint dated September 21, 1944, against The S. Frieder & Sons 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 Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act Copies of the complaint and notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that the respondent in and about the months of May and June 1944, by certain of its officers, agents, representatives, servants, and employees, had interfered with, restrained, and coerced, and was interfering with restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, in that it urged, persuaded, and warned its employees not to join or assist the Union, in that it interrogated employees as to their membership and activities in the Union; in that it disparaged and criticized the Union; in that on or about June 22, 1944, the day before a consent election was conducted by the Board,² it posted notices announcing approval by the War Labor Board of the granting of vacations with pay; in that it permitted and acquiesced in an anti-union campaign and anti-union demonstrations by its employees on respondent's time and property; in that it instructed employees to vote "No" at the said Board election on June 23, 1944; and in that it offered and granted inducements to employees for voting "No" at said election and for not becoming members of or engaging in activities on behalf of the Union

¹ It was stipulated at the hearing that "The S. Frieder & Sons Company" is the correct name of the respondent and that the pleadings be so amended. The pleadings originally named the respondent as "S. Frieder & Sons Company."

² *Matter of the S. Frieder & Sons Company and United Cannery, Agricultural, Packing & Allied Workers of America, CIO*, Case No. 4-R-1459. In this matter the union filed objections to the election conducted on June 23, 1944. By its order dated September 7, 1944, the Board directed that a hearing be held on the objections to the election and ordered that Case No. 4-R-1459 and Case No. 4-C-1431 be consolidated.

On or about September 23, 1944, the respondent filed an answer in which it denied the commission of any unfair labor practices, and also filed a motion for a bill of particulars. This motion was granted in part and the Board complied with the ruling of the Trial Examiner by filing a bill of particulars, dated September 29, 1944.

Pursuant to notice, a hearing was held at Wilkes-Barre, Pennsylvania, on October 3, 4, 5, 6, and 10, 1944, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel. The Union appeared through its representative. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the beginning of the hearing, the respondent renewed its motion for a bill of particulars as to that part of its original motion which had been denied. The motion was denied. At the close of the Board's case the respondent moved to dismiss the complaint for lack of proof, and the motion was renewed at the close of the whole case. Both motions were denied. At the close of the case, the attorney for the Board moved to conform the pleadings to the proof in regard to formal variances. The motion was granted without objection.

At the close of the hearing, the attorneys for the Board and the respondent presented oral argument on the record before the undersigned. Pursuant to permission granted at the hearing, the respondent filed a brief. None of the other parties filed briefs although afforded an opportunity to do so.

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 S' Frieder & Sons Company is an Ohio corporation, engaged in the manufacture, sale and distribution of cigars, with plants located in Wilkes-Barre and Kulpmont, Pennsylvania. A subsidiary of the respondent operates a plant at Philadelphia, Pennsylvania. The instant case is concerned only with the Wilkes-Barre plant and at the times under consideration herein this plant employed approximately 340 persons.

The respondent annually uses over \$50,000.00 worth of raw materials, principally tobacco, at its Wilkes-Barre plant. Over 75 percent of said raw materials is shipped to the plant from points outside the Commonwealth of Pennsylvania. The respondent annually sells over \$100,000.00 worth of its product from its Wilkes-Barre plant, over 50 percent of which is shipped to points outside the Commonwealth of Pennsylvania.

At the hearing the respondent admitted that it is engaged in commerce within the meaning of the Act.

II THE LABOR ORGANIZATION INVOLVED

United Cannery, Agricultural, Packing and Allied Workers of America, CIO, is a labor organization which admits to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

Up and until May 24, 1944, the Union had not attempted to organize the employees at respondent's Wilkes-Barre plant. On May 24, a number of respondent's employees participated in a strike. The Union learned of the strike and through its representatives persuaded the employees to meet at a hall engaged for the purpose. At the meeting the advantages of membership in the Union were explained to the employees.

It appears that a number of the employees joined the Union at the meeting or shortly thereafter. The employees returned to work at the regular starting times on May 26

On June 2, 1944, the Union filed with the Board a petition for investigation and certification of representatives. On June 9, 1944, the respondent and the Union entered into an agreement for consent election. Pursuant to this agreement, an election was conducted by the Board at the respondent's Wilkes-Barre plant on June 23, 1944. The Union lost the election.

B. *Interference, restraint, and coercion*

On about May 24, 1944, Harry Andes, apprentice mechanic, had a conversation concerning the Union with Forelady Tillie Hader.³ During this conversation Hader said that the Union was "no good", that the Union's initiation fees were too high, that the Union charged \$5, and that the employees were throwing their money away. Andes had subsequent conversations with Hader along the same line. Jennie Saia, forelady, also on several occasions told Andes that the Union was "no good".⁴

Starting on May 29, 1944, and on a number of occasions thereafter, representatives of the Union and employees who were active on behalf of the Union distributed leaflets to employees at the employees' entrance to the plant.

It is undisputed that while these leaflets were being distributed to employees who were entering or leaving the plant during the change in shifts or on other occasions when representatives of the Union were present in front of the employees' entrance, some five to six employees who worked in departments immediately adjacent to the entrance staged continuous anti-union demonstrations. At the time of the change in shifts, the leaflets were distributed from about 3:30 p m until about 4 p m or shortly thereafter. During almost all of this time, the demonstrators stood just inside the entrance on respondent's property, and yelled or jeered at those distributing the leaflets. They made remarks derogatory to the Union and their language was at times obscene. They told employees entering or leaving the plant not to accept any leaflets and grabbed leaflets from the hands of employees. The distributors of the leaflets did not provoke these demonstrations and except for one or two occasions they made no retort to the remarks of the demonstrators.⁵ The demonstrations took place during the working time of the demonstrators, and the plant entrance was about 20 or 30 feet from their department or place of work. Clyde Birth, plant superintendent, supervised the work of these employees since they did not have any forelady over them.

On about May 31, Frank Vrataric, field representative of the Union, at a meeting

³ The respondent contends that it is not bound by statements to employees made by Hader and other foreladies. The undersigned finds no merit in this contention. Aside from the fact that the consent election agreement excludes foremen and foreladies from the appropriate unit as supervisory employees, the record in the case conclusively shows that they had charge of and were responsible for the work of the employees under them.

⁴ Andes testified to the above statements by Hader and Saia and the undersigned credits his testimony in this connection. Andes further testified that he worked on May 24, the first day of the strike, that he joined the Union later on the same day, and that he subsequently campaigned during working hours against the Union. Both Hader and Saia denied the statements attributed to them by Andes.

⁵ The above facts were testified to by witnesses for the Board and the undersigned credits their testimony in this connection. The employees who were mainly responsible for the demonstrations were identified by witnesses for the Board and were called as witnesses by the respondent. In their testimony they did not contradict the testimony of the Board's witnesses in any material respects. They all admitted standing in the entrance for considerable periods of time. Some admitted making remarks to the distributors of the leaflets while others denied they made any demonstration other than to stand in the entrance. They further testified that the representatives of the Union made remarks to them as they stood in the entrance.

between representatives of the respondent and the Union informed Alexander Frieder, vice president of respondent, of the above anti-union demonstrations.⁶ On about June 6, Carmen Parente and Vrataric were distributing leaflets in front of the employees' entrance and an anti-union demonstration was in progress. Birth was standing on a truck which was about 20-feet distance from the entrance. Birth asked Parente for a leaflet and Parente complied with the request. Referring to the demonstration, Vrataric then said to Birth, "Did you see this? Why don't you stop this?" It does not appear that Birth made any answer.⁷ On at least two or three occasions, Birth stood behind and watched the employees as they were demonstrating against the Union and he did nothing at the time to stop them.⁸ On or about June 9 or 10, Parente telephoned Birth and complained about the anti-union demonstrations and on about June 15, at another meeting between representatives of the Union and the respondent Vrataric again complained to Frieder concerning the demonstrations.⁹ After Parente telephoned Birth, the demonstrations ceased for a few days but were thereafter resumed with greater vigor.¹⁰

During the morning of June 23, and before the election, the respondent posted the following notice on all bulletin boards in the plant.¹¹

NOTICE.

TO ALL EMPLOYEES:

VACATIONS GRANTED!

Our application to the National War Labor Board made April 1, 1944 has been approved and vacations with pay have been granted in accordance with our application.

THE S. FRIEDER & SONS CO

After the voting on June 23, the ballots were counted in the plant cafeteria. Frieder was present during the counting and shortly after the results were known he left the cafeteria, entering the hallway leading from the employees' entrance to the plant. A number of employees were standing in the hallway and it appears that some or all of them congratulated Frieder on the outcome of the election. Frieder suggested to the employees that a party be held at the Hotel Reddington or the Hotel Sterling but the employees replied that they did not want to go to the hotels as they

⁶ Vrataric testified without contradiction to this conversation with Frieder.

⁷ Parente and Vrataric testified to the above incident and conversation involving Birth and the undersigned credits their testimony in this connection. Birth admitted that he asked for a leaflet but denied that any demonstration was in progress.

⁸ Marjorie Rowland and Mary Kossitch testified that they saw Birth standing behind the demonstrators and the undersigned credits their testimony in this connection. Birth admitted that on several occasions he had seen employees standing at the entrance but testified that he "did not hear anything going on." He further testified that when he caught these employees standing in the entrance he warned them individually; that he warned one girl about 3 or 4 times; and that he warned the others about twice each.

⁹ Parente and Vrataric testified to these complaints without contradiction. Birth testified that he warned the employees involved after the complaints had been registered.

¹⁰ Parente testified without contradiction that he told Birth that the demonstrations would have to stop or the Union would file unfair labor practice charges with the Board.

¹¹ Frieder testified that the War Labor Board had notified the respondent on May 25, 1944, that its application had been granted and that the employees were not notified at that time because of the strike.

were not dressed and that they would rather have it in the cafeteria.¹² A party which was attended by about 150 employees was then held in the cafeteria and the respondent paid for all the food and refreshments.¹³ Employees who were working on the night shift left their work and joined the party. They did not return to work that night but they were paid by the respondent for the full hours of the shift

Concluding findings

The undersigned finds that the statements made by Hader and Saia to Anders constitute interference, restraint, and coercion.

The undersigned further finds that the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them under Section 7 of the Act in that it permitted on its time and property anti-union demonstrations, in that it posted, shortly before the election was scheduled to be held, a notice that vacations with pay had been granted, and in that it suggested and paid for a party to celebrate the loss of the election by the Union.

It is undisputed that the respondent knew of the anti-union demonstration. Still the only action taken by the respondent was to constantly warn the employees involved that the Company did not approve of such conduct. The employees were not docked in pay for the time they spent in standing in the entrance during demonstrations nor were they otherwise punished for their supposed disobedience to Birth's orders. Only one reasonable conclusion can be reached under the circumstances, namely, the respondent approved of these anti-union demonstrations. The facts surrounding these demonstrations certainly rouse suspicions as to whether the respondent itself instigated the demonstrations, but the evidence is not sufficiently strong to support such a finding. However, the respondent was under a duty to stop the anti-union demonstrations and, accordingly, its failure to do so clearly constitutes interference, restraint, and coercion.

The posting of the notice concerning vacations clearly was for the purpose of influencing employees to vote against the Union and the undersigned so finds.¹⁴ No other reason can be assigned for such action. Permission had been granted by the War Labor Board on about May 25. The respondent, however, did not see fit to post the notice until June 23. Surely, after that length of time the posting of the notice could have been delayed another day

The party after the election is merely an expression of the respondent's attitude towards the election. When the Union lost, Frieder openly accepted congratulations as though he or the Company had been a candidate at the election against the Union. To show his appreciation to the employees for voting down the Union, he suggested and paid for the party. There can be no doubt that the party further hurt the prestige

¹² Eleanor Fowler testified to the above conversation between Frieder and the employees and the undersigned credits her testimony. Frieder admits that he asked employees to join him at a hotel for a drink but his testimony indicates that the conversation was after the party had started. His testimony, in substance, is that the party started without his suggestion or knowledge, and that he joined the party after it had started. The Board contends that this party was planned in advance but the undersigned does not find any evidence to support this contention.

¹³ Frieder testified that the employees took the food without permission and that the respondent later made good the loss to the concessionaire. As noted above, the undersigned has found that Frieder suggested the party to the employees. Moreover, it is not reasonable to suppose that employees would enter a plant cafeteria and take food without permission, especially when company officials are present.

¹⁴ Although one witness for the Board testified that the notice was posted on June 22, the evidence conclusively shows that it was in fact posted on June 23. The evidence further shows that employees on the night shift did not see the notice before voting.

of the Union or that the employees, if previously uncertain, no longer had any doubt concerning their employer's attitude towards the Union.

No findings have been made herein on other testimony in the case either for the reason that the undersigned does not credit the witnesses or finds that the credible facts related do not constitute interference. For example, there is testimony by one employee that Forelady Margaret Naddeo told employees in a loud voice to vote against the Union as they were lined up and ready to proceed to the polling place. Naddeo denied the statement and the undersigned credits her denial. Undoubtedly, the Board would have been able to produce more than one witness if Naddeo had in fact made such a statement to assembled employees.

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 the operations of the respondent described 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

Since it has been found that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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. United Cannery, Agricultural, Packing and Allied Workers of America, CIO, is a labor organization within the meaning of section 2 (5) of the Act.

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

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

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, The S. Frieder & Sons Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from, in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Cannery, Agricultural, Packing and Allied Workers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act

(a) Post immediately in conspicuous places in and about its establishment located at Wilkes-Barre, Pennsylvania, and maintain for a period of at least sixty (60) con-

secutive days from the date of posting notices to all its employees stating that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 of these recommendations

(b) File with the Regional Director for the Fourth Region on or before ten (10) days from the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations

It is also recommended that, unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies 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 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.

Dated November 24, 1944.

JOHN H. EADIE
Trial Examiner