

IN the Matter of MISSISSIPPI VALLEY STRUCTURAL STEEL COMPANY,
MAPLEWOOD PLANT and INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 518, A. F. L.

Case No. 14-C-885

AMENDED DECISION AND ORDER
AND
RECOMMENDATION

October 12, 1945

On May 13, 1944, the National Labor Relations Board, herein called the Board, issued a Decision and Order in this case, in which it found that Mississippi Valley Structural Steel Company, Maplewood Plant, Maplewood, Missouri, herein called the respondent, had engaged in and was engaging in certain unfair labor practices affecting commerce and ordered that the respondent cease and desist therefrom and take certain affirmative action.¹

On December 11, 1944, the United States Circuit Court of Appeals for the Eighth Circuit, upon the respondent's petition to review the Board's Order, remanded the case to the Board with directions to afford the respondent an opportunity to adduce additional evidence relevant to the issues, to make the evidence so adduced a part of the transcript in the proceeding, and, if it be so advised, to make and file new or additional findings of fact, together with its recommendations, if any, for the modification, setting aside, or enforcement of its Order.²

Pursuant to notice and in accordance with the remand of the Court, a hearing was held at St. Louis, Missouri, on January 16 and 17, 1945, before Gustaf B. Erickson, the Trial Examiner duly designated by the Acting Chief Trial Examiner. The Board, the respondent, and International Association of Bridge, Structural and Ornamental Iron Workers, Local 518, A. F. L., herein called the Union, were represented by counsel, participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and

¹56 N. L. R. B. 485. In substance, the Board found that the respondent had engaged in and was engaging in conduct interfering with restraining, and coercing its employees in the exercise of their statutory rights.

²145 F. (2d) 664.

64 N. L. R. B., No. 16

to introduce evidence bearing on the issues. During the course of the hearing, the Trial Examiner made rulings on motions and on the admission of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On June 25, 1945, the Trial Examiner issued his Second Intermediate Report, copies of which were duly served on all the parties. In the Second Intermediate Report the Trial Examiner found that the respondent had engaged in and was engaging in certain unfair labor practices affecting commerce, and recommended that it cease and desist therefrom and take certain affirmative action. Thereafter, the respondent duly filed exceptions to the Second Intermediate Report. On August 30, 1945, the respondent and the Union participated in oral argument before the Board in Washington, D. C.

The Board has considered the Second Intermediate Report, the exceptions, and the entire record in the case, and finds that the exceptions have merit insofar as they are consistent with the supplemental findings of fact and order set forth below.

Upon the entire record in the case, the Board makes the following:

SUPPLEMENTAL FINDINGS OF FACT

In its Decision and Order herein, and on the basis of the evidence then before it, the Board found the respondent chargeable with certain coercive anti-union statements made in August 1943 by employees Davis, Heck, and Gabris, on the ground that they were supervisory employees. However, according to undisputed evidence adduced by the respondent at the further hearing directed by the Court, Davis, Heck, and Gabris were included with the rank and file employees in the collective bargaining unit claimed by the Union, as is shown by the following facts: (1) In 1937 the Union accepted Davis, Heck, and Gabris for membership although their positions were substantially the same as in August 1943, and obtained their signatures along with those of rank and file employees on a petition transmitted to the respondent, designating the Union as the collective bargaining representative; (2) the Union specifically solicited Davis' membership in the summer of 1943; and (3) the Union agreed to the list of eligible voters to be used in the consent election of August 1943 and this list included the names of Davis, Heck, and Gabris.

Under these circumstances, Davis, Heck, and Gabris, as members of the claimed bargaining unit, had the same right as rank and file employees to express their views as to the undesirability of representation by the Union. Liability for such statements and activities may be attributed to the respondent only upon a showing that the respondent "encouraged, authorized, or ratified their activities or acted in

such manner as to lead the employees reasonably to believe that the foremen [supervisors] were acting for and on behalf of management."³ No such showing has been made in the instant case. The Union's representative at the oral argument before the Board contended, however, that Davis, Heck, and Gabris improperly used their position to "browbeat" the employees into voting against the Union and to bribe them into doing so by promises of a wage increase. We find that there is no evidence in this case to support such an argument. Under all the circumstances, we are satisfied that the statements of Davis, Heck, and Gabris are not attributable to the respondent.

In its Decision and Order the Board further found that shortly before the consent election of August 1943, the respondent granted certain wage increases as part of its campaign against the Union. However, according to undisputed evidence adduced by the respondent at the further hearing directed by the Court, such wage increases were granted in accordance with a plan pursuant to which the respondent had granted the same number of wage increases in the preceding month of July 1943, when the plan first went into effect, and a greater number of wage increases in each of the next 6 succeeding months. Under these circumstances and in the absence of evidence that the August 1943 wage increases had any relation to union activity, we are satisfied that the granting of the wage increases did not constitute an unfair labor practice.

In its Decision and Order the Board also found that the respondent had engaged in interference, restraint, and coercion by distributing to its employees two letters, one dated August 10, 1943, and the other dated August 12, 1943, discussing the pending consent election, assuring the employees that they were free to join or to refrain from joining a union, indicating the respondent's unfavorable attitude toward the Union in this case, and asking those employees who were not on the pay roll at the time of the Union's strike in 1937 to talk to employees who remembered that event in order to find out what, if anything, the Union had accomplished for the employees. The Board further held the respondent chargeable for the anti-union statements of such "old-time" employees. However, according to undisputed evidence adduced by the respondent at the further hearing directed by the Court, the Union had engaged in a strike in 1937 which both the respondent and many of its employees considered contrary to the interests of the employees; and the respondent accordingly suggested to the employees who did not know of the Union's conduct in 1937 that they find out about it before voting in the consent election. Under these circumstances and in the absence of evidence that the respondent

³ *Matter of R. R. Donnelley and Sons Company*, 60 N. L. R. B. 635.

employed any threats of economic reprisal or otherwise coerced its employees into opposing the Union, we are satisfied that the letters and the anti-union statements of the "old-time" employees do not constitute unfair labor practices.

In its Decision and Order the Board found that the respondent had engaged in a background of anti-union conduct prior to the events alleged in the complaint. Since we find below, on the basis of the evidence now before us, that the unfair labor practice allegations of the complaint are unsupported by the evidence, we consider it unnecessary to make a finding as to the background conduct of the respondent.

Upon considering the case in the light of the entire record, including the evidence adduced by the respondent at the further hearing directed by the Court, we are no longer of the view which we announced in our original Decision and Order herein, but now conclude that the respondent did not engage in any of the alleged unfair labor practices. Accordingly, we shall vacate and set aside our original Decision and Order insofar as it is inconsistent with this Amended Decision and Order, and shall dismiss the complaint herein.

ORDER

Upon the basis of the foregoing supplemental findings of fact and 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 its Decision and Order of May 13, 1944, be, and it hereby is, vacated and set aside insofar as the said Decision and Order is inconsistent with the supplemental findings of fact and order herein.

AND IT IS FURTHER ORDERED that the complaint against the respondent, Mississippi Valley Structural Steel Company, Maplewood Plant, Maplewood, Missouri, be, and it hereby is, dismissed.

RECOMMENDATION

Upon the basis of the foregoing Order, and pursuant to the remand of the United States Circuit Court of Appeals for the Eighth Circuit, the National Labor Relations Board hereby respectfully recommends that the Court dismiss the petition of the Mississippi Valley Structural Steel Company to review, and the Board's answer requesting enforcement of, the Order of May 13, 1944, in this case.

CHAIRMAN HERZOG took no part in the consideration of the above Amended Decision and Order and Recommendation.