

In the Matter of THE HAYS CORPORATION and INTERNATIONAL MOLDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, LOCAL 316, A. F. L.

Case No. 13-C-2484.—Decided October 23, 1945

Mr. Gustaf B. Erickson, for the Board.

Fyffe & Clarke, by *Mr. John Harrington*, of Chicago, Ill., for the respondent.

Mr. Lester Campbell, of Grand Rapids, Mich., for the Union.

Mr. Thomas A. Ricci, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon an amended charge duly filed on November 9, 1944, by International Molders and Foundry Workers Union of North America, Local 316, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint, dated February 6, 1945, against The Hays Corporation, 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), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint together with notice of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that on or about October 7, 1944, the respondent terminated the employment of eight named persons because of their membership in and activities on behalf of the Union; (2) that since on or about October 6, 1944, the respondent refused to bargain collectively with the Union, which, at all times since October 4, 1944, has been the duly designated and exclusive bargaining representative of the respondent's employees in an appropriate unit comprising all the molders and foundry workers at its Michigan City, Indiana, plant;

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(3) that on or about March 1, 1940, and thereafter, the respondent urged, warned, and threatened its employees against joining and assisting the Union; and (4) that by the acts and statements described above, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On February 16, 1945, the respondent filed its answer in which it admitted the allegations in the complaint as to its corporate organization and its business operations, denied the allegations of the complaint with respect to unfair labor practices, and alleged that, on or about October 7, 1944, it "permanently discontinued the operation of its foundry."

Pursuant to notice, a hearing was held at Michigan City, Indiana, on February 20, 21, and 22, 1945, before James C. Batten, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and the Union by its International Organizer. 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 conclusion of the Board's testimony, counsel for the respondent moved to dismiss the complaint as to Paul Centgrof and Chas. D. Haack, two of the eight persons referred to above. This motion was denied. Later in the hearing, counsel for the Board moved to dismiss the complaint as to Paul Centgrof; the motion was granted without objection. At the close of the hearing, the Trial Examiner denied a motion by counsel for the respondent to dismiss the complaint, and granted, without objection, a motion by counsel for the Board to conform the pleadings to the proof as to minor details not touching matters of substance. During the course of the hearing, the Trial Examiner made rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that, save as to the respondent's motion to dismiss the complaint, no prejudicial error was committed. For the reasons hereinafter stated, we overrule the Trial Examiner's refusal to dismiss the complaint.

On April 16, 1945, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties, finding that the respondent had discriminatorily discharged seven of the persons named in the complaint and refused to bargain with the Union, and recommending that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. The Union has not filed any exceptions. No request for oral argument before the Board was made, and none was held.

The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and finds that the exceptions, insofar as they are consistent with the findings, conclusions, and order hereinafter set forth, have merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Hays Corporation, an Indiana corporation with its principal office and plant located in Michigan City, Indiana, is engaged in the manufacture of combustion instruments and boiler controls. For the operation of such plant, the respondent causes large quantities of materials to be transported to its plant from points outside the State of Indiana. The respondent also causes large quantities of finished products, manufactured and processed at such plant, to be sold and transported to points outside the State of Indiana. For the 12-month period ending December 31, 1944, approximately 45 percent of the respondent's products were manufactured under contract with the United States Government.

The Respondent admits, and we find, that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Molders and Foundry Workers Union of North America, Local 316, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Sequence of events*

The respondent employs more than 100 workers in its plant at Michigan City and divides its factory operations into a number of departments, such as screw machine, assembly, painting, welding, polishing, and plating. In addition, prior to October 7, 1944, in a small separate building connected with its main plant, the respondent operated a foundry where it employed 6 full-time and 2 part-time molders and their helpers. The foundry had been in operation for more than 20 years.

Prior to October 4, 1944, so far as appears, the employees of the respondent had evidenced no interest in self-organization for collective bargaining. On October 4, 1944, Lester Campbell, an organizer for the Union, who had been advised by molders in Michigan City, Indiana, that the respondent's foundry employees wished to organize,

gave employees Orville Baker and Elmer Dean authorization cards for this purpose. On the same day, seven of the respondent's foundry employees signed union cards, which Dean delivered to Organizer Campbell on Thursday, October 5. Also, on October 5, the employees started wearing union buttons prominently displayed on their working clothes and, on the same day, the respondent learned of their union activities.¹

On Friday, October 6, Organizer Campbell telephoned Factory Superintendent Otto Ziegler. Campbell stated that the respondent's foundry workers had joined the Union and requested an appointment to negotiate a collective bargaining agreement. Ziegler suggested that Campbell telephone again on the following Tuesday, explaining that "the week was almost up" and adding that "there was something pending which might affect their meeting."²

At the close of the work day on Saturday, October 7, without any prior notice, Ziegler discharged all the foundry employees and advised them that the foundry operations had been permanently discontinued.³ During the following week, the respondent disposed of almost all its foundry equipment; it has not resumed its foundry operations. The Union did not communicate with the respondent after the shut-down.

B. The alleged discriminatory discharges and the refusal to bargain

Counsel for the Board asserts in effect that the respondent was motivated by a desire to defeat the collective bargaining efforts of its employees in closing the foundry and thus discriminated against its employees in violation of Section 8 (3) and refused to bargain within the meaning of Section 8 (5) of the Act.

Denying that it had such a desire, the respondent asserts that the appearance of the Union among its employees almost simultaneously with the respondent's decision to close the foundry was a coincidence and that the union activity was not a factor in its decision. It asserts that the respondent had operated the foundry for many years at a

¹ Employee Weaver testified that the foundry men wore the union buttons on Wednesday, October 4, but Dean testified that he obtained the buttons from the union organizer upon delivery of the signed authorization cards on Thursday, October 5, and that the buttons were first worn on that day. Howard Brockman, a pattern maker, testified that he told Shop Foreman Alfred Werth about the union buttons as soon as he saw them on October 4 or 5. Phil Sprague, the respondent's president, testified that there was talk of union activities "a day or two" before October 7, 1944. We find that the union buttons were first worn by the foundry employees on October 5, 1944, and that the respondent learned of their union activities on that day.

² Ziegler testified that at about 5:15 p. m., on Thursday, October 5, 1944, he and Phil Sprague, the respondent's president, had decided to discontinue the foundry operations.

³ The respondent discharged the six full-time foundry employees and Chas. D. Haack, a part-time molder. Paul Centgrof, the other part-time foundry worker, who was also a drill press operator in the respondent's factory, was not discharged and was still in the respondent's employ at the time of the hearing.

financial loss; that it continued to operate the foundry on an inefficient basis, notwithstanding such loss, for the sole reason that it served as a convenience for the respondent's factory operations; and that the decision to close the foundry at that particular time was precipitated by three recent incidents which forcefully accentuated the disadvantages of operating the foundry. The first incident occurred on September 29, 1944, when President Sprague found the foundry employees engaged in a dice game during working hours. The second took place on October 4, 3 days before the shut-down, when the oldest foundry employee, whom the respondent had planned to retain as a 1-man foundry department at some indefinite future time when its foundry requirements should be reduced, decided to leave the respondent's employment. Finally, on October 5, 5 to 10 minutes before the 5 o'clock closing hour, Factory Superintendent Ziegler found a group of factory employees ready to leave the plant, misconduct which the respondent attributed to the example set by the foundry employees in taking excessive liberties and thus neglecting their work. As stated above, Ziegler testified that at about 5:15 p. m., on the same day, he and Sprague decided to discontinue the foundry operations permanently.

To support the contention that the respondent closed its foundry to escape collective bargaining, in addition to the fact that the shut-down coincided with the appearance of the Union in point of time, counsel for the Board introduced testimony and documentary evidence purporting to show the following: (1) that sometime in 1937 or 1938, Factory Superintendent Ziegler directed employee Weaver not to give employment to union men in hiring new employees; (2) that, during 1943, Ziegler said that he would close the plant rather than deal with a labor organization; and (3) that on or about October 5, 1944, when Ziegler first learned of the Union's activities in the foundry, he stated: "I'd be glad if the foundry did organize, because then maybe we would get some work out of the men down there. I don't care. If they'd increase the rate, then we'd have to have production out of the foundry. The Union would have to see to that. If the rate'll be too high, we'll just have to close the foundry up." Ziegler denied having made such statements, but the Trial Examiner in effect discredited his denials.

The Trial Examiner found that the reasons advanced by the respondent did not motivate it in closing the foundry. Upon the basis of the timeliness of the respondent's action, the absence of a plausible explanation therefor, and the three statements of Ziegler referred to above, the Trial Examiner concluded that the respondent closed the foundry in order to escape collective bargaining with the Union. We cannot agree.

True, the sudden closing of the foundry, after many years' operation, immediately following a swift and successful organizational campaign and a demand for collective bargaining, suggests a casual relationship between such union activity and the closing of the foundry. However, although the respondent's conduct is thus suspect and, assuming, as the Trial Examiner found, that the respondent's explanation of its conduct is unconvincing, the record does not contain sufficient affirmative evidence to convince us that the respondent was motivated by an illegal purpose in closing its foundry. As indicated above, Ziegler's instruction not to hire union help was issued at least 6 or 7 years prior to the closing of the foundry, a point in time too remote to give the incident probative value. Although Dorothy Fischer, a former employee, testified that, during 1943, she overheard Ziegler say to an unnamed person that he, Ziegler, would close the plant rather than deal with a labor organization, Ziegler denied that he ever made such a statement, a denial which the Trial Examiner failed to note in his Intermediate Report.

The remaining portion of the record relied upon to support the complaint consists of Ziegler's statement reflecting the respondent's attitude toward the Union's efforts to organize the employees. We do not regard this statement, set forth above, as anti-union in tenor. In the first portion thereof, Ziegler welcomed the Union in the hope that it would speed production in the plant. In the last portion of the statement, while Ziegler stated that the Union might compel the respondent to close the foundry, such discontinuance of operations was expressly conditioned upon the assertion of unreasonably high wage demands by the Union. In view of the fact that the Union had not made known its demands to the respondent at the time of the shut-down and the further fact that Ziegler in effect conditioned the prospective shut-down upon the existence of an economic impasse, we are of the opinion that Ziegler's statement does not show that the respondent closed its foundry in order to escape collective bargaining or that it had contemplated such action. Accordingly, we conclude that the evidence does not sustain the allegations of the complaint that the respondent violated Section 8 (3) or 8 (5) of the Act.⁴

In view of the absence of any other evidence and for the reasons indicated above, the record likewise does not support the remaining allegation of the complaint that the respondent urged, warned, and threatened its employees against joining and assisting the Union in violation of Section 8 (1) of the Act.

Accordingly, we shall dismiss the complaint in its entirety.

⁴ In view of our decision, we have no occasion to determine the appropriate unit, as such.

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

CONCLUSIONS OF LAW

1. The operations of the respondent, The Hays Corporation, Michigan City, Indiana, herein involved, occur in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. International Molders and Foundry Workers Union of North America, Local 316, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.
3. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (1), (3), and (5) of the Act, as alleged in the complaint.

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 complaint issued herein against the respondent, The Hays Corporation, Michigan City, Indiana, be, and it hereby is, dismissed.