

that period. Earnings in one particular quarter shall have no effect upon the back pay liability for any other quarter.

I shall also recommend that the Respondent make available to the Board, upon request, payroll and other records to facilitate the checking of the amount of back pay due.²²

The violations of the Act which the Respondent committed are persuasively related to other unfair labor practices proscribed by the Act, and the danger of their commission in the future is to be anticipated from the Respondent's conduct in the past. The preventive purposes of the Act will be thwarted unless the order is coextensive with the threat. In order, therefore, to make more effective the interdependent guarantees of Section 7, to prevent a recurrence of unfair labor practices, and thereby minimize industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the above findings of fact and upon the entire record of the case, I make the following:

CONCLUSIONS OF LAW

1. Amalgamated Clothing Workers of America is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Helen Little and Hazel Munyon, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By such discrimination and 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 (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.

[Recommended Order omitted from publication in this volume]

²² *F. W. Woolworth Company, supra.*

MACHINE PRODUCTS COMPANY, INC. and LOCAL NO. 948, INTERNATIONAL UNION OF OPERATING ENGINEERS. *Case No. 16-CA-252. May 18, 1951*

Decision and Order

On February 12, 1951, Trial Examiner C. W. Whittemore 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 he 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 brief in support thereof.

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

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.¹ The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the addition noted in the margin.²

Order

Upon the entire record in the case, the National Labor Relations Board hereby orders that Machine Products Company, Inc., its officers, agents, successors, and assigns, shall :

1. Cease and desist from :

(a) Discouraging membership in Local No. 948, International Union of Operating Engineers, or in any other labor organization of its employees by discriminatorily discharging them, or by discriminating in any other manner in regard to their hire, tenure of employment, or any term or condition of employment.

(b) In any other 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 Local No. 948, International Union of Operating Engineers, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any or all such activities 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 in Section 8 (a) (3) of the Act, as guaranteed in Section 7 thereof.

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

(a) Offer to M. B. Rosenbum and W. J. Ballew immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges.

(b) Make whole said Rosenbum and Ballew in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(c) Upon request, make available to the Board or its agents for examination and copying all payroll records, social security payment

¹ The Respondent's request for oral argument is hereby denied as we believe that the record and brief adequately present the issues and positions of the parties

² We agree with the Trial Examiner's finding that jurisdiction should be asserted.. *Memphis Cold Storage Warehouse Company*, 91 NLRB 1404; *Westport Moving and Storage Company*, 91 NLRB 902

records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due.

(d) Post at the plant in Tulsa, Oklahoma, copies of the notice attached hereto as Appendix A.³ Copies of such notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent's representative, be posted by it for sixty (60) consecutive days thereafter in conspicuous places including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

Intermediate Report

Mr. James R. Webster, for the General Counsel.

Mr. Joseph H. McDowell, of Kansas City, Kans., for the Respondent

Mr. C. C. Calhcoat, of Tulsa, Okla., for the Union.

STATEMENT OF THE CASE

Upon charges duly filed by Local No. 948, International Union of Operating Engineers, herein called the Union, the General Counsel of the National Labor Relations Board, herein respectively called General Counsel and the Board, by the Regional Director for the Sixteenth Region (Fort Worth, Texas), issued a complaint dated December 18, 1950, against Machine Products Company, Inc., of Wichita, Kansas, and Tulsa, Oklahoma, 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 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, herein called the Act. Copies of the charges, the complaint, and notice of hearing were duly served upon the parties.

With respect to unfair labor practices the complaint alleges that the Respondent: (1) Warned its employees to refrain from assisting the Union; (2) discriminatorily discharged employees M. B. Rosenbum and W. J. Ballew because of their union activities; and (3) by those acts interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act.

Thereafter the Respondent filed an answer, in which it denied that it was engaged in commerce within the meaning of the Act and that it had committed the unfair labor practices alleged.

Pursuant to notice a hearing was held at Tulsa, Oklahoma, on January 16, 1951, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented

³ This notice, however, shall be and it hereby is amended by striking from the first paragraph thereof the words, "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words, "A Decision and Order." In the event that this Order is enforced by a 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 "

by counsel; the Union by an official. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issue. At the conclusion of the hearing counsel waived opportunity to file briefs, but argued orally before the Trial Examiner. Ruling was reserved upon a motion by the Respondent to dismiss the complaint. Disposition of said motion is made in the findings, conclusions, and recommendations appearing below.

Upon the entire record in the case and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Machine Products Company, Inc., is a Kansas corporation, having its principal office and place of business at Wichita, Kansas. It is engaged in the vicinity of Tulsa, Oklahoma in the protection and maintenance of an aircraft assembly plant consisting of eight permanent buildings and an undetermined number of temporary buildings, with floor space aggregating more than 1,988,000 square feet. The plant was constructed for and is used by the U. S. Air Force for the assembly of aircraft parts and equipment. At the time of the hearing it was being maintained by the Respondent in a stand-by condition for the U. S. Air Force.

Contrary to the contention of the Respondent, the Trial Examiner is of the opinion that the nature of the Respondent's business, at the Tulsa operation, is such that it falls within the category of enterprises "substantially affecting national defense" over which the Board has determined it will exercise jurisdiction. (*Westport Moving and Storage Co*)

II. THE LABOR ORGANIZATION INVOLVED

Local No. 948, International Union of Operating Engineers, is a labor organization admitting to membership employees of the Respondent at said Tulsa operations.

III. THE UNFAIR LABOR PRACTICES

A. *The discriminatory discharges; interference, restraint, and coercion*

The kernel of this case is the question as to whether or not two employees were, in violation of the Act, discriminatorily selected for layoff at a time of non-discriminatory reduction in force. That is, General Counsel concedes that the Respondent was motivated by legitimate reasons in effecting a reduction in force, but contends that it selected two individuals for layoff because of their union activities.

The reduction in force as a setting requires but brief mention. Under contract with the U S Air Force the Respondent assumed maintenance responsibility for the Tulsa operations on September 30, 1949. It hired and placed on its payrolls about 100 employees who had, in some cases, for many years been Government employees doing generally the same type of work at the same plant. In early November the Respondent decided that in order to keep within funds allotted under the contract it would be necessary to reduce its force. At a conference of two of the Respondent's officials and representatives of the U. S. Air Force, held on November 8, it was determined that a necessary saving would be made by laying off two electricians and two employees of the boiler room force.

In support of his claim of discriminatory selection of two of the four employees, General Counsel introduced evidence establishing considerable union activity in the plant at this time, in which these two employees were known leaders. These circumstances, in summary, were as follows. About November 1, M. B. Rosenbum, an engineer in the boiler room and for some years a member of the Union, approached the union business representative regarding the organization of the employees under the new setup. They discussed the possibility of establishing the "industrial" type of representation, as opposed to separate craft units, and Rosenbum was given authorization cards for the purpose of obtaining signatures to them. Rosenbum again met with the union representative on November 3 and a meeting of employees was held the following day. On November 7, Callicoat, the union representative, called on T. P. Buck, the Respondent's general superintendent, and asked for recognition of the Union as representative of certain employees in the plant. Buck told Callicoat that he would first have to talk with Captain C E Emanuel, commanding officer at the assembly plant. Emanuel told Callicoat that while he had no objections to organizing, it would be necessary that the Union be "properly investigated," and if nothing "disfavorable to the Government" was revealed, the Air Force would not be "opposed to organized labor."

Credible evidence establishes that Buck and other management representatives were aware of the organizing leadership taken by Rosenbum and W J. Ballew, an electrician, and that this knowledge was acquired before the two were selected for layoff on November 12. Both Buck and Foreman J. O. Sillman admitted that the former had questioned the latter about "dissension" among the employees and about union activity in the plant, and that they had discussed Ballew specifically—particularly the fact that Ballew had asked Sillman himself to join. On November 8 Sillman called Ballew aside, asked him how many cards he had "signed up," inquired if he thought Buck knew of his activity and when the employee admitted some uncertainty assured him that "I think he knew it" and then told him that if he lost his job because of it he did not want him to think that he had had anything to do with it. Buck and H. B. Hobby, plant engineer with supervision over the department in which Rosenbum worked directly under Foreman K. C. Ellington, discussed the fact that Rosenbum was a member of the Union. And Ellington, as a witness, admitted that he had warned Rosenbum that he had "better go a little bit slow on his talking," and that while he did not mention the word "Union" he was "sure that Rosenbum understood that I was talking about the Union as well as I did."

In the foregoing setting Rosenbum and Ballew were selected for termination on November 12. According to the credible testimony of Hobby, on November 8 or 9 Buck told him of the reduction decided upon and said he wished to make it effective as soon as possible. Hobby suggested that he, himself, check with Ellington who was in direct charge of the engineers, and then submit two names to the superintendent. Buck said he would prefer to decide the identity of the individuals to be laid off in this department at once, and said he had already decided Rosenbaum was to be one. On the basis of Buck's own testimony it is found that Rosenbum was selected for termination by the superintendent without reference to any of the company records, without consultation with the foreman in charge, and without consideration of Rosenbum's ability as a workman. On the basis of Hobby's credible testimony it is further found that in the selection of the second person for layoff from this department, with whose termination this case is not concerned, Buck consulted Ellington.

As to Ballew, Foreman Sillman made the selection. According to his testimony he chose Ballew from among the electricians under him on the basis of "classification" and qualifications. Later in his testimony he admitted that there was no "classification" of his electricians at that time. Thus "qualification" remained, according to his testimony, the sole basis. His testimony on this point is confused and unconvincing. After stating flatly that Ballew "couldn't do refrigeration work" he said he could recall no specific occasion when he had "tried" him on this work and "couldn't say" as to his qualifications for this work. He further admitted that Ballew performed all jobs given to him, and the only single incident when he had found fault with his performance was in making one "feeder" splice. Sillman further admitted that Ballew had tutored him in his studies he was engaged in during a course in electrical engineering. Ballew's testimony, on the other hand, is undisputed that as to experience in maintenance at that plant he had considerably more seniority than a number of other electricians who were retained at the time of the reduction in force. He was an electrician of 16 or 17 years' general experience.

Buck claimed that he selected Rosenbun because he "had heard from various sources" that he "spent lots of time talking," although he said he did not know what he was talking about. He later said he "thought" Rosenbun was wasting his time and that of others, but admitted he knew of no complaints on this score, and admitted he consulted no one about the selection. Ellington, Rosenbun's direct supervisor, testified that the employee never neglected his work, and that it was his duty to "go round over the building," that he knew of no occasion when he had criticized Rosenbun, and that when he warned the employee about talking it was with reference to union matters.

In resolving the conflict in evidence as to motives for selecting Rosenbun, the Trial Examiner relies in large part upon the marked credibility of Hobby's testimony. His testimony was given with convincing restraint and directness; it was unchallenged by any cross-examination. Although Buck's testimony, when first called as a witness, was substantially different from that of Hobby, subsequently called, when the superintendent thereafter was recalled he admitted that Hobby's account of their consultation at the time of selecting Rosenbun was correct. Following his interview with Buck, when the superintendent insisted upon laying off Rosenbun and declined to permit himself and Ellington to make suggestions based upon availability, Hobby lay awake that night and tendered his resignation the next morning because he did not feel he "could stay and enjoy the confidence of the Company and the employees." Under the circumstances the Trial Examiner is convinced, and finds, that Buck selected Rosenbun for layoff in this department because of his known leadership in organizing for the Union.

The Trial Examiner is likewise persuaded by the preponderance of credible evidence that Sillman's selection of Ballew was also based upon the employee's known union activity. Whether Buck actually was instrumental in the selection of Ballew or not, it is undisputed¹ that Sillman warned the employee that because of his union activities he was likely to be discharged.

In summary, it is concluded and found that both Rosenbun and Ballew were discriminatorily discharged on November 12, 1949, because of their union activities, and that by these discriminatory discharges, and by: (1) Sillman's questioning of Ballew as to the number of authorization cards signed and his statement to the effect that he might be discharged because of union activities, and (2) Ellington's warning to Rosenbun that he had better go slow in similar

¹ When queried about this warning, Sillman simply said he did not remember it. The Trial Examiner does not consider an avowed lack of memory as an effective denial.

activities, the Respondent has discouraged membership in the Union and interfered with, restrained, and coerced employees in the exercise of rights guaranteed by 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 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

Having found that the Respondent has engaged in unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action which will effectuate the policies of the Act.

It has been found that the Respondent discriminated in regard to the hire and tenure of employment of M. B. Rosenbom and W. J. Ballew. It will be recommended that the Respondent offer to them immediate and full reinstatement to their former or substantially equivalent positions² and make them whole for any loss of pay they may have suffered as a result of the discrimination against them by payment to each of a sum of money equal to that which he would have earned as wages from November 12, 1949, to the date of the offer of reinstatement. Loss of pay shall be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondent's discriminatory action to the date of a proper offer of reinstatement. The quarterly periods, herein called quarters, shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which each would normally have earned for each such quarter or portion thereof, his net earnings,³ if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter⁴. In accordance with the *Woolworth* decision, it will be recommended that the Respondent, upon reasonable request, make available to the Board and its agents all records pertinent to an analysis of the amount due as back pay.

The unfair labor practices found reveal on the part of the Respondent such a fundamental antipathy to the objectives of the Act as to justify an inference that the commission of other unfair labor practices may be anticipated. The preventive purposes of the Act may be frustrated unless the Respondent is required to take some affirmative action to dispel the threat. It will be recommended, therefore, that the Respondent cease and desist from in any manner interfering with, restraining, and coercing its employees in the exercise of rights guaranteed by the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. Local No 948, International Union of Operating Engineers, is a labor organization within the meaning of Section 2 (5) of the Act.

² *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch.* 65 NLRB 827.

³ *Crossett Lumber Company*, 8 NLRB 440, 497-8.

⁴ *F. W. Woolworth Company*, 90 NLRB 289.

2. By discriminating in regard to the hire and tenure of employment of M. B. Rosenbum and W. J. Ballew, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By such discrimination and by interfering with, restraining, and coercing 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 (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.

[Recommended Order omitted from publication in this volume.]

ANGWELL CURTAIN COMPANY, INC. *and* AMERICAN FEDERATION OF
LABOR. *Case No. 35-CA-118. May 18, 1951*

Decision and Order

On February 2, 1951, Trial Examiner Reeves R. Hilton issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged 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. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, the Respondent's brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the additions and modifications hereinafter set forth:

1. The Trial Examiner found, and we agree, that the Respondent discriminatorily discharged Stella Thomas in violation of Section 8 (a) (3) and 8 (a) (1) of the Act.

As detailed in the Intermediate Report, the record shows that Thomas was regarded as an efficient and wholly satisfactory employee; she has received several merit increases, and was utilized to train new and inexperienced workers in her department. After her layoff in July, she was called back on August 15, but was discharged 3 days later, on August 18, the day the Union filed its petition for representation. Thomas had become active in the Union after August 15. At the time Thomas' employment was terminated she was advised that

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].