

IN the Matter of PHILADELPHIA GEAR WORKS, INC. and INTERNATIONAL
ASSOCIATION OF MACHINISTS, DISTRICT LODGE #1

Case No. 4-C-1459.—Decided June 26, 1946

Mr. Herman Lazarus, for the Board.

Mr. Francis W. Sullivan, of Philadelphia, Pa., for the respondent.

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

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a charge duly filed on October 18, 1944, by International Association of Machinists, District Lodge #1, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued its complaint dated March 10, 1945, against Philadelphia Gear Works, Inc., 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 (4) 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 the respondent discharged Harry Grant Wilkinson on October 16, 1944, and has since refused to reinstate him, because he gave testimony under the Act and because of his membership in and activities on behalf of the Union; and (2) that by the foregoing, and by disparaging and criticizing the Union and the Congress of Industrial Organizations, by threatening its employees with economic reprisals in the event that either of the foregoing labor organizations became their bargaining agent, by accusing the employees of causing a loss of production by their concerted activities, by urging the employees to remain members of Gear Workers Independent Union, herein called the Independent, and by questioning them concerning

their union affiliation, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. On March 12, 1945, the respondent filed its answer in which it admitted that it had discharged Wilkinson, but denied that his discharge was discriminatory or that it had engaged in any unfair labor practice.

Pursuant to notice, a hearing was held at Philadelphia, Pennsylvania, on April 19 through April 21, 1945, before Henry J. Kent, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and 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 close of the Board's case in chief, and again at the close of the entire hearing, the respondent moved to dismiss the complaint in its entirety. The Trial Examiner denied the first motion without prejudice to later renewal and, after reserving decision on the second motion, denied it in his Intermediate Report. He granted, without objection, a motion by counsel for the Board to conform the pleadings to the proof with respect to names, dates, and other minor recitals. During the course of the hearing, the Trial Examiner ruled on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that he committed no prejudicial error. For reasons hereinafter indicated, we hereby reverse the Trial Examiner's denial of the respondent's motion to dismiss the complaint. His remaining rulings are hereby affirmed.

On June 8, 1945, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the parties, finding that the respondent had discriminatorily discharged Harry Grant Wilkinson and otherwise interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by the Act, and recommending that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act. Thereafter, the respondent filed exceptions to the Intermediate Report and supporting briefs. The Union has not filed any exceptions.

Pursuant to notice, the Board, on January 15, 1946, heard oral argument at Washington, D. C. The respondent and the Union appeared and participated in the argument. The Board has considered the Intermediate Report, the respondent's exceptions and briefs, the contentions advanced at the oral argument before the Board, and the entire record, 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

Philadelphia Gear Works, Inc., a Pennsylvania corporation, has its main office and place of business in Philadelphia, Pennsylvania, where it is engaged in the manufacture, sale, and delivery of gears, speed reducers, and other transmission machinery. During the year 1944, the respondent used raw materials valued at approximately \$1,500,000, of which approximately 40 percent was transported to its plant in Philadelphia from points outside the Commonwealth of Pennsylvania. During the same period, the respondent sold products valued in excess of \$3,000,000, of which approximately 62 percent was shipped from its Philadelphia plant to points outside the Commonwealth of Pennsylvania.

The respondent admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, District Lodge #1, is a labor organization admitting to membership employees of the respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Sequence of events*

Prior to 1940, there came into existence among the respondent's employees, the Gear Workers Independent Union, an unaffiliated labor organization. The last of its several yearly contracts with the respondent, executed on August 27, 1943, by its terms was to remain in effect until September 30, 1945, and annually thereafter. The contract was signed by Harry Grant Wilkinson as president, on behalf of the Independent and provided, in part, as follows:

It is mutually agreed that this agreement cannot be assigned by either party and that it shall become null and void if either party is succeeded by any other organization.

During February and March 1944, the Union herein and the United Electrical and Machine Workers of America, affiliated with the Congress of Industrial Organizations, instituted separate campaigns for membership among the respondent's employees. At a membership meeting of the Independent on May 8, 1944, after a union representative and a C. I. O. organizer had addressed the meeting by invitation, a resolution was passed to investigate the advisability of disbanding

the Independent and affiliating with a national labor organization. On June 8, 1944, the Executive Committee of the Independent recommended dissolution, and, at the next membership meeting on July 15, 1944, it was resolved to call a special membership meeting to vote upon the proposed dissolution.

On the following day, the respondent's president, Russell Ball, requested a meeting with the Independent shop committee, consisting of employees Wilkinson, James Oram, Joseph Ekies and William Feather. Present at the conference, in addition to President Ball, were Vice-President and Plant Manager Robert Coulter and Superintendent Malcolm Riddle. Ball creditably testified that he knew of the action taken by the Independent on the previous evening, that the distribution of A. F. L. and C. I. O. circulars was causing unrest in the plant, and that he called the meeting in order to discuss the situation generally with the president of the Independent and the shop committee in an attempt to improve conditions in the shop.

According to the creditable testimony of Wilkinson and Feather, uncontradicted and substantially corroborated by the three management representatives present, Ball opened the meeting by telling the committee that the plant had been awarded another star for its Army and Navy "E" flag because of high production during the preceding 6 months; that some of the Navy inspectors in the plant had recently complained to him about lax discipline and the increase in absenteeism which they claimed were slowing production, and that he wished to know what caused this increased absenteeism as he did not want the Navy to take over the business; he then told the committee that wage increases of 15 to 25 percent, as promised in A. F. L. and C. I. O. leaflets which Ball showed the committee, could not be given because of National War Labor Board wage ceilings and because wages then paid by the respondent compared favorably with prevailing rates in the area as established by the National War Labor Board.

Ball then referred to the movement aimed at the dissolution of the Independent. According to Wilkinson, Ball said, "I understand you fellows are causing a lot of confusion and commotion in the plant by the action that took place at the union meeting last night," and, after stating that the officers of the Independent, especially Wilkinson, were particularly active, asked Wilkinson what he had to say about it; Wilkinson did not reply. According to Feather, a shop committee member, Ball said that he had learned of the decision reached at the meeting of the Independent and he "wasn't very pleased with it, trying to break up the Independent Union to get an outside organization . . .," and that he had heard that Wilkinson was the ring leader. Feather also quoted Ball as having said that "Things were going along as good as they possibly could," and, "He couldn't see why they [the

employees] wanted an outside organization in there." Both Wilkinson and Feather testified that Ball stated that the employees should adhere to the 1943 contract. We credit the testimony of Wilkinson and Feather referred to in this paragraph.

Riddle, the superintendent, creditably testified that Ball asked Wilkinson "if his signature on the contract did not mean anything" and "why he was so active." Ball creditably testified that he told Wilkinson of complaints that Wilkinson was "putting pressure" on other employees to join another union, and that, referring to the 1943 contract. Ball asked Wilkinson "haven't you any respect for your signature?"¹

In accordance with a resolution adopted at its June 15 meeting, the Independent met again on July 17 and voted to disband as of August 23, 1944, and its officers notified the respondent of this action by letter dated August 2, 1944. On October 7, 1944, the Union filed a petition for investigation and certification of representatives under Section 9 of the Act, upon which a hearing was held before a Board Trial Examiner on October 11, 1944. Pursuant to a Decision and Direction of Election issued in that proceeding,² an election was held among the respondent's production and maintenance employees. The Union won the election and was certified by the Board on November 24, 1944.

B. The alleged discriminatory discharge of Harry Grant Wilkinson

Wilkinson entered the respondent's employ in 1940 as a turret-lathe operator on the night shift, where he worked on a piece-work basis until 2 months before his discharge, when he was transferred to the day shift on an hourly pay basis. He became president of the Independent in September 1942. He testified creditably that, following the distribution of A. F. L. and C. I. O. literature among the respondent's employees, in the early part of 1944, he openly advocated disbanding the Independent; that he took a leading role toward that goal at subsequent meetings of the Independent and of its Executive Committee; and that thereafter he was active in soliciting membership in the Union, obtaining 30 to 35 cards. He was the only employee who testified for the Board at the representation hearing on October 11; and was discharged on October 16, 1944, under circumstances discussed below. The complaint alleges that he was discharged because

¹ Wilkinson and Feather also testified that during the meeting Ball said that the employees could picket the plant, and inasmuch as he did not need money, he could stop operations and permit the Navy to take over. Ekies another shop committeeman who was present at the conference, did not mention such statements in his testimony. Oram did not testify. Ball, corroborated by Coulter and Riddle, denied having made such statements. Like the Trial Examiner, we credit their denials.

² *Matter of Philadelphia Gear Works, Inc.* 58 N. L. R. B. 1478

of his union activities and because he gave testimony at the Board hearing, and that the respondent thereby violated Section 8 (3) and (4) of the Act.

The respondent admits that it knew of Wilkinson's position of leadership among the employees and of his outspoken attitude in the movement to disband the Independent and in the Union's recruiting campaign. It denies, however, that his union activities or his appearance as a Board witness motivated the respondent's decision to discharge him. It asserts, rather, that he was discharged because of excessive absenteeism, low production, and loafing during working hours. There is evidence in the record supporting these contentions.

On July 31, 1944, about 2 weeks after the dissolution of the Independent, the respondent announced that its night shift would be terminated. In order of their seniority, the lathe operators on the night shift were offered positions on the day shift.³ Foreman George Weilenman creditably testified without contradiction that Wilkinson chose to operate an engine lathe and requested that he be put on an hourly pay basis. His hourly rate of pay was established at \$1.00. On August 15, after a 1-week vacation, Wilkinson entered on his new position.

On October 13, 1944, Wilkinson together with employees Gustav Obermeyer and Hoeffcker were called to Superintendent Riddle's office and advised that their production was very low and that it must be raised on pain of discharge. Riddle told them that their records would be reviewed a few weeks later.⁴ Wilkinson was also questioned about his absenteeism and in response to such questioning, stated that he "hadn't been feeling so well and that it was just inexcusable." About 3:00 o'clock of the same day, Plant Manager Coulter discovered Wilkinson in the men's room sitting on a box engaged in conversation with three other employees. Wilkinson admitted this infraction of the respondent's plant rules, which Coulter reported to Assistant Superintendent Leon Brown. On the following day, Wilkinson did not report to work and Riddle thereupon instructed Brown to discharge Wilkinson. On Monday, October 16, when Wilkinson reported for work, he was discharged by Brown who, according to his uncon-

³ Wilkinson testified that most of the 20 to 28 lathe operators on the night shift favored dissolution of the Independent and that, although the announcement of discontinuance referred to the entire night shift with some exceptions, it provided, in effect, for the elimination only of the night lathe department. There is no allegation in the complaint that the respondent discontinued the night shift in order to impede the Union's organizational campaign. Wade Bowman, the respondent's industrial engineer, and President Ball, creditably testified without contradiction that this step was taken because of excessive absenteeism, low production, and incompetent supervision during the night shift. Like the Trial Examiner, we find that the termination of the night shift was not motivated by a desire to discriminate against the lathe operators, because of their union activities.

⁴ According to the unimpeached testimony of Riddle, which we credit, the work of Obermeyer, a union shop-committee man, improved and he was retained, while that of Hoeffcker did not and he was discharged on November 20, 1944, for inefficiency.

tradicted testimony, which we credit, gave as a reason, "his poor attitude towards his work and the fact that he had not reported to work again Saturday, and the incident in the toilets had climaxed the affair."

The respondent's records show that from the time Wilkinson entered on his day-shift duties, he averaged $40\frac{1}{2}$ hours weekly and his average earnings were $78\frac{1}{9}$ cents an hour, and that during the last $2\frac{1}{2}$ months which he spent on the night shift he averaged 50 hours a week and \$1.29 an hour.⁵ While Wilkinson was on the day shift, the average work week in the lathe department was 53 hours. As stated above, Wilkinson's night shift was on a piece-work basis and his day shift was on an hourly basis. Any dereliction in the performance of his duties on the night shift was, therefore, reflected in his income, while his production on the day shift did not affect his pay and any difference between his hourly rate and his production, of necessity, was made up by the respondent. Although the respondent admitted that average hourly earnings of 92 cents would have been satisfactory in view of the acute labor shortage, Wilkinson achieved this rate only twice during the 9-week period.

The Trial Examiner concluded that Wilkinson was discharged because of his union activities and for giving testimony at the representation hearing. We cannot agree.

It is clear from unimpeached records of the respondent that Wilkinson's efficiency had seriously deteriorated during the last 2 months of his employment; his men's room conversation during working hours on October 13, and his absence on October 14, following immediately upon a warning by the respondent, give proof of his lack of interest in his job. Although Wilkinson's persistence in urging dissolution of the Independent in the face of the respondent's expressed disapproval, and the fact that his discharge followed closely upon his appearance as a witness in a Board hearing, give rise to suspicion as to the real motive underlying his discharge, we are of the opinion that the evidence in the record is insufficient to warrant a finding of discrimination in his discharge, either in violation of Section 8 (3) or of Section 8 (4) of the Act.

In his appraisal of the entire case, the Trial Examiner also found that Ball's statements to the shop committee on June 16, viewed as part of the respondent's total conduct, were coercive and thus constituted interference, restraint, and coercion violative of the Act. In view of our finding with respect to the discharge of Wilkinson, while not free from doubt, we are of the opinion that Ball's remarks, standing alone, were not coercive within our usual definition of the term.

⁵ Testimony given by Wilkinson as to his night-shift attendance during each of 6 weeks, having been selected from a 5-month period, is thus of little weight

The evidence in the record being insufficient to support any of the allegations in the complaint, we shall dismiss the complaint in its entirety.

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

CONCLUSIONS OF LAW

1. The operations of the respondent, Philadelphia Gear Works, Inc., Philadelphia, Pennsylvania, herein involved, occur in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. International Association of Machinists, District Lodge #1, 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), or (4) 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 herein against the respondent, Philadelphia Gear Works, Inc., Philadelphia, Pennsylvania, be, and it hereby is, dismissed.