

In the Matter of WAYNESBORO KNITTING COMPANY and TEXTILE
WORKERS UNION OF AMERICA, C. I. O.

Case No. 6-CA-62.—Decided June 6, 1950

DECISION AND ORDER

On March 17, 1950, Trial Examiner Robert L. Piper issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief, and the Respondent filed an opposing brief.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.² The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case, and pursuant to Section 10·(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint issued herein

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

² At the start of the hearing, the Trial Examiner granted a motion by the Respondent to dismiss a paragraph of the complaint on the ground that it did not allege the commission of an unfair labor practice. The paragraph in question alleged that the Respondent was responsible for certain statements and expressions tending to discourage concerted activities and union membership. As discouragement of such activities may well include illegal restraining and coercive conduct, as well as permissible expressions of opinion, this allegation of the complaint was sufficiently broad to support findings of Section 8 (a) (1) violations if the evidence so warranted. The Trial Examiner's ruling granting the motion was therefore erroneous and is hereby reversed.

We find, however, that the ruling was not prejudicial, as all the evidence relied upon by the General Counsel to support that particular paragraph, received in evidence as relevant to other unfair labor practice allegations of the complaint, has been considered and found insufficient to support any unfair labor practice finding.

against Respondent, Waynesboro Knitting Company, Waynesboro, Pennsylvania, be, and it hereby is, dismissed.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Messrs. Emil E. Narick and Eugene K. Kennedy, for the General Counsel.
Rice & Hannis, by *Messrs. L. I. Rice and D. H. Rodgers, Jr.*, of Martinsburg, W. Va., for Respondent.

Messrs. Samuel J. Fiore, Edmund F. Ryan, Jr. and C. P. Ellington, for the Union.

STATEMENT OF THE CASE

Upon a charge filed on January 8, 1948, by Textile Workers Union of America, CIO (hereinafter called the Union,) the General Counsel of the National Labor Relations Board (hereinafter called the Board), by the Regional Director for the Sixth Region, (Pittsburgh, Pa.), issued a complaint dated June 10, 1949, against Waynesboro Knitting Company (hereinafter called Respondent), alleging that Respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8 (a) (1) and (3), and 2 (6) and (7) of the National Labor Relations Act, as amended (hereinafter called the Act), 61 Stat. 136, 29 U. S. C. Supp. I, Secs. 141, *et seq.* Copies of the charge, the complaint, and a notice of hearing were duly served upon Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that Respondent: (1) From on or about September 1, 1947, to the date of the issuance of the complaint, made or authorized statements and expressions tending to discourage concerted and union activities and union membership among its employees; (2) discharged Donald C. Flohr, its employee, on or about November 24, 1947, and has since failed and refused to reinstate said Flohr, because of his membership in and activities on behalf of the Union, and other concerted activities; and (3) by the foregoing conduct engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

Respondent's answer admitted certain allegations of the complaint with respect to the nature of its business but denied the alleged unfair labor practices, and affirmatively alleged that Flohr was laid off because of the installation of technological improvements.

Pursuant to notice a hearing was held at Chambersburg, Pennsylvania, from June 28 to July 1, 1949, inclusive, before the undersigned, Robert L. Piper, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and Respondent were represented by counsel and the Union by representatives. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the opening of the hearing, Respondent moved to dismiss paragraph 4 (a) and (b) of the complaint, which alleged statements and expressions by Respondent tending to discourage concerted and union activities and membership, on the grounds that no unfair labor practice was alleged in the absence of any allegation of threat of reprisal or force or promise of benefit. The motion was granted.¹

¹ The General Counsel did not avail himself of the opportunity to amend the complaint.

At the conclusion of the General Counsel's case-in-chief, the General Counsel moved for reconsideration of the dismissal of paragraph 4 (a) and (b) of the complaint on the grounds that the evidence adduced established the alleged violation of the Act. This motion was denied.² Respondent's motion to dismiss the complaint for failure of proof was denied. Upon renewal thereof at the close of the hearing, ruling was reserved thereon and is disposed of by the findings and conclusions hereinafter made. A motion made at the close of the hearing by the General Counsel to conform the pleadings to the proof with respect to minor variances was granted.

Oral argument was heard from counsel. Respondent waived the filing of a brief. The General Counsel requested and received time to file a brief. No brief was received.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Pennsylvania corporation maintaining its principal office and plant at Waynesboro, Pennsylvania, where it is engaged in the manufacture, sale, and distribution of ladies' and men's knit underwear and related products. During the year immediately preceding this hearing, Respondent in the operation of its business purchased materials of a value in excess of \$100,000, of which approximately 75 percent was purchased outside the State of Pennsylvania, and sold finished products of a value in excess of \$100,000, of which approximately 70 percent was sold and delivered outside the State of Pennsylvania. These facts were stipulated by the parties. Respondent admits, and I find, that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

The Union is a labor organization admitting to membership employees of Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The alleged discriminatory discharge of Flohr*

As previously noted, the single purported allegation in the complaint of independent interference, restraint, and coercion was dismissed and this ruling was reiterated after receipt of the evidence, which clearly failed to establish any acts constituting independent violations of Section 8 (a) (1) of the Act.

This leaves as the sole issue for consideration the alleged discriminatory discharge of Donald C. Flohr.

Respondent operates its manufacturing plant in Waynesboro, Pennsylvania. The plant is divided into several departments, each headed by a superintendent. The rayon knitting department operates a number of machines. The employees in that department are a foreman, a number of machine operators, machine fixers, several winder operators, and some inspectors. The number varies depending upon the number of machines in production. The foreman is also a fixer and

²The evidence adduced by the General Counsel, which was received in support of the allegations of violation of Section 8 (a) (3) of the Act, clearly establishes that the conduct complained of was protected free speech under Section 8 (c) of the Act.

spends most of his time doing such work. The fixers are mechanics who make the necessary repairs on the machines.

In February 1941, Flohr started to work for Respondent in the knitting department as an operator. In August 1942, Flohr quit but returned in December and started to work as a fixer. In February 1943, Flohr was transferred to the night shift as foreman-fixer. He requested transfer back to day work in December, which was granted, and he reverted to the status of fixer at a lower wage. He remained on this job until terminated on November 24, 1947.

Glenn Miller was the day foreman-fixer, and as such was Flohr's immediate supervisor after he returned to day work. Respondent strenuously contended that Miller was not a supervisor within the meaning of the Act because most of his time was spent working as a fixer. However, the undisputed evidence, most of which was adduced by Respondent's witnesses, shows that Miller was in charge of the operators and fixers, made daily work and machine assignments, disciplined employees, reported employees' faults to the superintendent, exercised a portion of the superintendent's functions daily and all of them in his absence, received reports of defective work by operators and fixers from the inspectors, criticized employee work and qualities, instructed new employees and inspected the operations in his department, made reports to the superintendent, and generally responsibly directed the work of all the operators, fixers, and inspectors. In addition it was conceded that a portion of Miller's pay was for supervision, and that the same was true with respect to Flohr while he was the night foreman. Miller concededly did not have the power to hire or fire, but did make recommendations and reports concerning employees to his superior. The undisputed evidence convinces me, and I so find, that Miller was a supervisor within the meaning of the Act.³

The events in issue took place during the late summer and fall of 1947. Sometime in August, Samuel J. Fiore, a national representative of the Union, came to Waynesboro for organizational activities. On September 15, he and several assistants handed out union pamphlets at Respondent's 2 gates. This was repeated about 8 times up to and through December. Respondent was aware of this activity. The first distribution was immediately followed by a union organization meeting, which was attended by 7 or 8 of Respondent's employees, including Flohr. A second union meeting was held on September 24, again attended by 7 or 8 including Flohr. At this meeting most of those present signed union application cards and were given additional cards to solicit fellow employees. Flohr passed out about 20 union application cards, but only 1 during working hours, and did not discuss the subject or wait for a signature, but merely asked the employees to return the cards later. Flohr did secure about 11 signers. The third and last union meeting was held about October 20, and only Flohr attended.

During July Respondent started to install electrical stop-motion devices on its knitting machines, and completed the installation by January 1948. In November 1947, all of the machines in operation at the time had had such devices installed. During this period, Respondent had about 11 or 12 employees in the rayon knitting department. They were the foreman-fixer (Miller), 2 other fixers, 1 inspector, 5 or 6 machine operators, and 2 winder operators. The 2 fixers were Flohr and Richard Burns. While Burns had worked for Respondent off and on since 1941, he had not become a fixer until April, 1947, more than 4 years

³ *Ohio Power Company v. N. L. R. B.*, 176 F. 2d 385 (C. A. 6); *Acme Breweries*, 86 NLRB 1098.

after Flohr. On November 24, Snowberger, superintendent of Respondent's rayon knitting department, advised Flohr that the installation of the stop-motion devices reduced the need for fixers, and that Respondent was laying him off as the poorest fixer of the three. Flohr left the plant. Either that day or the next. Flohr contacted Reid, Respondent's vice president and general manager, concerning his layoff and Reid advanced substantially the same reasons.

B. Evidence adduced by the General Counsel

Practically the only evidence adduced in support of the alleged discriminatory discharge was that given by Flohr. Substantially, his testimony was that he had joined the Union on September 15, had attended the three meetings, and had solicited membership in the Union. It was undisputed that no one representing management was aware of Flohr's solicitations, that only once had he handed out a card during working hours, and that this took a very short time, as he did not discuss the matter and did not ask the employee to sign at the time. He admitted that no management representative ever witnessed his activity in passing out cards. He did testify that he gave a card to Lowe, a patternmaker and Reid's nephew. Flohr testified that Miller, his foreman, was aware of his Union membership. Flohr said that after the meeting of September 24, Miller told him at the plant that Flohr was at the meeting. Flohr further testified that he told Miller he was at the meeting and Miller said, "all right, it isn't any of my business." Miller, Flohr, and two other employees rode in a car-pool after work. On October 15, Flohr met Fiore outside the plant on the sidewalk and left Miller and the others waiting in the car while he discussed with Fiore wage rates at the Utica mills for work similar to that in Respondent's plant. Flohr claimed that this was within sight of Miller and that after he got back in the car he told Miller and the others that union members at Utica made twice as much pay as Respondent's employees. He and Fiore agreed their conversation lasted around 8 minutes, but could not be heard in the car. Fiore was unable to identify Miller as an occupant of the car. No one else testified that he was.

Flohr said that the next morning when he came to work, Snowberger and Miller were talking at Snowberger's desk and failed to say good morning to him. He also testified that from then on Respondent watched him closely and gave him more "dirty" work. He was unable to give any instances of "watching" by anyone specifically, and admitted the "dirty" work referred to was his regular job, but contended he was given extra amounts of the less desirable tasks, although not working any longer hours than before. He was unable to further elucidate this contention. Flohr admitted the installation of the stop-motion devices and while first denying that they resulted in less fixing work, subsequently admitted that they did. He admitted that no other incidents occurred, no threats were made and that other than Miller, no representative of management was aware of his union membership or activities.

On November 24, 1947, Snowberger came up to Flohr and told him to get his tool box and leave. He told Flohr his work was unsatisfactory and said "something about the stop-motions cutting the need for help." Snowberger agreed with Flohr that he was the oldest fixer other than Miller. Flohr asked Snowberger if it was because of the Union and Snowberger replied that he knew nothing about the Union. Flohr then left. Later he returned and saw Reid, asking him for an explanation. Reid told him it was because the stop-motion devices reduced the need for fixers and advised him not to work against the

company he was with. Flohr also asked Reid about the Union and said that Reid made no reply. Flohr further said that in response to his inquiry Reid told him he would not be blacklisted. All of the above is Flohr's version of what happened. He pointed out that he had been a fixer longer than Burns, had been a foreman-fixer for a period, and should not have been laid off because of seniority.

Portner, a witness called by the General Counsel, testified that he heard Miller say, during a discussion of the Union among the workers, that he knew how many had attended the union meeting, and that he could not say anything for or against the Union. Bryan, another witness for the General Counsel, said that Miller had once told him that he (Miller) had no use for the Union which represented employees in a plant where Bryan had formerly worked. This was not the union in this case.

• *C. Evidence adduced by Respondent*

Undisputed expert evidence, as well as the testimony of Respondent's officials, clearly established that the installation of the electric stop-motion devices reduced breakage, machine damage, and broken needles, and resulted in substantially less fixing work. It was also undisputed that Respondent had no seniority policy in the plant, and reduced its force when necessary on the basis of merit rather than seniority. It was further established that on November 24, all the operating knitting machines had been equipped with the stop-motion devices.

Miller, Flohr's foreman, corroborated his own functions as foreman. He testified that Flohr was a less efficient worker than Burns and that he had reported Flohr's deficiencies to Snowberger upon occasion. However, he testified, and it was both corroborated and undisputed, that he had nothing to do with the decision to terminate Flohr, and was unaware of it until after it occurred. He denied that he had any knowledge of Flohr's union membership or activities, and denied ever discussing the Union with Flohr. He stated that he was not present in the car when Flohr met Fiore and never heard Flohr discuss the wages paid at the Utica mills. Miller lived one block from the plant and only rode with the others occasionally. He denied ever sitting in the car for any period of around 8 minutes while only a block from home. He said that he had no recollection of not speaking to Flohr on the morning of October 16, but denied that he had treated Flohr in any different manner after that date. He also denied that Flohr had any different or dirtier work after that date, and pointed out that he himself, as foreman-fixer, did the most difficult fixing. Miller testified that after November 24, he and Burns did all the fixing and no one replaced Flohr. He also said that after Burns quit in 1948, he handled all of the fixing work alone. In each case this was because of the reduction in such work by the installation of the stop-motion devices. Miller further denied making any statements to Portner about the Union.

It was undisputed that Miller was the best fixer, so the choice narrowed to Burns and Flohr. Some effort was made by the General Counsel to prove that Flohr's work was handled by others after he left. However, the record establishes only that all of the operators upon occasion when their work was slack helped to do incidental fixing jobs of lesser complexity, and that such had always been the practice in the plant. The record convinces me, and I find, that Respondent assigned no one to replace Flohr as a fixer.

Snowberger, Respondent's superintendent, testified that some time before November 24 he and Reid had discussed the matter of layoffs because of the

stop-motion devices, and that they had agreed that when the time came, Flohr should be laid off because Burns was a better fixer. The record reveals that from Respondent's viewpoint Burns was the better. It will serve no useful purpose to document the evidence with respect to the quality of Flohr's work. In any event, it is unessential, as the real question is the reason for his layoff, and not the basis for its formation. Snowberger denied any knowledge of Flohr's union activities, and said that he had not discussed Flohr's layoff with Miller. Because Snowberger did the hiring and firing, Reid left to him the decision as to the appropriate time. No evidence was adduced to show that Snowberger had any knowledge of Flohr's union activities. Snowberger denied that Flohr's layoff had any connection therewith. He said that on November 24 he told Flohr he was being let go because of the stop-motion devices and that Flohr merely said O. K. and left. He denied that Flohr asked him anything about the Union. He also denied that he told Flohr to leave at once, and said he was surprised when Flohr did not return in the afternoon to complete the day. He told Flohr that he was less satisfactory than Burns and that was the basis for the decision. Snowberger explained that while Flohr was a fixer longer than Burns, and had been a foreman for a period, that during that time help had been difficult to get because of the war, and that in spite of Flohr's experience, Burns was a better fixer. He admitted knowledge of the union distribution of pamphlets, but knew nothing about any employees joining. As far as he knew, the plant had never had a union. He also denied treating Flohr any differently after October 16, and could not recall the incident when Flohr said that Snowberger and Miller did not say good morning. He further denied Flohr's work assignments were any different after October 16, and pointed out that they were probably lighter because the stop-motion devices had reduced the fixing work to some extent by that time. He corroborated the fact that no one replaced Flohr, and that Miller had been the only fixer employed since Burns left. He denied watching Flohr closer after October 16. He also corroborated that all operators helped do occasional fixing work when their own work was slack, and that this was a custom in the department.

Reid, Respondent's general manager, testified that he and Snowberger reached the decision on the termination of Flohr, and that Miller knew nothing about it. Reid also denied any knowledge of Flohr's union activity. He corroborated Snowberger's statement that Burns was retained as the better fixer, and that he (Reid) left to Snowberger the decision as to when to terminate Flohr, based upon the status of the installation of the stop-motion devices. He admitted knowledge of the union handbills. Reid said that when he saw Flohr after his layoff he advised Flohr it was because the stop-motion devices resulted in less fixing work and in Respondent's opinion the other fixers were better. He admitted that Flohr asked if it was because he had joined the Union and said that he told Flohr, "Donald, that is news to me. I didn't know you were a Union member." He also testified that before Flohr asked about the Union, he had advised Flohr that he should always work for the best interests of his boss and company, and if he did so, he would never have to worry about having a job. Reid explained that he had reference to Flohr's qualities as a workman and employee, and was then unaware of Flohr's union activities. Reid also testified that no one was employed to replace Flohr.

D. Conclusions and ultimate findings

The undisputed evidence in the record established that the installation of the stop-motion devices did reduce the fixing work, and consequently the need

for fixers, and that Respondent's policy concerning reductions in force was to retain employees on the basis of merit rather than seniority. It was also undisputed that Respondent's officials, other than Miller, had no knowledge of Flohr's union activities, and that Miller was not consulted and was unaware of the decision to terminate Flohr. Miller himself denied that he knew of Flohr's union activities, and under all of the circumstances, it seems probable to me that he did not. It is not essential, however, to resolve this issue, because it is immaterial whether Miller knew of Flohr's union activities if this had nothing to do with his termination. I am convinced, and find from a preponderance of the credible evidence, that Reid and Snowberger had no knowledge of Flohr's union activities when he was terminated.

The General Counsel made no attempt to refute the evidence that the installation of stop-motion devices reduced the need for fixers, and that Respondent reduced its working force on the basis of merit rather than seniority. On the basis of this record, the General Counsel's contention, shorn of its embellishments and reduced to its bare essentials, seems to be that if an employee joins a union and engages in union activity, a discharge or termination by an employer amounts to discrimination. The inadequacy of such a position needs no elaboration.

Even assuming, *arguendo*, that Respondent's officials were aware of Flohr's union activities, the General Counsel has failed to prove a termination for discriminatory reasons. The record is utterly barren of any antiunion conduct by Respondent. The failure of proof as to the alleged interference, restraint, and coercion has previously been found. At best, Flohr seemed to be grasping at straws to make out a case. His testimony of officials not saying good morning, of being "watched" but not seeing anyone watching him, and of being assigned extra "dirty" work but not being able to elaborate on this contention, illustrates this point. His union activity which might have come to the attention of Respondent was to say the most fragmentary. In a plant of over 400 employees, he handed out 1 union card during working hours, with the officials in view, the whole transaction apparently taking less than a minute.

Reid and Snowberger both testified credibly that they decided to terminate Flohr because they thought Burns was a better fixer. It is clearly established that Flohr was not replaced, and that some 7 months later when Burns resigned, he was not replaced and Miller alone handled the fixing work. Even assuming that Respondent's officials knew of Flohr's union activities, there is nothing in the record to indicate that such activities were the reason for his termination.

Under all of the circumstances, and upon consideration of the entire record, the preponderance of credible evidence convinces me and I so find, that Respondent did not discriminatorily discharge or terminate Flohr because of his union membership or activities, but on the contrary, terminated Flohr without discrimination because of a reduction in work.

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

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2 (5) of the Act.
2. Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
3. Respondent has not engaged in any unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, it is recommended that the complaint against Respondent be dismissed.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order 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 six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or brief, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed, shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendation, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 17th day of March 1950.

ROBERT L. PIPER,
Trial Examiner.