

In the Matter of THOMPSON PRODUCTS, INC. and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U. A. W.-C. I. O.)

Case No. 7-C-1266

Mr. N. L. Smokler, of Detroit, Mich., for the U. A. W.-C. I. O.

Mr. Harry E. Smoyer, of Cleveland, Ohio, for the respondent.

Mr. Milton E. Harris, of counsel to the Board.

AMENDED DECISION

AND

ORDER

February 21, 1947

On August 15, 1946, the Board issued a Decision and Order in the above-entitled proceeding,¹ finding that the respondent had engaged in certain unfair labor practices affecting commerce, and ordering that the respondent cease and desist therefrom and reinstate certain employees without back pay.

On November 29, 1946, the Board issued a notice herein, advising the parties that it desired to reconsider its disposition of the case, that they might file a written statement of position and a supporting brief, and that oral argument would be held before the Board on the question of whether the Board should vacate the Decision and Order and, if so, what findings of fact, conclusions of law, and order should then be made or issued or what other disposition should be made of the case. Thereafter the respondent duly filed a written brief. The U. A. W.-C. I. O. originally advised the Board that its position was set forth in the brief it had previously filed; a later request to file a brief after oral argument was denied.²

¹ 70 N L R B 13 This decision issued before Mr Reynolds took office. A separate opinion was written by each of the then Members of the Board. Mr. Houston favored reinstatement of certain discharged strikers with back pay, Mr. Reilly urged dismissal of the company, and Chairman Herzog—differing with each of his colleagues in part—held that the appropriate remedy would be reinstatement without back pay.

² The U. A. W.-C. I. O. urges that the Board cannot properly modify its Decision and Order, because the notice of November 29, 1946, failed to satisfy the requirement of Section

On January 21, 1947, pursuant to notice, the full Board at Washington, D. C., heard oral argument. The U. A. W.-C. I. O. and the respondent participated by counsel.

Upon full reconsideration of the case, we have concluded that the Decision and Order of August 15, 1946, was erroneous to the extent that it is inconsistent with the disposition hereinafter made of the case. It will therefore be vacated and set aside.

Upon reconsideration, the Board concludes that the case was correctly decided by the Trial Examiner in his Intermediate Report dated August 25, 1945. He found that the respondent had not engaged in the unfair labor practices affecting commerce alleged in the complaint, and recommended that the complaint be dismissed. The Board has again considered the rulings of the Trial Examiner at the hearing, and again finds that no prejudicial error was committed. His rulings are hereby affirmed. The Board has reconsidered 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, with the following additional statement:

As in its original decision, where they are more fully recited,³ the Board agrees with and adopts all the factual findings of the Trial Examiner. The Trial Examiner further found and the respondent urges, in reliance on the *American News* case,⁴ that the complainants

10 (d) of the Act that "reasonable notice" first be given. We find no merit in this argument, inasmuch as the notice clearly stated that the Board wished to reconsider its disposition of the case and the conclusions of law and the order it had previously issued. Moreover, at no time during the period of almost 2 months between the issuance of the notice and the oral argument before the Board did the U. A. W.-C. I. O. complain of any alleged inadequacy in the notice or request the Board to particularize it in any respect.

³ "(1) On September 14, 1942, the Society was certified by the Board as the exclusive representative of the respondent's employees in an appropriate unit, (2) on October 1 and December 29, 1942, the U. A. W.-C. I. O. requested exclusive recognition as the bargaining representative for the employees in the same unit; (3) the respondent refused to comply with the U. A. W.-C. I. O.'s demand because of the outstanding Board certification of the Society; (4) the strike which began on December 29, 1942, was for the purpose of compelling the respondent to grant exclusive recognition to the U. A. W.-C. I. O. in the face of the existing certification of the Society, and not for any of the other purposes or reasons asserted by the U. A. W.-C. I. O.; (5) later that day the respondent, through a notice posted on its bulletin board and at a conference with a State conciliator and a U. A. W.-C. I. O. representative, promised to reinstate the strikers without discrimination, whereupon it was agreed that the strike would be called off; (6) the strike of December 30 and 31 was not a new, or second, strike, but was a continuation of the strike of December 29, and (7) the respondent discharged the members of the U. A. W.-C. I. O. committee on January 2 and 4, 1943, and thereafter refused to reinstate them, as Plant Manager Graham testified, 'Simply because they had said they were going back to work and didn't,' and 'because they were the leaders of the strike' and 'were out in front picketing the second day.' "

⁴ *Matter of The American News Company*, 55 N. L. R. B. 1302, decided in 1944, holding that a strike whose purpose was to force an employer to violate the War Labor Disputes Act was not protected by the National Labor Relations Act. The discharge of employees for participating in such a strike was held not to be a violation of the Act, Chairman Millis dissenting.

were not entitled to the protection of the Act because they engaged in a strike for the purpose of compelling the respondent to violate the Board's recent certification of the Society, an independent labor organization. We agree with the Trial Examiner that the purpose of the strike was to force the respondent to recognize the U. A. W.-C. I. O. at a time when it was under a legal duty to bargain with the Society. On reconsideration, we also believe that the respondent discharged the strikers because they had called and continued a strike whose purpose was unlawful, and that, on this record, the fact that its momentary motive may have been a different one should not alter the legal effect of its action. We hold that the doctrine laid down in the *American News* case is applicable to such a situation and that, in accordance therewith, the complaint should be dismissed in its entirety. It follows that the strikers are entitled neither to reinstatement nor back pay.

In the Decision of August 15, 1946, Chairman Herzog held that under the special facts revealed by this record reinstatement would be an appropriate remedy, but that it would not effectuate the policies of the Act to award back pay to these dischargees. He found, together with Board Member Reilly, that as the purpose of the strike was to compel the respondent to violate its obligations under the Board's certification, the *American News* doctrine would ordinarily apply so as to require dismissal of the complaint. He then believed, however, that an exception was warranted because this respondent had condoned the strikers' improper conduct by offering them early reinstatement, and had thereafter discharged them for an intervening reason that was proscribed by the Act. Upon reconsideration, the Chairman agrees with Mr. Reynolds that there was, in fact, no effective condonation because, despite the respondent's promise on December 29, 1942, to reinstate the strikers upon the U. A. W.-C. I. O.'s agreement to discontinue the strike on that date, the strike nevertheless was continued on December 30 and 31 for the identical purpose of compelling the respondent to violate its obligations under the Board's certification. In such circumstances it cannot be said, as a matter of law, that the respondent condoned the continuation of the strike. It follows that the respondent discharged the strikers for reasons that cannot be disassociated from the strikers' original objective of compelling the respondent to bargain with one union at a time when it was under a legal obligation, pursuant to the Board's certification, to bargain with another.

On August 15, 1946, in denying back pay to the discharged strikers even when he believed that this respondent's condonation of the strike made a reinstatement order appropriate, Chairman Herzog observed that: "There would be neither moral, legal nor practical justification for our requiring employers to respect our certifications if we were unwilling to respect them ourselves." Mr. Reynolds joins wholeheartedly in this observation, which governs our present decision in this case.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) and (d) of the National Labor Relations Act, the National Labor Relations Board hereby orders that its Order of August 15, 1946, against the respondent, Thompson Products, Inc., Detroit, Michigan, and its officers, agents, successors, and assigns be, and it hereby is, vacated and set aside.

AND IT IS FURTHER ORDERED that the complaint against the respondent, Thompson Products, Inc., Detroit, Michigan, be, and it hereby is, dismissed.

Mr. JOHN M. HOUSTON took no part in the consideration of the above Amended Decision and Order.