

presented by that case and are to the effect that absent "a general pattern and plan of anti-union hostility" or promises of benefit or threats of reprisal, employer interrogations of employees, under the circumstances of the *Winer* case, are not violative of the Act. Although the matter is not free from doubt, the undersigned is persuaded that the facts and circumstances of the *Winer* case are comparable to those of the instant proceeding and make the conclusions reached in that case controlling upon the issues herein involved. As found above, the complaint's allegations as to the discharge of Stewart were wholly without merit. Moreover, McFarlin's interrogations of employees Smith and Stewart were not accompanied by promises of benefit<sup>10</sup> or threats of reprisal and are, in themselves, insufficient to establish a "general pattern and plan of anti-union hostility" on the part of the Respondent. It is accordingly found that McFarlin's statements and queries addressed to employees Smith and Stewart were not violative of the Act. In conclusion, the undersigned finds that the Respondent has not engaged in violations of Section 8 (a) (1) and (3) of the Act and will recommend that the complaint be dismissed in its entirety.

On the basis of the foregoing and upon the entire record in the case, the undersigned makes the following:

#### CONCLUSIONS OF LAW

1. Waffle Corporation of America is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. Bakery & Confectionery Workers International Union of America, Local No. 173, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.
3. Waffle Corporation of America has not engaged in unfair labor practices as alleged in the complaint within the meaning of Section 8 (a) (1) and (3) of the Act.

[Recommendations omitted from publication in this volume.]

<sup>10</sup> In reaching this conclusion, the undersigned has considered the fact that in March 1952, McFarlin told Stewart that the latter would soon be receiving an automatic 5-cent an hour increase. This statement was one of fact and cannot be construed to be a promise of benefit, since under the Respondent's wage policy, enunciated and explained to the employees early in 1952, an employee automatically received an increase of 5 cents an hour after being in the Respondent's employ for 6 months. Stewart completed her first 6-month period of employment by the Respondent on March 10, 1952.

SHEDD-BROWN MFG. CO. and UNITED PAPERWORKERS OF AMERICA,  
C. I. O. and DULY AUTHORIZED COMMITTEE OF PRODUCTION EM-  
PLOYEES OF SHEDD-BROWN MFG. CO., ALSO KNOWN AS SHEDD-BROWN  
PLANT ASSOCIATION, PARTY TO THE CONTRACT. *Case No. 18-CA-290.*  
*March 23, 1953*

#### Supplemental Decision and Order

On January 28, 1952, the Board issued its Decision and Order in the above-entitled case.<sup>1</sup> Thereafter, Shedd-Brown Plant Association, herein called the Association, and the Respondent, each filed a

<sup>1</sup> 102 NLRB 742.

103 NLRB No. 107.

petition requesting the Board to modify or set aside its Decision and Order in certain respects. The Respondent objects to paragraph 2 (a) of the Board's Order which requires the Respondent to reinstate and make whole the 2 employees named therein who the Board found were discriminatorily discharged and the 14 employees named therein whom, as found by the Board, the Respondent discriminatorily failed and refused to recall to work following an economic layoff. The Respondent also objects to the Order insofar as it directs the Respondent to reimburse its employees for any association dues deducted from their wages and paid to, or being retained for, the Association, by paying to each of them a sum of money equal to the total of such dues deducted from his or her wages.<sup>2</sup> The Association objects to paragraph 2 (c) of the Order which directs the Respondent to withdraw recognition from the Association as bargaining representative of its employees, and completely to disestablish the Association as such representative.

With respect to the first of its objections, the Respondent asserts, in effect, that the 16 employees ordered reinstated were hired in 1950 for seasonal terms, and that these employees knew when they were hired that their employment would terminate in that year. The Respondent contends that because these employees had no right or expectation of employment beyond the season for which they were hired, the Board's order requiring the Respondent to reinstate them and to make them whole for losses resulting from the Respondent's discrimination, should have been limited to such employment or earnings of which they were deprived during the 1950 season, and should not have extended to any subsequent period; that by so failing to limit the order in this case the Board has overlooked the fact that the employees involved were seasonal employees. The Respondent apparently has misconstrued the Board's Decision and Order. The Trial Examiner and the Board were clearly cognizant of the seasonal character of the Respondent's operations, and the fact that the employment of the Respondent's employees was justifiably terminable at the close of the 1950 season in December of that year. These circumstances, however, do not preclude a finding that the Respondent violated Section 8 (a) (3) of the Act by refusing to recall employees upon the resumption of operations in 1951 because of the past union interests and activities of these employees. The record amply demonstrates that the Respondent's practice was to recall its laid-off employees upon resumption of operations following a seasonal or economic shutdown. It did so near the end of the 1950 season, and again in 1951 when its new season began. The Respondent's assertion,

---

<sup>2</sup> Reimbursement for these deductions was recommended by the Trial Examiner in that part of his Intermediate Report entitled, "The Remedy," which was adopted by the Board and, therefore, constitutes part of the Board's Order though not specifically enumerated therein, through inadvertence.

therefore, that the 14 laid-off employees and the 2 employees discriminatorily discharged in November 1950 had no expectation of employment beyond the 1950 season is contradicted by the record.<sup>3</sup> The Trial Examiner concluded in effect, and we are satisfied that his conclusion is supported by the record, that all these employees would have been recalled, along with other laid-off employees who were recalled, to employment during the 1951 season, absent the Respondent's discriminatory reasons. A remedial requirement that the Respondent immediately offer suitable employment to these employees, with the further requirement that they be made whole for losses incurred because of the Respondent's discrimination against them, including back pay from such dates when they would have been employed absent the Respondent's discrimination,<sup>4</sup> is clearly consistent with the nature and scope of the Respondent's unlawful conduct.<sup>5</sup> The Respondent's objection to these requirements is without merit.

Regarding the objection to the Board's order that it reimburse the employees for association dues which it deducted from their earnings, the Respondent contends that it should be relieved of this requirement because the dues in question were deducted pursuant to signed authorizations submitted by the employees to the Respondent without compulsion. Contrary to this assertion, the record shows that the authorizations were not voluntarily submitted by the employees, but were coercively procured by the Respondent. As related by the Trial Examiner in his Intermediate Report, the Association passed a resolution on January 3, 1951,

to insert in [its] contract the following rider. "It is agreed by a majority to make as a condition of employment membership in the Shedd-Brown Plant Association. All persons affected are to fill out application blanks and dues deduction blanks within 30 days of January 3, 1951, or 30 days after commencing work."

---

<sup>3</sup> When the Respondent laid off its employees in December 1950 it gave each of them a card signed by O. Bast, Respondent's vice president, containing the following:

As you were informed when employed this calendar business is seasonal and we find it necessary at this time to discontinue with your service. We appreciated your cooperation.

*We hope that when we find we are in need of your service we may have the pleasure of calling you again.* (Emphasis supplied.)

After the Respondent resumed its operations in 1951, following the December 1950 layoffs, the laid-off employees were contacted by Bast's secretary to come back to work.

<sup>4</sup> As noted by the Trial Examiner in his Intermediate Report, the record does not permit a determination of the date when the 2 employees discriminatorily discharged in November 1950 would have been laid off at the close of the 1950 season or the dates when they and each of the 14 laid-off employees would have been recalled in 1951 absent the Respondent's discrimination against them. Accordingly, in accordance with customary procedure in such cases, these dates will be ascertained at the compliance stage.

<sup>5</sup> *Stokely Foods, Inc.*, 91 NLRB 1267, enfd. 193 F. 2d 736 (C. A. 5); *International Shoe Co.*, 87 NLRB 479.

The record does not disclose that the Respondent agreed to attach a "rider" incorporating such a union-security clause into the then existing contract with the Association. The record, however, does conclusively show that Foreman Gabriel, found to be a supervisor and the leader in the formation and administration of the Association, had, with the permission of Vice-President Bast, posted a notice of the foregoing association resolution on the bulletin board above the employees' time clock where it remained continuously from January 1951, except for a brief period, until the hearing.<sup>6</sup> Gabriel testified that at the end of the 30-day period after employees were hired, a notice was placed on their timecards directing them to see him or certain other association officials. Gabriel further testified that "they all came" to him, and received from him association membership *and* dues checkoff cards to sign. He turned over the signed checkoff cards to the Respondent for deduction of association dues from their earnings.

Gabriel also testified that he conducted "a pretty serious campaign" early in January 1951 to get everybody into the Association and contacted most of the employees around the plant. After a campaign of a month to 2 months "to get them one hundred percent signed up" he found a few employees "that were lagging back." He thereupon intensified his solicitation of these employees with arguments containing the following coercive remarks:

. . . if I were in your position and another organization was representing the employees and I refused to join up, well, wouldn't be long, I just wouldn't be working here, maybe I'd quit, maybe they would find fault with my work, but I told them I had seen it happen before, and that I says, you take the chances.

Such incontestable proof of direct wide-scale solicitation of association membership *and* checkoff authorizations of Respondent's employees by its supervisor, Gabriel, and the resort by this supervisor to plainly coercive tactics for the accomplishment of these objects, negates the Respondent's assertion that it deducted association dues pursuant to voluntary authorizations from its employees. As the Respondent is chargeable with its supervisor's coercive conduct, we find the Respondent's objection to the requirement that it refund these dues to its employees to be without merit.<sup>7</sup>

As to the Association's objections to the requirements that the Respondent cease recognizing the Association as bargaining representative of its employees, and that it disestablish the Association as

<sup>6</sup> Balow, president of the Association at the time of the hearing, testified that he had seen the notice on the bulletin board on the Friday preceding the day of his testimony.

<sup>7</sup> *Federal Stores Division of Spiegel, Inc.*, 91 NLRB 647; *Precast Slab and Tile Co.*, 88 NLRB 1237, *enfd.* 190 F. 2d 206 (C. A. 8).

such representative, these issues were fully considered by the Board when it issued its Decision and Order herein, and we are satisfied that the arguments presented now by the Association to support its objections do not warrant modification or setting aside of the Decision and Order.

### Order

For the reasons stated above, it is ordered that the petitions filed by the Respondent and by the Association to set aside or modify the Board's Decision and Order in this proceeding be, and they hereby are, denied.

IT IS FURTHER ORDERED that the Board's Decision and Order in this proceeding be, and it hereby is, clarified as follows:

1. By adding to section 2 of the Order the requirement that the Respondent take the following affirmative action which the Board finds will effectuate the policies of the Act:

Reimburse its employees for any association dues deducted from their earnings and paid to, or being retained for, the Association, by paying to each of them a sum of money equal to the total of such dues deducted from his or her earnings.

2. By adding to the notice attached to the Intermediate Report, marked "Appendix B," and ordered by the Board to be posted, the following:

WE WILL reimburse our employees for any dues deducted from their earnings and paid to, or being retained for, the Shedd-Brown Plant Association, by paying to each of them a sum of money equal to the total of such dues deducted from his or her earnings.

CHAIRMAN HERZOG AND MEMBER PETERSON took no part in the consideration of the above Supplemental Decision and Order.

---

WHITLOCK CORPORATION *and* EDWARD H. BLAKE

DISTRICT 65, DISTRIBUTIVE, PROCESSING AND OFFICE WORKERS OF AMERICA *and* EDWARD H. BLAKE. *Cases Nos. 2-CA-2264 and 2-CB-700. March 24, 1953*

### Decision and Order

On January 28, 1953, Trial Examiner A. Bruce Hunt issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in unfair labor practices in violation of the Act and recommending that they cease and desist therefrom and take certain affirmative action, as set forth