

It contends however, that the Regional Director erred as a matter of law in his determinations. We do not agree. In our opinion, the record fails to establish that the Petitioner deliberately sought the arrest of its organizers. Moreover, contrary to the Employer's contention, the latter had ample opportunity effectively to reply to the Petitioner's election campaign. We find, as did the Regional Director, that this objection of the Employer is without merit.

We find therefore that the Employer's exceptions raise no substantial and material issues with respect to the election and we adopt the Regional Director's recommendations that the objections be overruled.<sup>13</sup>

As we have overruled the Employer's objections and as it appears from the tally of ballots that the Petitioner has secured a majority of the valid votes cast in the election, we shall certify the Petitioner as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified United Gas, Coke and Chemical Workers of America, CIO, as the designated collective-bargaining representative of the employees of the Employer in the unit found appropriate in the Decision and Direction of Election herein.]

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<sup>13</sup>No persuasive reason appears for granting the Employer's request for a hearing. Accordingly, this request is denied.

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WESTERN FOUNDRY COMPANY *and* CHESTER SWANSON and  
EDWARD KOENIG. Case No. 13-CA-1238. June 24, 1953

### DECISION AND ORDER

On April 24, 1953, Trial Examiner Horace A. Ruckel issued his Intermediate Report in this 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. The Respondent requested permission to file a reply brief, which request was granted.

The Board<sup>1</sup> 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 and the briefs, and the entire record in the case, and hereby adopts

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<sup>1</sup>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. [Members Houston, Murdock, and Peterson].

the findings, conclusions, and recommendations of the Trial Examiner.<sup>2</sup>

[The Board dismissed the complaint.]

<sup>2</sup>The General Counsel, in his exceptions, objects, among other things, to the Trial Examiner's description of the union committee as a "grievance" committee, and to the Trial Examiner's statement that members of such committee were without knowledge of the content and nature of the petition at the time they interviewed Swanson. As we find the Trial Examiner's primary findings and conclusions to be correct, we deem any possible error in these and other minor findings to be immaterial.

## Intermediate Report and Recommended Order

### STATEMENT OF THE CASE

Upon a charge filed September 10, 1952, by Chester Swanson and Edward Koenig, individuals, the General Counsel for the National Labor Relations Board, herein called respectively the General Counsel and the Board, issued his complaint dated January 14, 1953, against Western Foundry Company, herein called Respondent, alleging that Respondent had engaged 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, 61 Stat. 136, herein called the Act. Copies of the complaint and a notice of hearing were duly served upon Respondent, Koenig, and Swanson.

The unfair labor practices alleged are that (1) Respondent on or about September 9, 1952, interrogated employees concerning their concerted activities, and (2) on or about the same date discriminatorily discharged Swanson and Koenig because of their concerted activities and for the further reason that the discharges were demanded by United Steel Workers of America, Local 2674, herein called the Union.<sup>1</sup>

Respondent filed its answer dated January 26, 1953, admitting that it is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act, but denying the commission of any unfair labor practices.

Pursuant to notice a hearing was held before the undersigned Trial Examiner at Chicago, Illinois, on February 4 and 5, 1953. The parties were represented by counsel and participated in the hearing. Full opportunity was permitted to examine and cross-examine witnesses and to introduce evidence pertinent to the issues. The Union moved to be allowed to intervene in the proceeding and Respondent moved that the proceeding be enlarged so as to include the Union as a Respondent. Both motions were denied.

At the conclusion of the hearing counsel for the parties engaged in a brief oral argument and were granted until February 19, 1953, to file briefs with me. Subsequently this time was extended by the Chief Trial Examiner to March 5. A brief has been received from Respondent.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

Respondent is an Illinois corporation maintaining its principal office and plant in the city of Chicago, Illinois, where it is engaged in the manufacture of gray iron and steel castings. In the course and conduct of its business, and at all times material herein, it has continuously caused quantities of raw materials to be purchased and transported in interstate commerce to its Chicago plant from and through States of the United States other than the State of Illinois. During the 12 months preceding the hearing the value of raw materials purchased for use at its plant was approximately \$1,440,000, of which about 16 percent was shipped to its plant from points outside the State of Illinois. During the same period the value of finished products sold was about \$3,900,000, of which approximately 43 percent was shipped from the Chicago plant to points outside the State of Illinois.

At the time of the events hereinafter related Respondent employed about 200 employees, exclusive of supervisory employees.

<sup>1</sup>No charge was filed against the Union.

## II. THE LABOR ORGANIZATION INVOLVED

United Steel Workers of America, Local 2674, is a labor organization admitting employees of Respondent to membership. It is affiliated with the Congress of Industrial Organizations.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

## A. The discharge of Chester Swanson and Edward Koenig

On April 27, 1950, Respondent and the Union entered into a contract containing a maintenance-of-membership clause, expiring by its terms on March 1, 1952, but to be continued thereafter unless terminated by a 60-day notice. It does not appear from the record that such notice has been served.

Koenig came to work for Respondent in August 1951 as a setup and maintenance man in the machine shop. Swanson came to work in March 1951 as a maintenance man. Swanson never joined the Union. Koenig joined in August 1952 following a conversation with Fleming, the then president of the Union, in which Fleming, according to Koenig's uncontroverted testimony, assured him that he would be appointed a steward upon joining. He attended three union meetings at which he made known his dissatisfaction with the handling of negotiations by the Union's officials looking toward a new contract, and at which a proposed strike vote was opposed by Lucius Love, the Union's international representative in charge of the contract negotiations. In spite of this, at the second or third meeting he was duly appointed a steward. His dissatisfaction with the Union's officials and their conduct of the negotiations persisted, and he drew up the following document, referred to in the record as a petition:

We, the undersigned, workers of the Western Foundry Company, feel that this Union is not working in our behalf, and would very much appreciate an investigation covering the last 6 months of our operation.

The usual starting time in the plant is 7:30 a.m. On September 9, Koenig arrived at the plant a half hour early armed with copies of his petition, 5 or 6 of which he prevailed upon Swanson to accept, and the 2 immediately began its circulation. News of the event took the form of a rumor that the petition called for a strike, and it promptly came to the attention of Love who immediately repaired to the plant.

It also came on the same day to the attention of management when an employee informed Harry Scheidt, Respondent's personnel manager, of it, stating that he feared that there might be a strike, and Scheidt informed Frank Spencer, Respondent's president. On Love's arrival at the plant he asked permission of Scheidt to speak to the members of the Union's grievance committee, which Scheidt granted, and Scheidt called the members of the committee to the first-aid room. The committee was in session for some minutes and then requested Scheidt to have Swanson appear before the committee, which Scheidt did.

The committee, in the initial absence of Scheidt or Spencer, interviewed Swanson who admitted circulating the petition and involved Koenig as its author. Concerning the purpose of the petition, Swanson, who did not have a copy of it with him, was vague. Before Swanson left, Spencer entered and asked Swanson if he knew that it was against the plant rules to engage in solicitation during working hours without permission and if he had done so, to which Swanson, according to Spencer's uncontradicted testimony which I credit, replied that he had. Swanson was sent back to work and Koenig called in. Spencer at this point decided to discharge Swanson, order the payroll department to make out his time, and so notified Swanson's foreman. Swanson was not told in so many words that he was discharged because Spencer first wanted to talk to Koenig. Koenig was interviewed in the presence of Spencer and apparently in the temporary absence of Love from the room. Koenig had with him a copy of the petition, and it was immediately apparent that it was adverse to the Union's officers. The committee attempted to dissuade him from continuing its circulation but he replied that he had gone too far to stop. Spencer then told Koenig that he was discharged for violating Respondent's rule against soliciting.<sup>2</sup>

The rule to which Spencer referred was posted on bulletin boards in the plant and read as follows:

<sup>2</sup> Spencer charged Koenig with violating Respondent's rule and asked him if he had anything to say to which Koenig replied: "I suppose I am going to be fired, too, so I will keep quiet.

## Notice

It is against Company Policy to do any Soliciting of any kind on the Company premises, unless a clearance permit has been given. This covers Solicitation of money, membership or signatures.

This is in agreement with the Union Committee.

While testifying, both Swanson and Koenig denied soliciting signatures during working hours, although admitting that some employees approached them for the purpose of signing or of removing their signatures during working hours, and their requests were complied with. I am not convinced by their testimony. Moreover, five witnesses called by Respondent testified that they were approached by either Koenig or Swanson when they should have been working. I credit their testimony. It does not appear that Spencer had all of this information in his possession at the time of discharge. Probably much of it was subsequently obtained. However, as has been found, Swanson, at least, admitted to Spencer in the presence of the grievance committee that his activities had not been confined to nonworking hours, and I think it reasonable for Spencer to reach the same conclusion as to Koenig, which was in accord with the actual fact. It is not contended that prior permission to circulate the petition was obtained from Respondent.

## Conclusions

The complaint alleges that Respondent discriminatorily discharged Swanson and Koenig because they engaged in concerted activities and for the further reason that the Union demanded their discharge because they were attempting to induce other employees to investigate the Union.

There is no evidence in the record whatsoever that the Union requested that Respondent discharge the employees in question. Both Love and Spencer testified that no such request was made at any time. To support the allegation, reliance must be had solely upon the circumstances which attended the discharges; that is, the fact that the grievance committee before which Koenig and Swanson were summoned was convened in the first-aid room with permission of Respondent, that Spencer was present part of the time during the interviewing of both of the men, and that Spencer discharged Koenig on the spot and in the presence of the Committee, in effect similarly discharged Swanson, and made no investigation, so far as the record reveals, other than questioning the two men. These circumstances create the suspicion that the discharges were effectuated at the instigation of the Union or at least in the belief that the discharges would mollify the Union. Suspicion, however, is not enough. It must be borne in mind that the circulating of the petition took place during a critical period when a new contract was being negotiated. The information which came to both Respondent and the Union was that the petition called for a strike of the employees. It is small wonder that both Respondent and the Union were concerned, and it surely was unobjectionable for Respondent to facilitate an investigation by the Union's grievance committee to ascertain the truth of the matter.

It is seen from the foregoing facts that Swanson, the first one to be interviewed, did not have a copy of the petition with him and was unable to give a clear account of its purpose or effect. So far as the Respondent knew it was simply a petition that was being circulated in the plant during working hours in violation of its rule. Swanson, I have found, admitted circulating it during working hours. It would seem that no further investigation was necessary so far as he was concerned, and Spencer thereupon decided to discharge him. It was not known at that point either to Respondent or to the Union that the petition called for an investigation of the latter's officials.

It was not until Koenig had been called before the grievance committee that either Respondent or the committee was able to ascertain the precise nature of the petition. It may be readily assumed that the Union's representatives did not relish its wording. But, as has been found, the uncontradicted evidence is that none of its representatives at any time demanded reprisals against either Koenig or Swanson. While Koenig was apparently less frank than Swanson in admitting that circulation had taken place during working hours, the fact that he was the admitted author of the petition and had prevailed upon Swanson to circulate it, together with Swanson's admission that he had circulated it during working hours and that some employees, at least, had already reported to management that they had been solicited and had signed the petition during working hours, was sufficient for Spencer to conclude that both Koenig and

Swanson had extensively circulated the petition during working hours in contravention of Respondent's posted rule. In this state of facts Spencer immediately, and without prior consultation with any of the Union's representatives and without any request from them, discharged Koenig as he had Swanson.

It having been found, contrary to the allegations of the complaint, that the Union did not request the discharge of the two men, it remains only to consider the other contention that Respondent discharged Koenig and Swanson because they engaged in concerted activities. These concerted activities, although they are not specifically so termed, were obviously concerted activities "for the purpose of collective bargaining or other mutual aid or protection," to employ the language of the Act. The question remains, however, whether they were protected concerted activities. The situation here is no different in principle from the more usual one where employees distribute a petition with the object of obtaining union representation or facilitating union organization. The Board has held in cases too numerous for citation that where such activity is in contravention of a valid employer rule the employer may discharge such employees providing that the motivating reason is, in fact, the violation of the rule and not the concerted activities themselves. In deciding this latter question it is usually helpful in establishing discrimination to show that the employees in question were treated differently from employees who had previously violated the rule. There is in this record, however, no evidence whatever of any previous infraction and hence of any discharge because of such infraction. It cannot be found, therefore, that Respondent treated Swanson and Koenig disparately, or that it would not have discharged Koenig and Swanson had the nature of the petition not been related to their mutual aid or protection. In this state of the record I must, and do, conclude that the General Counsel has not met the burden of proof incumbent upon him. The presumption remains that Respondent acted legally rather than illegally.

### CONCLUSIONS OF LAW

1. Western Foundry Company is, and at all times relevant herein was, engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. United Steel Workers of America, Local 2674, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.
3. Respondent has not engaged in any unfair labor practices within the meaning of the Act.

[Recommendations omitted from publication.]

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CORO, INC., and CORO, INC. OF RHODE ISLAND *and* LOCAL 251, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, Petitioner. Case No. 1-RC-3189. June 24, 1953

### DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Joseph Lepie, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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, Murdock, and Styles].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. Local 251, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, is