

WAGNER IRON WORKS, a corporation *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO

WAGNER IRON WORKS, a corporation *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO *and* BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS SHOPMEN'S LOCAL 471 (AFL), Party to the Contract *and* THE "TEMPORARY COMMITTEE" *and* THE EMPLOYEE'S INDEPENDENT UNION OF WAGNER IRON WORKS

BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS SHOPMEN'S LOCAL 471 (AFL), *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO. Cases Nos. 13-CA-849, 13-CA-864, and 13-CB-148. August 10, 1953

### ORDER DENYING MOTION TO REOPEN RECORD AND TO REMAND PROCEEDINGS TO TRIAL EXAMINER

On April 28, 1953, the Board issued its Decision and Order in the above-entitled proceeding,<sup>1</sup> finding, *inter alia*, that the Respondent, Wagner Iron Works, unlawfully discharged Gust John Gould and Jake Steffes on or about May 28, 1951, in violation of Section 8 (a) (3) and (1) of the Act, as amended. In so doing, the Board adopted the Trial Examiner's findings, rejecting the Respondent's defense that it discharged Gould and Steffes because they appeared at work on May 26, 1951, in a drunken condition, and concluding that the Respondent discharged Gould and Steffes because of their CIO activities, as set forth in the Trial Examiner's Intermediate Report.

More specifically, the Board adopted the Trial Examiner's findings in substance that: (1) Neither Gould nor Steffes was an abstainer from intoxicating drink; (2) each imbibed a sufficient quantity of alcoholic beverage on May 26, 1951, that the odor remained on his breath after reporting for work; (3) neither of them was sufficiently under the influence of liquor to affect the performance or quality of his work; and that the condition of neither of them was such as to suggest to the Respondent's supervisors that Gould or Steffes should be sent home; and (4) in any event, the alleged drunken condition of Gould and Steffes was no more than a pretext for discharging them because of their union activities.

On June 25, 1953, the Respondent and the General Counsel, jointly, filed with the Board a "Motion to Reopen and To Remand Proceedings to Trial Examiner," together with two separate stipulations as to facts, designated therein as stipu-

<sup>1</sup>104 NLRB 445.

106 NLRB No. 110.

lation No. 1 and stipulation No. 2, attached thereto. In substance, stipulation No. 1 mainly shows that Steffes has a long police court record of convictions on charges of drunkenness, the last conviction having occurred on February 18, 1951; stipulation No. 2 principally shows that Gould was convicted on a charge of drunkenness on August 9, 1952.

In the motion, the Respondent and the General Counsel request in substance that: (1) The Board reopen the record herein and remand the proceedings to the Trial Examiner for the purpose of making the facts contained in stipulation No. 1 part of the record for consideration of the Trial Examiner; and (2) the Board direct the Trial Examiner to issue and file a Supplemental Intermediate Report in the light of the entire record thus enlarged. Although the General Counsel stipulated in the joint motion that the facts contained in stipulation No. 1 are "relevant, admissible, and should be considered in determining the merits of the case," he contends that such facts "add insufficient weight to the record to warrant changing any part of the ultimate findings and conclusions made by the Trial Examiner and the Board." As to the facts contained in stipulation No. 2, the General Counsel opposes their introduction on the ground that they are "irrelevant, immaterial, and untimely presented."

On July 13, 1953, the UAW-CIO, the charging union, filed its opposition to the joint motion.

Upon consideration of the foregoing and the entire record in the proceeding, we conclude that the motion to reopen the record should be denied.

As stated above, in our decision in this case we adopted the Trial Examiner's finding that Gould and Steffes were not drunk on May 26, 1951. Their convictions for drunkenness on other remote occasions would have little, if any, probative weight to determine their conditions at or about the time of their discharge. Steffes was last convicted for drunkenness on February 18, 1951, several months before his discharge. Gould was convicted on a drunkenness charge in August 1952, long after his discharge. Moreover, on the basis of facts set forth in the Intermediate Report, we found, as did the Trial Examiner, that the Respondent discharged Gould and Steffes because of their CIO activities and not because of their condition as to sobriety, whatever it might have been, on May 26, 1951. Under the circumstances, the facts stated in stipulation No. 1 and stipulation No. 2, now sought to be adduced, would not alter our previous conclusions on the merits of the case as they affect Gould and Steffes. Accordingly, we hereby deny the joint motion of the Respondent and the General Counsel to reopen the record and to remand the proceedings to the Trial Examiner.

Chairman Farmer and Member Murdock took no part in the consideration of the above Order Denying Motion to Reopen Record and to Remand Proceedings to Trial Examiner.