

believe that the election already held is sufficiently representative to reflect the desires of those in the unit presently found appropriate. Indeed, to allow the prior election to determine the choice of a bargaining representative would in effect disenfranchise those employees who are presently in the unit but who may not have had the opportunity to vote in that election. Accordingly we believe that it would best effectuate the policies of the Act to vacate the original Decision and Direction of Election, and direct a new election in the unit presently appropriate.

[The Board vacated the Decision and Direction of Election of November 19, 1952.]

[Text of Direction of Election omitted from publication.]

ESSEX WIRE AND ASSOCIATED MACHINES, INC. *and* UNITED STEELWORKERS OF AMERICA, C. I. O. *and* ASSOCIATED MACHINES, INC. COMMITTEE, Party to the Contract. Case No. 9-CA-673. February 17, 1954

DECISION AND ORDER

On October 9, 1953, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent, Associated Machines, Inc., had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondents had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the General Counsel and the Respondent, Associated Machines, Inc., each filed exceptions to the Intermediate Report, and supporting briefs.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. 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.¹

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act as amended, the

¹Chairman Farmer and Member Rodgers concur in the assertion of jurisdiction in this case but are not to be deemed thereby as agreeing with the Board's present jurisdictional standards.

National Labor Relations Board hereby orders that the Respondent, Associated Machines, Inc., Lancaster, Ohio, and its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Associated Machines, Inc. Committee, or the formation or administration of any other labor organization, and from contributing support to it or to any other labor organization, and from otherwise interfering with the representation of its employees through a labor organization of their own choosing.

(b) Recognizing Associated Machines, Inc. Committee, or any successor thereto, as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

(c) Giving effect to the agreement of May 23, 1953, between said Respondent, and Associated Machines, Inc. Committee, or to any extension, renewal, or modification thereof, or to any other contract or agreement between the said Respondent and the said labor organization which may now be in force.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Associated Machines, Inc. Committee as the representative of any of its employees for the purpose of dealing with the said Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said organization as such representative.

(b) Post at its plant in Lancaster, Ohio, copies of the notice attached to the Intermediate Report.² Copies of said notice, to be furnished by the Regional Director of the Ninth Region, shall, after being duly signed by the said Respondent, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Ninth Region in writing, within ten (10) days from the date of this Order, what steps the said Respondent has taken to comply therewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed, insofar as it alleges the commission of unfair labor practices by Respondent, Essex Wire Corporation,

² This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner," the words "a Decision and Order." If this Order is enforced by a decree of a Circuit Court of Appeals, the notice shall be further amended by substituting for the words "Pursuant to a Decision And Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

and also insofar as it alleges that the Respondent violated the Act by the discharge of Ray Martin and by assistance given to the IBEW.

Intermediate Report

STATEMENT OF THE CASE

Charges having been duly filed and served, a complaint and notice of hearing having been issued and served by the General Counsel of the National Labor Relations Board, and answers having been filed by the above-named Companies, herein called the Respondents, a hearing involving allegations of unfair labor practices in violation of Section 8 (a) (1), (2), and (3) of the National Labor Relations Act, as amended, (61 Stat. 136) herein called the Act, was held in Columbus, Ohio, on September 9 and 10, 1953, before the undersigned Trial Examiner.

In substance the complaint, as amended, alleges that the Respondents: (1) From about May 23, 1953, have dominated and interfered with the formation and administration of a labor organization called Associated Machines, Inc Committee, (2) on May 8, 1953, discriminatorily discharged employee Ray L. Martin to discourage membership in the charging Union; and (3) by the aforesaid acts and by assisting agents of another labor organization, International Brotherhood of Electrical Workers, AFL, herein called IBEW, have interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act. The answers deny the allegations of unfair labor practices.

At the hearing all parties were represented by counsel, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record and to file briefs and proposed findings and conclusions. Briefs have been received from the Respondent and General Counsel. The Respondents' motions to dismiss the complaint received at the close of the hearing, upon which ruling was reserved, are disposed of by the rulings, conclusions, and recommendations below.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

A. Essex Wire Corporation

Essex Wire Corporation is a Michigan corporation which, among other enterprises, engages in the manufacture of electrical wire and wire products, with principal offices located in Detroit, Michigan. According to its counsel, Essex not only operates plants in various States, but it has "some divisions, and some subsidiaries, and some are merely connected,"--some which it operates and some which, as holding company, it services.

Counsel for the Respondent Essex concedes that it ships in interstate commerce material valued at more than \$100,000 annually and that it is engaged in commerce within the meaning of the Act. It is so found.

B. Associated Machines, Inc.

Associated Machines, Inc., is an Ohio corporation with principal place of business in Lancaster, Ohio, where it is engaged in the manufacture and sale of plastic parts for electric switches. During the 12-month period before the hearing it sold products valued at more than \$50,000 to Essex Wire, according to its answer. At the hearing its counsel conceded that it annually sells products valued at more than \$50,000 to concerns which, in turn, ship products annually out of the State of Ohio valued at more than \$25,000, and that this Respondent is engaged in commerce within the meaning of the Act. It is so found.

II. THE LABOR ORGANIZATION INVOLVED

United Steelworkers of America, C.I.O., International Brotherhood of Electrical Workers, AFL, and Associated Machines, Inc. Committee, herein called the Committee, are labor organizations admitting to membership employees of the Respondent Associated Machines.

III. THE UNFAIR LABOR PRACTICES

A. The major events and issues

Events in issue occurred, for the most part, on the premises of Associated Machines which employed 20 or 22 persons in May 1953. As noted more fully in another section below, this employer has been operating as a separate corporation since January 1953. Before then the plant had been run for an undetermined period as a division of Essex Wire. The shift, if any, in corporate control appears to have not altered the practical management-employee relationship. Employees already on the payroll of Essex were transferred to the records of Associated Machines. F. E. Twiss has continued to be general manager.

It likewise appears that although until the change in corporate setup at least some of the employees of Associated Machines (while a division of Essex) were represented by the IBEW, after January 1, 1953, the IBEW was not recognized as the bargaining agent of any of Associated Machines employees. There is evidence that early in 1953 the IBEW asked management to continue such recognition but its representatives were advised just to be certified by the Board.

In April and May there was some discussion among employees as to both the IBEW and the charging Union, although there is no evidence of an open organizing campaign by either labor organization.

Shortly before May 8 a representative of the Steelworkers visited employee Ray Martin at his home. Later Martin took union-application cards to the plant but engaged in no overt solicitation. He was discharged on May 8. The dismissal is in issue. On the same day Twiss told the IBEW representatives they had his permission to organize the plant. The granting of such permission is in issue.

On May 23 Twiss called employees together and advised them to set up their own committee to handle complaints and grievances with him. They did so, and the formation and administration of the resultant committee are in issue.

B. The discharge of Ray Martin

1. The events

Before May 8 Martin had brought a few union cards into the plant but, according to his own testimony, he neither passed them out nor displayed them. Although there is evidence that at least one employee knew he had such cards in his pocket, there is no credible evidence that he ever solicited any employee to join this organization.

On the morning of May 8 he and another employee were sent to perform a special task in a building other than their regular place of work. At the drinking fountain they met a third employee who was asked by Martin to join "a union," without specifying which. This employee apparently resented the suggestion, became angry, and created a disturbance noted from a distance by Foreman Miller. Miller telephoned to Twiss, reporting that Martin had caused a commotion, the nature of which he did not know. Twiss instructed Martin's own foreman to discharge him the same day. He was dismissed.

Soon after the dismissal an IBEW representative interceded on Martin's behalf and on June 12 he was reinstated with full back pay. Upon reinstating the employee Twiss told him he had been fired because Miller's complaint was the third he had received.

2. Conclusions

It is General Counsel's claim that Martin was discharged because management believed he was active on behalf of the charging Union and to discourage membership in it. Although the surrounding circumstances are more than somewhat suspicious, the Trial Examiner considers the evidence too scant to support a sound inference that the dismissal was violative of the Act.

Circumstances creating suspicion include (1) the summary nature of the discharge of an employee whose work had been satisfactory, as the Respondent concedes, (2) the failure on the part of management to investigate the "commotion" at the drinking fountain; and (3) as described below--Twiss' sudden offer the same day to IBEW representatives permitting them to organize employees in the same plant. Nor does the Trial Examiner overlook the fact, made clear by the record, that Martin was a reluctant although credible witness. He filed no charge and attempted to have General Counsel drop his case.

Yet there is no substantial evidence permitting a finding that management selected him for dismissal because it suspected him of being active on behalf of the Steelworkers. He merely had cards in his pocket. In his one effort to solicit he did not mention any specific union. According to Martin there were others more active than he. If knowledge, or suspicion, is to be attributed to management merely because the plant employed only a few employees, and what is known by one must be known by all, then it is reasonable to question why those more active than Martin were not discharged.

An inference that the employee solicited on May 8 reported to his foreman and that the foreman reported to Twiss that Martin was soliciting for the Charging Union must clear the hurdle of flat denials by the employee and by Twiss, and the testimony of Martin that he did not mention the Union. The foreman himself was not a witness.

Furthermore, Martin's own testimony establishes that he had been involved in previous disputes which Twiss claims were, in accumulation with the "commotion" of May 8, the reason for the discharge.

Under these circumstances the Trial Examiner finds that the preponderance of credible evidence does not sustain the allegations of the complaint as to Martin's discharge.

C. Assistance given IBEW

The evidence is mainly undisputed as to the single incident which General Counsel contends was--as to IBEW--in violation of Section 8 (a) (2) of the Act.

In substance the facts are that sometime during May 8 (the record does not disclose whether before or after Martin's dismissal) Twiss, who is also general manager of another nearby plant, not here involved, told two IBEW officers at that plant that they had his permission to organize employees at Associated Machine and take whatever time was necessary. Viewed starkly the offer, of course, must be considered as assistance of a sort. But the Trial Examiner is not aware that the Board has found such assistance, standing alone, as violative of the Act to an extent warranting a cease and desist order--unless similar permission has been denied a competing labor organization. Here there is no evidence that such permission had been either requested or denied the Union. And the evidence does establish that the same IBEW officers had asked management, before May 8, for the permission granted that day.

Under these circumstances, the Trial Examiner finds the incident too isolated and trivial to support the allegations of the complaint.

D. Domination and support of Associated Machines, Inc. Committee

The evidence relating to this issue is also in small dispute. The following facts are mainly revealed in documents prepared under the direction of General Manager Twiss himself. Management summoned all employees to a meeting early the morning of May 23, 1953, and paid them for their attendance.¹

According to a notice posted by Superintendent Jack Twiss the following Monday events at the May 23 meeting were, in part:

The Company (General Manager Twiss) suggested to the employees that they elect a committee of four to represent them. One man for three (3) months, one man for six (6) months, one man for nine (9) months and one man for twelve (12) months. Thereafter, on the expiration of a committee man's term another man would be elected for twelve (12) months. The committee would meet with the Company on the fifteenth (15) and the last day of the month or the closest working day to those dates. This system of representation would remain in effect so long as it is agreeable to a majority of employees of Associated Machines.

The same notice announced, over the Superintendent's signature, that the first meeting of the Committee would be held in the General Manager's office on May 26.

The employees elected their representatives as "suggested" by Twiss, and they met with management as instructed on May 26. Grievances and working conditions were settled and discussed at the May 26 meeting and at later meetings also held in Twiss' office on June 15, July 1 and 15, and August 20.

¹Only 2 employees of all 3 shifts failed to attend.

So far as the record shows the Committee is still in existence. In any event it is clear that it has never been disestablished by the Respondent as the "system of representation" announced in the first notice.

The committee members were paid for their attendance at meetings by the Respondent. Minutes were taken by Twiss' secretary, posted and distributed by the Respondent.

The Respondent Associated Machines contends that the Committee is not a labor organization. The language of the Act deprives the claim of merit. Section 2 (5) defines a labor organization as

... any organization of any kind, ... or employee representation committee ... in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances or conditions of work.

It is clear and the Trial Examiner finds that the Committee was created and formed at the instigation of the Respondent Associated Machines, and that the Respondent has dominated and supported both its formation and administration, and that thereby the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act.

E. The issue as to Essex Wire

The complaint, as issued, runs against both Essex Wire and Associated Machines. Ruling was reserved at the close of the hearing upon a motion to dismiss as to Essex Wire, on the ground that the proof does not establish that Essex is the employer of the employees concerned.

In substance, it appears that until December 31, 1952, Associated Machines was owned and operated as a division by Essex Wire. At that time Associated formed a separate corporation, purchasing the buildings and machinery. The immediate management-employee relationship, however, remained undisturbed, Twiss continuing as general manager. Three individuals hold the same executive offices in each: A. E. Holton as president, M. A. Roesler as vice president and treasurer, and Walter Probst as secretary. It is plain, in the simplest analysis, that Twiss, in control of labor relations policies at Associated Machines, is in turn controlled by Holton, who heads both companies, and that the officers of Essex may effectively guide the policies of Associated Machines.

Yet the Trial Examiner is not convinced, by this record, that Essex has exercised such employer-employee control. On the contrary, it appears that a contractual relationship between IBEW and Associated Machines existing when the latter was a division of Essex ceased soon after it became a separate corporation.

Counsel for both parties have ably briefed their respective positions. The Trial Examiner is persuaded that as to the issues in this proceeding counsel for the Respondent Essex has the better argument. The recommended order below, it appears to the Trial Examiner, is sufficient to remedy the unfair labor practices herein found. It runs as to the officers of Associated Machines, its successors and agents, whether certain individuals continue or not to be at the same time officers of Essex.

The motion to dismiss as to Essex is therefore granted.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent Associated Machines, set forth in section III above, occurring in connection with the operations of the said Respondent in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent Associated Machines has engaged in certain unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take affirmative action to effectuate the policies of the Act.

It has been found that the said Respondent has interfered with, sponsored, and dominated the formation and administration of the Committee and has assisted and contributed support thereto. The effect and consequences of the Respondents' interference with, domination

and support of the Committee, as well as its continued recognition of it as the bargaining representative of its employees, constitute a continuing obstacle to the free exercise by its employees of their right to self-organization and to bargain collectively through representatives of their own choosing. Because of the Respondent's illegal conduct with regard to the Committee, the Committee is incapable of serving the Respondents' employees as a genuine collective-bargaining agency. Accordingly, the Trial Examiner will recommend that the Respondent withdraw all recognition from the Committee, as the representative of any of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish the Committee as such representative.

Although the agreement quoted above appears to be unilateral, it continues to be a means whereby the Respondent has utilized an employer-dominated organization to frustrate self-organization and defeat genuine collective bargaining by its employees. It will therefore be recommended that the Respondent cease giving effect to any agreement between it and the Committee, or to any modification or extension thereof.

Since it appears that the Respondent's illegal conduct of interference, restraint, and coercion stems from its conduct in dominating, interfering with, and supporting the formation and administration of the Committee, it will be recommended only that the Respondent cease and desist from engaging in like or related conduct of interference with the representation of its employees through a labor organization of their own choosing.²

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Trial Examiner makes the following:

CONCLUSIONS OF LAW

1. United Steelworkers of America, C.I.O., International Brotherhood of Electrical Workers, AFL, and Associated Machines, Inc. Committee are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Associated Machines, Inc. Committee and by contributing support thereto the Respondent Associated Machines has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

3. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the said Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2 (6) and (7) of the Act.

5. By the discharge of Ray Martin and by assistance given the IBEW the said Respondent has not engaged in unfair labor practices within the meaning of the Act.

[Recommendations omitted from publication.]

²Braswell Motor Freight Lines, 101 NLRB 1151.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE HEREBY disestablish Associated Machines, Inc. Committee as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and we will not recognize it or any successor thereto for any of the above purposes.

WE WILL NOT dominate or interfere with the formation or administration of any labor organization or contribute financial support to it.

WE WILL NOT give effect to any and all agreements and contracts, supplements thereto or modifications thereof, or any superseding contract with the above-named labor organization.

WE WILL NOT otherwise interfere with the representation of our employees through a labor organization of their own choosing.

ASSOCIATED MACHINES, INC.,
Employer.

Dated By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

HENRY HEIDE, INC. and CANDY AND CONFECTIONERY UNION, LOCAL 50, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, CIO and CANDY AND CONFECTIONERY WORKERS UNION, LOCAL 452, BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, AFL, Party to the Contract. Cases Nos. 2-CA-2554 and 2-CA-2907. February 18, 1954

DECISION AND ORDER

On April 8, 1953, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and Local 452 filed exceptions to the Intermediate Report and supporting briefs. On September 22, 1953, the Board at Washington, D. C., heard oral argument.¹

The Board has reviewed the rulings made by the Trial Examiner 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 briefs, the oral argument, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations except insofar as they are inconsistent with the findings and conclusions set forth below.

1. The Trial Examiner found that on and after February 19, 1952, the Respondent violated Section 8 (a) (5) and (1) of the Act by (a) filing a petition during Local 50's certification year and refusing to bargain with Local 50 while petitions were pending during that period; (b) adamantly limiting the duration of any contract to October 9, 1952, and conditioning bargaining on that basis; and (c) terminating its recognition

¹At the close of the oral argument, Local 50 requested permission to withdraw a motion to reopen the hearing before the Trial Examiner, which it had filed with the Board on May 11, 1953. The request is hereby granted.