

The majority concedes this when it states that "The machine repairmen may properly be regarded as members of a craft which the Petitioner has traditionally represented." What we have then is a determination that probes a petitioning union's motivation, and, on the basis of a wholly subjective appraisal, denies that union and the employees it seeks to represent an election to which they clearly are entitled in accord with the Board's own objective standards. It is my sincere conviction that the administrative arm of Government, of which we are part, can function best through a firm adherence to objective principles and to the objective application of those principles. Feeling as I do, I cannot join in that portion of the majority's decision which denies an election among the machine repairmen.

Member Beeson took no part in the consideration of the above Decision and Order.

SHELL CHEMICAL CORPORATION *and* OIL WORKERS INTERNATIONAL UNION, CIO, LOCAL #5. Case No. 20-CA-151. April 15, 1954

DECISION AND ORDER

The above-entitled proceeding stems from charges filed November 19, 1948, and March 21, 1949, by the Union named in the caption of this case, attributing to the Respondent Company the commission of unfair labor practices during and immediately following the September to December 1948 oil strike on the west coast. A complaint charging the Respondent with violations of Section 8 (a) (1) and (3) of the Act issued October 13, 1949, and after being fully litigated before Trial Examiner Howard Myers, first came before the Board for decision on the merits in the latter part of 1950. While the case was thus pending before the Board, and on May 14, 1951, the United States Supreme Court issued its decision in N. L. R. B. v. Highland Park Mfg. Co., 341 U. S. 322, holding that the Board had erred, as a matter of law, in considering a complaint based upon charges filed by a union affiliated with the CIO, where such complaint had issued (as was true in this case at that time) on a date preceding the CIO's compliance with the filing requirements of Section 9 (h) of the Act. In accord with the Supreme Court's ruling, the Board by order dated July 19, 1951, dismissed the October 13, 1949, complaint in this case without disposing of the merits.¹

¹The CIO did not comply with the Act's filing requirements until December 22, 1949. Pursuant to the Highland Park decision the Board dismissed all cases pending before it in which complaints had been issued before December 22, 1949, on the basis of charges filed by CIO affiliates.

Following this dismissal, and in light of contemporaneous Board ruling that otherwise validly issued complaints alleging the violation of Section 8 (a) (3) and (1) of the Act were not subject to summary dismissal because predicated upon charges filed by unions which were not in compliance with the Act's filing requirements on the date of the charges,² the General Counsel decided to relitigate the merits of like unfair labor practice cases disposed of on Highland Park grounds. In the instant case, he issued a new complaint dated February 7, 1952, on the basis of the Union's 1948 and 1949 charges, containing substantially the same unfair labor practice allegations as had been incorporated in the October 13, 1949, complaint. The case was set for hearing before Trial Examiner Wallace A. Royster.

At the opening of the hearing, and before the presentation of any evidence, the Respondent moved the Trial Examiner that the complaint be summarily dismissed without regard to the substantive merits of the case, in view of: (1) The noncompliance of the charging Union at the time the charges were filed; and (2) the dismissal of the initial complaint issued on those charges. The Trial Examiner denied the motion, and the Respondent promptly filed an interlocutory appeal to the Board. In presenting this appeal the Respondent also argued that, even if the Board could validly entertain the complaint, it should refuse to do so, as a matter of policy. The General Counsel vigorously opposed the appeal. By order dated July 29, 1952, the Board affirmed the Trial Examiner's rulings on the motion and denied the Respondent's appeal.

Following the above procedural steps, the hearing was resumed and the parties presented the case on its merits.

On May 7, 1953, Trial Examiner Wallace A. Royster issued his Intermediate Report, disposing of the case on its merits. He dismissed each and every allegation of the complaint, with one exception: he found that the Respondent's 6-day delay, in November 1948, in resuming full operation of its struck plant constituted a discriminatory "lockout" of the striking employees violative of Section 8 (a) (3) and (1) of the Act, because the lockout action was directed towards obtaining from the employees assurance that they would not resume strike activity once the struck plant reopened. Thereafter the Respondent filed exceptions to the Trial Examiner's findings adverse to it, and the General Counsel filed exceptions to the dismissal of complaint allegations challenging the validity of: (1) The Respondent's November 1948 discharge of two strikers for strike misconduct; and (2) certain letters issued by the Respondent during the 1948 strike telling the strikers, in effect, that the strike did not serve their best interests and that the

²E g., American Thread Co., 84 NLRB 573; Dant & Russell Ltd., 92 NLRB 307; Nina Dye Works Co., Inc., 95 NLRB 824; in all of which cases the Board's action was subsequently sustained by the Supreme Court's ruling in *N L R B. v. Dant & Russell, Ltd.*, 344 U. S. 375.

Respondent had work available for all. Both parties filed briefs in support of their respective exceptions.³ These exceptions and briefs disclose that complex delicate, and highly controverted issues of law and fact were presented on the merits.

In addition, the Respondent's exceptions and brief present, in effect, a renewal of the motion to dismiss which was the subject of the Board's July 29, 1952 order, and a request for reconsideration of the Board's decision denying the same. That order was predicated upon findings that "there was a valid legal basis for issuance of a new complaint by the General Counsel," and that summary dismissal of the complaint on "policy grounds was not justified at that stage of the proceedings. This "policy" ruling must be read in light of the fact that, at that juncture of the case, the parties had had no opportunity to provide record support for their respective "policy" contentions, and that in a situation such as this, the scope of the considerations which may affect a "policy" decision is necessarily a broad one. In these circumstances, the Board deemed it imperative to preserve the "policy" question for such further litigation of that issue as the parties might regard as pertinent. The Board, therefore, has now re-examined, on the basis of the record as a whole, the wisdom of proceeding further in the circumstances here presented.

In opposing the motion to dismiss, the General Counsel argues that, as the failure to dismiss the instant charges administratively was due to the Board's misconception of the law, the entertainment of the charges lulled the individuals immediately affected by the unfair labor practices into a sense of security which resulted in their failure to file valid charges on their own behalf. He claims that for this and other reasons these proceedings are justified. Thus, the General Counsel, assuming the existence of unfair labor practices, urges policy considerations which, to a large extent, are universally applicable to all cases in which the Board's powers are validly invoked, namely that the public interest in remedying and preventing unfair labor practices must be deemed to overshadow and outweigh the private interests of party-litigants.

On the other hand, the Respondent contends that we are here presented with the kind of unusual situation warranting the exercise of administrative self-restraint. Although no one circumstance is alone persuasive, we are of the view that, in combination, the special circumstances in this case outweigh the considerations urged upon us by the General Counsel.

Thus, as has been noted above, the charges were filed in 1948 and 1949 and involve conduct which occurred more than 5 years ago. It is clear that, but for the Board's misapprehension of the legal requirement of Section 9 (h) of the Act, the General Counsel would have refused to issue a complaint

³ The Respondent also requested oral argument. This request is hereby denied, as the briefs and the record in the case adequately present the position of the parties on the aspect of the case we deal with here. The Respondent's additional request for permission to file a supplemental brief with respect to certain of the unfair labor practice issues is also hereby denied

based on these charges and they would have been administratively dismissed, and thus could not have formed the basis for the instant complaint. It is entirely speculative as to whether, on administrative dismissal of the instant charges, other individual charges would have been timely filed. Substantial amounts of time and funds, both private and public, were expended in the initial litigation culminating in the dismissal order of July 19, 1951, which, so far as the parties were concerned, laid the case to rest. The revival of the litigation under the instant complaint not only reinstated a course of action which, as the Respondent points out, might well serve as a source of irritation in the present conduct of labor-management relations by the parties thereto, but also has necessitated (and unless now stopped, will continue to necessitate) substantial expenditure of private and public time and funds in coping with the prosecution and/or defense of the complaint allegations. In light of all these circumstances, we would not serve the public interest as a whole to now adjudicate the merits of this 1948 dispute. Accordingly, we find that further proceedings in this case would not effectuate the broad purpose and policies of the Act, and we shall therefore dismiss the complaint without passing upon its merits.

[The Board dismissed the complaint.]

Member Beeson took no part in the consideration of the above Decision and Order.

MAGEE CARPET CO. *and* TEXTILE WORKERS UNION OF AMERICA, CIO. Case No. 4-CA-178. April 15, 1954

DECISION AND ORDER

The above-entitled proceeding stems from charges filed February 2 and 3, 1949, by the Union named in the caption of this case, attributing to the Respondent Company the commission of unfair labor practices in January 1949. A complaint, charging the Respondent with violations of Section 8 (a) (1) and (3) of the Act, issued August 30, 1949. This complaint initiated an extensive and time-consuming course of litigation on the merits, which included a full hearing before Trial Examiner W. Gerard Ryan, his issuance of an Intermediate Report on May 11, 1950, the Board's decision of the case on the basis of the parties' exceptions and briefs, the Board's issuance of a Decision and Order, on August 31, 1950, and the completion of the litigation cycle before the Third Circuit Court of Appeals (hereinafter referred to as the Court), upon the Board's petition for enforcement of the August 31, 1950, order.¹ On May 14, 1951, while this case was pending for

¹In April 1951 the Respondent reinstated 1 of the 2 employees whose prior discharge formed the basis of: (1) The 8 (a) (3) allegations of the complaint; (2) the Board's finding sustaining such allegations; and (3) its order directing, among other things, that reinstatement be offered