

The fact that the Company followed the contract and that the discharge was upheld under its grievance procedures does not, of course, preclude finding that the discharge constituted an unfair labor practice, since the Board's power to prevent unfair labor practices is not affected by any other means of adjustment or prevention, whether established by agreement, by law, or otherwise. Section 10 (a); *Columbus Iron Works Company*, 107 NLRB 1354, and cases there cited; cf. *Wertheimer Stores Corp.*, 107 NLRB 1434.

The Trial Examiner therefore adheres to and readopts his previous findings of fact, conclusions of law, and recommendations.

---

ACE EXPORT PACKING CO., INC. *and* UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA. *Case No. 13-CA-1208. July 22, 1954*

### Decision and Order

On November 19, 1953, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in and is not engaging 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, and the Employer filed a brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed.<sup>1</sup> The rulings are hereby affirmed. The Board has considered the Intermediate Report, the General Counsel's exceptions and brief, the Employer's brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

---

<sup>1</sup> The General Counsel excepts to the Trial Examiner's rulings excluding the introduction of background evidence purporting to show antiunion animus of the Respondent. Without deciding on its merits the correctness of this ruling, we find that, as the discharge was for cause, the ruling is not, in any event, prejudicial.

### Intermediate Report and Recommended Order

#### STATEMENT OF THE CASE

Upon a first amended charge filed on September 22, 1952, by United Electrical, Radio & Machine Workers of America, herein called the Union, the General Counsel for the National Labor Relations Board by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued his complaint dated April 29, 1953, against Ace Export Packing Co., Inc., herein called Respondent, alleging that Respondent had engaged in and was engaging 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 complaint and notice of hearing were duly served upon Respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that Respondent on September 16, 1952, discharged Robert Green because of his membership in and activity on behalf of the Union. On May 11, 1953, Respondent filed its answer in which it admitted certain allegations of the complaint as to the nature of its business, but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before me at Chicago, Illinois, on September 8, 9, and 11, 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. At the conclusion of the hearing the parties waived oral argument but were given until October 1 to file briefs. Subsequently the time in which to file briefs was extended by the Chief Trial Examiner to October 19. On this date briefs were received from the General Counsel and Respondent.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF RESPONDENT

Respondent is an Illinois corporation engaged in the packing and shipping of various products from its office and plant in Chicago, Illinois. During the year 1952, Respondent packed at its plant and caused to be shipped to points outside the State of Illinois products valued in excess of \$180,000.

##### II. THE LABOR ORGANIZATION INVOLVED

United Electrical, Radio & Machine Workers of America is a labor organization admitting employees of Respondent to membership.

##### III. THE ALLEGED DISCRIMINATORY DISCHARGE

###### A. *Green's role in the Union*

Robert Green is an electrician. He first began working for Respondent as an independent contractor in about 1951. A year or so later Respondent regularly employed him as a maintenance man. He had no regular schedule of hours, it being understood that he could continue to do private electrical contracting work on the side, but in practice he put in a substantial workweek, occasionally taking a few days off to do outside jobs.

In August 1952 several of the employees, including Green, became interested in union organization and obtained membership application cards from a union representative. Several were passed out at the plant, but none by Green. A few days later Green, Billy Macklin, and Walter Huguley, other employees, drove in Green's car to interview prospects at their homes, and a meeting was arranged at the Plantation Cafe. About 25 employees showed up at the meeting, but no representative of the Union appeared. At about 6 o'clock in the evening, after the gathering had dispersed, Green went to the plant where he spoke with William Vignola, Respondent's president, who asked him whether he had been to the meeting and who was present. Several days later Vignola asked Green if he had been at a neighboring liquor store in the course of organizing a union, and Green denied that he had. Vignola then, according to Green, whose testimony in this respect I credit, stated that he had obtained information to that effect from Jack Rogers, another employee, and that he had not believed Rogers and, in effect, believed Green. On a later occasion, however, Vignola accused Green of having voted for the Union in a poll which Respondent had conducted inside the plant.<sup>1</sup>

Vignola admitted that while testifying that he had been informed by employee Rogers that Green was interested in the Union, and testified to several conversations with Green around the middle of August in which the Union was discussed. Vignola's testimony, however, is that while he knew that other employees were sympathetic to the Union he believed that Green, on the contrary, was opposed to it. For example, his testimony is that on August 14 he had a conversation with Green in which Green, after relating various personal problems of his own, brought up the subject of the Union saying that he did not understand why the employees

<sup>1</sup> Respondent's conduct of this poll and the discharge of Macklin and Huguley during the week of August 11, form the subject matter of the original charge herein. Respondent and the Regional Director on September 15 entered into a settlement agreement pursuant to which these employees and others discharged about August 15, whose names were included in an additional charge, were reinstated and the customary notice was posted in Respondent's plant. At the hearing, the General Counsel attempted to go into the circumstances surrounding these previous discharges and the poll, for the purpose of "background" evidence. I sustained objections to this general type of evidence, and permitted the General Counsel to introduce only background evidence directly concerning Green himself.

wanted it and that they were a bunch of "idiots." Vignola further testified that Green told him about the meeting at the Plantation Cafe before it took place. He admitted asking Green several times whether he was organizing for the Union, but insisted that Green told him he was not, and that he believed Green and that Green was keeping him posted on the Union's activities. His testimony is that the first knowledge he had that Green himself was favorable to the Union was when he met him at the office of the Regional Director at the time Green filed the amended charge.

### B. Green's discharge

Between August 29 and September 1, 1952, Green approached Vignola and asked for a 2 weeks' leave of absence to do other jobs for other employers, and his request was granted. Vignola's credited testimony is that he told Green at that time that he must keep Vignola personally informed as to his whereabouts in the event that he was needed at the plant for maintenance work during his absence. His further testimony is that on one occasion during this time he needed Green and called him at two places where he knew Green had been working, as well as at his home, but was unable to reach him. During the 2-week period, being unable to reach Green, he replaced him with someone whom he believed would be more regular in his work. Accordingly, when Green returned to work on September 16 Vignola told him that his services could no longer be used.

Catania, plant supervisor, called as a witness by the General Counsel,<sup>2</sup> testified that when Green went on leave he left word of his whereabouts with him, Catania, and that whenever Green's services were needed he was successful in contacting him. He testified that these occasions were 3 or 4 in number and that pursuant to call Green came to the plant and performed the necessary work, once repairing a pump, on another occasion an electric saw, and on a third working on the wiring to the time clock transformer. According to Catania, when Green worked on the time clock Vignola himself was present and saw him so engaged. Catania was not clear as to the precise time of Green's leave of absence, but was sure that these visits to the plant occurred during it.

Erskine Hillary testified that he saw Green in the plant during his leave of absence and saw Green near the time clock with Vignola standing beside Green. He placed this as on Monday, September 1 or 8. Oma Lamb testified that she worked on the day shift every day during the 2 weeks in question, receiving a check for each week amounting to about \$39, and that she saw Green in the plant during this period. Green himself testified that he did the above-described work and that it was his recollection that when he came in to work on the time clock it was pursuant to a telephone call from Macklin, and that he spoke to Vignola on that occasion.

Catania fixed the repair of the time clock as taking place on 1 of the 2 Fridays during the first 2 weeks of September. Both he and Green described a heavy rain which ran down through the roof near the time clock, Catania's opinion being that this had occasioned the trouble.

The evidence does show clearly that Green worked at the plant on Thursday, September 4, from 1:14 a. m. until 7:14 a. m. This was the only occasion on which Green punched the time clock during his leave of absence, and the only time for which he was remunerated. Asked why he was not paid for the other time that he assertedly spent in the plant, his testimony was, in effect, that he did not always charge for such services.

Vignola's credited testimony is that he did not become aware of the night work done by Green on September 4 until about September 22, when he had occasion to check Green's timecards.

Respondent introduced in evidence Weather Bureau records for the month of August and September 1952, taken at approximately 20 recording stations located throughout the Chicago area, which state that there was no measurable rainfall during the 12-day period between September 2 and September 15. The Bureau characterized this month as "exceedingly dry." The records do indicate, however, a rather severe rain storm on August 20, prior to Green's leave of absence.

Respondent also introduced in evidence an order for repairing Respondent's roof, together with a 5-year guarantee, given upon completion of the work, indicating that it was completed on September 3, 1952, a time prior to the occasion on which Catania and other witnesses testified there was a heavy rainfall which necessitated Green's coming to the plant to work on the time clock. Vignola testified that after September 3 the roof was completely watertight.

<sup>2</sup> Catania himself was discharged by Respondent during the latter part of September 1952

Respondent's timecards show that, contrary to her testimony, Lamb worked only 3 days during the entire period from August 29 to September 14. As to Macklin, whom Green said he thought telephoned him to come to the plant, the charge herein and the settlement agreement both indicate that he was discharged by Respondent on August 14, and was not reinstated as an employee until after the settlement agreement of September 15. Hence, he could not have been at the plant as an employee during the period in question.

#### Conclusions

I am of the opinion and I find, that Catania, Hillary, Lamb, and Green himself are mistaken, or untruthful, in their testimony that Green came to the plant more than once during his 2-week leave of absence, the one exception being the night work performed on September 4. I am convinced that the heavy rainfall which made such an impression on Catania and Green, and which is associated in their testimony with the failure of the time clock, was prior to September.

Furthermore, I find difficulty in believing that Green on 2 or 3 occasions would have performed a considerable amount of work for which he was not paid. I conclude that he was in the plant only once during the 2-week period, and then without Vignola's knowledge.

These findings lead me to credit Vignola's testimony that he unsuccessfully attempted to contact Green during his leave of absence, when he needed him. Moreover, I credit Vignola's testimony that although he knew that Green was associating with union people, and had attended the abortive meeting at the Plantation Cafe, he believed that Green in fact was not in favor of the Union but was cooperating with Vignola in opposing it. Too, I find it somewhat strange that Respondent did not discharge Green at the same time it discharged Macklin and others, if he indeed believed that Green was active in the Union. In sum, I find that Respondent did not discharge Green because of his union activities, but for legitimate business reasons.

#### CONCLUSIONS OF LAW

1. Ace Export Packing Co., Inc., 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 Electrical, Radio & Machine Workers of America is a labor organization within the meaning of Section 2 (5) of the Act.
3. Respondent has not engaged in and is not engaging in any unfair labor practices within the meaning of the Act.

[Recommendations omitted from publication.]

SEMON BACHE & COMPANY *and* LOCAL 528, GLASS BEVELERS, MIRROR WORKERS, CUTTERS & MITRE CUTTERS UNION, BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS OF AMERICA, AFL, PETITIONER. *Case No. 2-RC-6649. July 22, 1954*

#### Decision and Direction

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted on April 9, 1954, under the direction and supervision of the Regional Director for the Second Region, among the employees in the stipulated unit. Upon conclusion of the balloting, the parties were furnished with a tally of ballots which showed that of approximately 162 eligible voters, 144 cast valid ballots, of which 72 were for the Petitioner, 70 for the Intervenor,<sup>1</sup> and 2 for neither participating Union. There were 10 challenged ballots, a number sufficient to affect the results of the election.

<sup>1</sup> Semon Bache Employees Association.