VAN DE KAMP'S HOLLAND DUTCH BAKERIES, INC. *and* UNITED BAKERY WORKERS UNION, LOCAL 1807, CIO. *Case No. 19–CA–905. August 6, 1954*

Decision and Order

On May 6, 1954, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in any unfair labor practices, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Charging Party filed exceptions to the Intermediate Report.

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 Charging Party's exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

MEMBERS PETERSON and BEESON took no part in the consideration of the above Decision and Order.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

This proceeding is brought under Section 10 (b) of the National Labor Relations Act, 61 Stat. 136, and is based upon charges filed by United Bakery Workers Union, Local 1807, CIO, herein called Local 1807, against Van De Kamp's Holland Dutch Bakeries, Inc., herein called Respondent The General Counsel of the National Labor Relations Board thereafter issued a complaint dated March 3, 1954, against Respondent alleging that it had engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act. Copies of the charges, complaint, and notice of hearing thereon were duly served upon Respondent.[1]

In substance, the complaint, as amended at the hearing to reflect the correct name of Respondent, alleged that Respondent discharged Kenneth Atkisson and Chester Goulet on September 9 and 10, 1953, respectively, because they had joined or assisted Local 1807 or had engaged in protected concerted activities. In its duly filed answer Respondent denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Seattle, Washington, on March 23 and 24, 1954, before the undersigned Trial Examiner, Martin S. Bennett, duly designated by the Associate Chief Trial Examiner. All parties were represented; participated in the hearing; and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce relevant evidence. At the close of the hearing,

[1] The complaint was originally consolidated with another complaint issued on the same date against *Golden Rule Bakery* in Cases Nos. 19–CA–904, 916, and 967. At the outset of the hearing in the consolidated cases, I granted a motion made prior to the hearing by counsel representing both that respondent as well as the present Respondent that the cases be severed and heard separately The cases were heard separately and *seriatim* There is no conflict concerning the organizational history, set forth below, and note is taken herein of the transcript of testimony in the *Golden Rule Bakery* case, where this organizational history was set forth either by way of stipulation or by uncontroverted and credited testimony

the parties were given an opportunity to argue orally and to file briefs. Oral argument was waived and briefs have not been submitted.

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

Van De Kamp's Holland Dutch Bakeries, Inc., a Delaware corporation, is engaged in the manufacture and sale of bakery products in the States of Washington and California. It operates 2 bakeries, 1 at Los Angeles, California, and 1 at Seattle, Washington, whose products are sold through Respondent's own retail stores; in addition to the Los Angeles stores, Respondent operates 49 such stores in the State of Washington.

Respondent annually purchases raw materials for the Seattle plant, the sole plant involved herein, which are valued between $800,000 and $900,000. Sales of bakery products from the Seattle plant are in the approximate amount of $2,500,000 per annum and sales of the Los Angeles plant are from 4½ to 5 times those of the Seattle plant, namely, between $11,250,000 and $12,500,000 per annum. The officers and directors of both plants are the same, although local policy in Seattle is determined by a resident vice president as well as by a general manager; there is some exchange of supervisory personnel between the two plants. The record does not disclose the precise area in California in which sales of the Los Angeles plant are made. The exchange of merchandise between the 2 plants is negligible and consists of special seasonal merchandise shipped from the Los Angeles plant to the Seattle plant which is valued at approximately $2,000 per annum.

I find, in view of the foregoing, that the business operations of Respondent are those of a multistate enterprise, affect commerce, and have an impact upon commerce sufficiently substantial to justify the assertion of jurisdiction herein. *N. L. R. B.* v. *Drummond Implement Co*, 210 F. 2d, 828 (C. A. 6); *Diamond Match Co.*, 108 NLRB 183; and *Grand Rapids Fuel Co.*, 107 NLRB 1402.

In addition, Respondent is a member of Seattle Bakers' Bureau, Inc., a nonprofit Washington corporation. One of the prime functions of that organization is to represent its 40 to 50 employer members who are located in the Seattle area in the negotiation of labor agreements with unions representing employees of its members. All contracts entered into by the Bureau are associationwide and are signed only by the Bureau in behalf of its members, including Respondent; the members of the Bureau are bound by these contracts.

The members of the Bureau, in the course and conduct of their businesses, annually purchase raw materials valued in excess of $500,000 which are shipped to the State of Washington from points outside thereof. The annual sales of the members of the Bureau exceed $1,000,000, of which products valued at $200,000 are shipped from the State of Washington to other States.

It is to be noted that the Board has previously asserted jurisdiction over the operations of members of the Bureau. *Seattle Bakers' Bureau, Inc.*, 108 NLRB 104. I find, therefore, on this additional ground, that the operations of Respondent affect commerce within the meaning of the Act. See *N. L. R. B.* v. *Gottfried Baking Co.*, 210 F. 2d 772 (C. A. 2); *Davis Furniture Co., et al.* v. *N. L. R. B.*, 197 F. 2d 435 (C. A. 9); and *Carpenter and Skaer, Inc., et al.*, 90 NLRB 417.

II. THE LABOR ORGANIZATION INVOLVED

United Bakery Workers Union, Local 1807, CIO, is a labor organization admitting to membership the employees of Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Introduction*

The General Counsel contends that the two complainants, Chester Goulet and Kenneth Atkisson, were discharged from their positions as journeymen bakers with Respondent because they were advocates and supporters of Local 1807 rather than Bakers' Union Local No. 9, AFL. The background of the dispute between these two labor organizations concerning the representation of the employees of Respondent is as follows.

Prior to the period material herein, the employees of Respondent, together with the employees of other members of the Seattle Bakers' Bureau, had been represented under one associationwide contract by the AFL. In August of 1952, the CIO commenced an organizational campaign among the employees of Respondent as well

as the other members of the Bureau. It filed a petition for certification of representatives pursuant to which an election was duly held in January of 1953 with both labor organizations on the ballot. *Seattle Bakers' Bureau, Inc.*, 101 NLRB 1344. The CIO won and was duly certified by the Board on April 21, 1953. The Bureau then decided to test the decision finding the AFL contract not to be a bar and directing an election. An unfair labor practice proceeding followed in which the Board, on March 30, 1954, and after the completion of the present hearing on March 24, 1954, ordered the Bureau to bargain with the CIO, finding that the Bureau had refused to bargain with the CIO on and after April 28, 1953. *Seattle Bakers' Bureau, Inc*, 108 NLRB 104. It may be noted, although the last cited decision does not so indicate, that Local 1807 was chartered in February of 1953, after the election victory by the CIO, and that previous card signers for the CIO became members of Local 1807.

As stated, the CIO was denied recognition by the Bureau, despite its certification on April 21, 1953, and, as a result, it engaged in strikes against many if not all of the members of the Bureau including Respondent during the month of May 1953. These were largely of a hit-and-run nature with picket lines being established at the plants of certain members of the Bureau and then being transferred to the plants of other members. It appears that the initial picketing at the plant of Respondent lasted but 1 day on May 8 and that a subsequent strike started around May 25 and lasted for several weeks. All but 1 or 2 of Respondent's 200 employees, including approximately 60 journeymen bakers, participated in the strike either directly or by remaining absent from work.

The theory of the General Counsel is that Goulet and Atkisson were terminated by Respondent on September 10, 1953, primarily because of their participation in the CIO picket lines at the plant of Respondent as well as at other plants. Both men were employed as jobbers or part-time workers and were admittedly terminated on September 10.[2]

B. *The discharges*

1. Introduction

Respondent's bakery employees total approximately 200 in all classifications, of whom approximately 60 are full-time journeymen bakers. The complainants herein, journeymen bakers, were employed at the time of the alleged discrimination as "jobbers." A jobber is a journeyman baker who is employed on a part-time basis such as 1 day a week. They are customarily used in times of peak production of bakery products or during vacations. Respondent normally utilizes their services every week of the year although not every day and the number in use may vary from 1 to 7 on a particular day. Respondent contends that it does not consider them part-time employees in that they are not entitled to vacation or holiday pay, a resolution of this issue is not necessary herein for it is clear that they are employees within the meaning of the Act. In some cases at least, jobbers are regularly employed at other bakery concerns for a full workweek and work for Respondent either on their days off or during nonshift hours. It appears that these other concerns are also members of the Seattle Bakers' Bureau.

Respondent's supervisory staff, insofar as material herein, includes Office and Plant Personnel Manager Jack Warner. His tenure as office manager dates back 4 years and, during July of 1953, he assumed the additional duties of personnel manager. All applications for full-time employment pass across his desk for consideration. George Marlow is plant superintendent and was transferred to the Seattle plant on May 28 or 29, 1953, where he assumed his duties about 1 week later. The record demonstrates that both men consult and cooperate in the hiring and firing of personnel, although primarily with respect to full-time personnel.

The hiring of so-called jobber employees is carried out in a different manner as Marlow and Warner do not participate therein. The respective foremen have in their possession, based primarily upon past experience, the names of persons who are interested in obtaining jobber work It appears that the foremen may also contact the personnel office for possible additions to this list of names. Significant herein, however, is the fact that when jobbers are needed the respective foremen contact the man directly and solicit his employment. If the jobber accepts, he reports for work and the transaction, unlike the hiring of a full-time employee, does not pass or clear through the personnel office. As a result the transaction does not come to the attention of Warner.

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[2] The complaint alleges September 9 as the date of the alleged discrimination against Atkisson, but Respondent's records as well as the testimony demonstrate that September 10 was the actual date of his termination.

2 Kenneth Atkisson [3]

Atkisson, a journeyman baker, has worked for Respondent on a number of occasions. He was hired and worked as a full-time employee from February 25 through April 24, 1949, when he was discharged, apparently for cause not developed in the record. He did some jobbing work for Respondent in May 1949. Atkisson was rehired as a permanent full-time employee in June 1950, despite a notation in the personnel records that he was not to be rehired, and was employed in that capacity until April 1952 when he was again discharged. According to Office and Personnel Manager Warner, Atkisson was discharged on this occasion at the request of Foreman Cline because of drunkenness. Cline did not testify herein and Warner's knowledge of the case is confined solely to the report received from the foreman on that occasion.

Atkisson did obtain employment thereafter with Respondent as a jobber during July 1952 and also during March, April, and May, 1953. Contrary to the testimony of Atkisson, he worked as a jobber during this latter period rather than as a full-time employee. According to Atkisson, his work with Respondent ceased on or about May 8, 1953, at the time of the first strike at Respondent's plant. He did not work again for Respondent until the time directly material herein, namely, September 1953.

Atkisson who had been a member of the CIO and Local 1807 since they first organized the employees of Respondent late in 1952, participated in the 1-day strike of Respondent's plant as a picket from 8 a. m. to 4 p. m. on May 8. There is no evidence of any other union activity on his part.

On September 9 Atkisson telephoned Foreman William Heins, who had been recently promoted late in May from the position of assistant foreman to that of foreman. He requested work as a jobber; Heins replied that he could use him on the following day and directed him to report at that time. Atkisson did so and worked one shift on September 10. He was terminated at the close of the shift together with Chester Goulet whose case is discussed below

3. Chester Goulet

Goulet worked as a jobber for Respondent in November 1951, in April 1952, and not again until the period material herein, August and September 1953.[4] Goulet was prominent in the affairs of the CIO and Local 1807 He joined the CIO in August 1952 and Local 1807 in March 1953. Goulet served as an alternate of the executive board of Local 1807, and has also served on just about every local union committee. He participated in the various strikes called by Local 1807 and picketed at the plant of Respondent on May 8. Goulet also served as picket captain during this, as well as later, strike activity. According to Goulet, he picketed during the later strike activity at Respondent's plant in May and June for some time each day.

Goulet enjoyed an acquaintanceship with Foreman Heins which dated back to a period when both were members of the AFL and attended union meetings together. According to Goulet, he telephoned Heins on or about August 27 and asked for work as a jobber. Heins directed him to report for work on Friday, August 28. Goulet did so and worked the entire day. At the close of the shift, he was instructed either by Heins or by Foreman Melvin Johnson to contact the plant on the following Tuesday. On Tuesday, September 1, Goulet telephoned Heins who instructed him to report for work on Thursday, September 3. Goulet did so and worked the entire day. At the close of the shift, he was instructed to contact the plant for work on Tuesday, September 8. Goulet neglected to do this on September 8 and that evening Heins telephoned him and asked him to work on Wednesday, September 9. Goulet replied that he was not free on September 9 and was instructed by Heins to call him on September 9 for work on Thursday, September 10. Goulet did so and was told to report for work on September 10. Goulet worked the entire shift on September 10, at the conclusion of which he was terminated together with Atkisson.

4. The discharges

Initially, it may be noted that although the complaint alleges the two men were discharged by Respondent, this actually amounted to a notification to the men that

[3] The findings hereinafter are based upon the testimony of Warner and Marlow and upon Respondent's records I deem and find the testimony of Warner, corroborated by the records of Respondent concerning the chronology of events, to be more reliable than the testimony of Atkisson and Goulet

[4] As set forth in the transcript in *Golden Rule Bakery, supra,* he was employed on a full-time basis by that concern from July 1952 to July 31, 1953.

they would not be employed again by Respondent. For, as the record indicates, they had been used as jobbers for the day and had completed their day's work. The circumstances surrounding Respondent's decision to dispense with their future services are somewhat unusual.

Office and Personnel Manager Warner testified that he was in the plant checking production cards with Plant Superintendent Marlow on September 10 and happened to notice for the first time that Atkisson had returned to Respondent's employ as a jobber. Warner uncontrovertedly testified that he was familiar with Atkisson's employment history and the fact that he had been previously discharged twice. He also testified that Atkisson's record, during his full-time employment with Respondent, was marked by considerable absenteeism, as in fact it was, and that Foreman Cline had on numerous occasions informed him that Atkisson was a heavy drinker. Warner immediately proceeded to call this to the attention of Marlow who decided forthwith, pursuant to Warner's recommendation, that Atkisson's record did not warrant his retention as a jobber by Respondent.

This consideration of Atkisson's employment led to the decision to discharge Goulet. For, when Warner spoke to Marlow about Atkisson, he pointed out Atkisson who was at work in the plant. In observing Atkisson, Marlow walked into the plant and chanced to see Goulet working there. Marlow, who admittedly did not know Goulet's name, nevertheless recognized him as a former employee of Golden Rule Bakery who had been selected for discharge as an undesirable employee by that concern. He promptly decided in view thereof that he did not wish the man to remain in Respondent's employ. Marlow accordingly informed Foreman Heins that he wished neither Goulet nor Atkisson to be employed in the plant and Heins terminated the men shortly thereafter at the end of the shift.

The circumstances under which Marlow allegedly became familiar with Goulet's record at Golden Rule Bakery are of interest. Goulet, as the transcript in the *Golden Rule Bakery* case shows, was discharged by that concern on July 31, 1953; the facts surrounding his discharge are set forth in the Intermediate Report in the case. *Golden Rule Bakery,* Cases Nos. 19–CA–904, 916, 967 [dismissed per Board Order, May 24, 1954].

According to Marlow, it is customary for plant superintendents in the baking industry to visit and inspect the various machines and processes utilized by similar concerns in the area. Marlow made such a visit to the Golden Rule plant during July of 1953, shortly after his arrival in the Seattle area, primarily to inspect a coffeecake machine, and was shown around the plant by Superintendent Leedle of that concern. In their tour, the management representatives got into a discussion of plant personnel and specifically a discussion of desirable and undesirable qualities in employees. Either Leedle or his assistant, in the course of this discussion, pointed out Goulet, who was then working at Golden Rule, as an example of an undesirable employee who was slated for discharge that week because of undesirable qualities as an employee, namely, a tendency to argue, his temper, and his use of profanity in front of female employees. Other employees were allegedly pointed out on this tour as desirable and dependable employees. According to Marlow, Leedle has on at least two occasions made return visits to Respondent's plant of a similar nature.

Marlow did not learn Goulet's name and did not see the man again until September 10 when he spotted him, as set forth above, working as a jobber in the employ of Respondent and decided forthwith to terminate him because he recognized him as the man who was deemed an undesirable employee by Golden Rule Bakery.

Returning to the actual termination of the two men, Foreman Heins credibly testified that he knew nothing of the merits of the two cases and was merely informed by Marlow to dispense with the men which he promptly did. Heins, when pressed by the men for a reason, informed them that he was merely following orders issued by the plant superintendent and that he knew of no other reasons; he denied that he referred to the union activities of the men. According to Atkisson, he pressed Heins for a reason for his termination and Heins, after indicating that Atkisson's work was not the cause of the discharge, stated that it came from the "front office" and "evidently it must be some union activity, some way or another." Heins, a forthright and incisive witness, impressed me as a more reliable witness than Atkisson whose testimony was vague in many respects and I credit Heins' denial that he referred to any union in this terminal conversation.

In so finding, it is noteworthy that, according to Goulet, Heins informed him, when Goulet pressed Heins for a reason for his termination that "it has something to do with something that has happened in the past in some other shop, for your activities outside of the shop." This of course was precisely Respondent's position herein, namely, that Goulet was selected for termination because he was an un-

desirable employee at his previous employment. There is a conflict whether Heins informed the men jointly that they were terminated or whether, as Goulet testified they were discharged separately one after the other. I deem this aspect of the case to be of no particular significance herein.

5 Conclusions

The case of the General Counsel, stressing the unlawful motivation of Respondent, is predicated upon the CIO activities of the two complainants and is indeed weak. While Respondent opposed recognition of the CIO and, in the representation proceeding, demonstrated a preference for the AFL, based upon its contractual relationship, the record is devoid of anything that demonstrates that Respondent was prepared to visit the extreme penalty of discharge upon CIO adherents.

While Goulet and Atkisson were active in the picketing activities, the fact is that both Goulet and Atkisson were hired by Respondent subsequent to such activities, conduct which, in my belief, would tend to refute the existence of an unlawful bias against them. This is particularly significant in the case of Goulet, who was a picket captain, allegedly picketed at the plant of Respondent daily for a period of several weeks, and as a result, was presumably outstanding in the strike activity. Also tending to refute the existence of any improper motivation herein, is the fact that all but 1 or 2 of Respondent's employees either participated in or respected the CIO picket line. Nevertheless, all who desired it were subsequently reinstated and, as set forth above, the two complainants were thereafter hired.

I do consider the testimony of Respondent with respect to Superintendent Marlow's recognition of Goulet 2 months after Marlow's visit to the Golden Rule plant to be suspicious Although this testimony tends to endow Marlow with an exceptional memory, I find no basis on this record for impugning its veracity and I have therefore credited it. In addition, while the fact that both men were terminated rather abruptly on the same day is an unusual circumstance, this does not of itself render any substantial support to the position of the General Counsel herein.

One other point relied upon by the General Counsel is the testimony of Goulet that on two occasions Foreman Heins asked him if he would consider permanent employment. The first of these he placed as the first time he worked for Respondent during his last term of employment, namely, on August 28, 1953. According to Goulet, Heins asked him on this occasion if he would consider a steady job on the oven and he, Goulet, replied that he was uncertain whether he could consider it in view of other offers he then had. Goulet further testified that on or about September 8, on the occasion that Heins telephoned him at his home and asked him to report for work on Wednesday, September 9, Heins stated that he expected to have a vacancy in a steady position and asked Goulet to consider it. Goulet allegedy replied that he would consider the offer which, he stated, was not mentioned to him by Heins again.

According to Heins, he held one conversation with Goulet on this topic at about the time that Goulet first contacted him for work in August 1953. Heins testified that he spoke to a number of people at the time because he anticipated that Respondent would need a permanent replacement for an oven position and that when Goulet first spoke to him about work he, Heins, held a "purely exploratory" talk with him on the subject. He further testified that he did not offer Goulet the position at that time or at any other time and that the vacancy did not materialize. I credit the testimony of Heins herein as well as elsewhere.

On balance, I conclude that a preponderance of the evidence will not support the allegations of the complaint herein. While the circumstances surrounding the termination of the 2 men are somewhat suspect, the union activities relied upon by the General Counsel are remote and insubstantial and do not warrant a finding that they were an operative factor herein in the discharge of 2 part-time employees of short tenure, particularly so in the case of Atkisson whose prior employment record with Respondent was not exemplary. Respondent's conduct was not inconsistent with its claim that bakers were in larger supply in 1953 and that it was striving to be more selective in its choice of personnel. I shall therefore recommend that the complaint be dismissed for failure of proof. See *N. L. R. B.* v. *Shen-Valley Meat Packers, Inc.*, 211 F. 2d 289 (C. A. 4).

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. The operations of Respondent, Van De Kamp's Holland Dutch Bakeries, Inc., affect commerce within the meaning of Section 2 (6) and (7) of the Act.

2. United Bakery Workers Union, Local 1807, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
3. Respondent has not engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

[Recommendations omitted from publication.]

M. PAVIA FERNANDEZ, INC., D/B/A HOSPITAL PAVIA *and* UNIDAD GENERAL DE TRABAJADORES DE PUERTO RICO. *Case No. 24–RC–676. August 6, 1954*

Supplemental Decision and Direction

Pursuant to a Decision and Direction of Election issued by the Board on May 12, 1954,[1] an election by secret ballot was conducted on June 2, 1954, under the supervision of the Regional Director for the Twenty-fourth Region, among the employees in the unit found appropriate. Upon the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately 28 eligible voters, 21 cast ballots, of which 4 were for and 5 were against the Petitioner, and 12 ballots were challenged.

As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director, in accordance with Board Rules and Regulations, conducted an investigation of the challenged ballots, and on June 23, 1954, issued and duly served upon the parties his report on challenged ballots. In his report, the Regional Director recommended that the challenges be overruled and that the ballots be opened and counted. Thereafter, the Employer filed exceptions to the report on challenged ballots.

We are in accord with the recommendation of the Regional Director. The ballots of 12 nurses' aides were challenged by the Employer on the ground that these individuals did not possess a license required under Puerto Rico statute for employment as nurses' aide. The 12 nurses' aides, though unlicensed, have been and continue to be employees of the Employer. As they were on the Employer's payroll during the eligible period preceding the election, we find they were entitled to vote in the election. Accordingly, we hereby overrule the Employer's challenges, and shall direct that the challenged ballots be opened and counted.

[The Board directed that the Regional Director shall, within ten (10) days from the date of this Direction, open and count the ballots cast by Carmen A. Texidor, Maria E. Caraballo, Basilia Rivera, Catalina Llanos, Maria Andino, Carmen Julia Escalera, Julia Rodriguez, Carmen Rivera, Antonia Otero, Aida L. Cedres, Aurea Robles, and

[1] Not reported in printed volumes of Board Decisions and Orders.