

In the Matter of LAMB GLASS COMPANY and FEDERATION OF FLAT
GLASS WORKERS OF AMERICA

Case No. C-231.—Decided October 26, 1937

*Glass Manufacturing Industry—Discrimination: discharge—Reinstatement
Ordered—Back Pay: awarded.*

Mr. Harry L. Lodish and Mr. Peter Di Leone for the Board.

Mr. L. C. Stillwell, of Mt. Vernon, Ohio, for the respondent.

Mr. Julius Schlezinger, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On May 18, 1937, Federation of Flat Glass Workers of America, herein called the Union, filed a charge with the Regional Director for the Eighth Region (Cleveland, Ohio) against Lamb Glass Company, Mt. Vernon, Ohio, the respondent herein, charging the respondent with violation of Section 8 (1) and (3) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 19, 1937, the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighth Region, issued its complaint against the respondent, alleging that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7), of the Act, in that the respondent had discharged and refused to reinstate Leo Lewis, a workman employed by the respondent in its plant at Mt. Vernon, Ohio, for the reason that he had joined and assisted the Union and had engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection. The complaint and accompanying notice of hearing were duly served upon the parties.

The respondent filed an answer to the complaint. The answer admitted the discharge of Leo Lewis but denied that such discharge was because of his union activities or that the respondent had engaged in unfair labor practices.

Pursuant to the notice, a hearing was conducted by Charles B. Bayly, the Trial Examiner duly designated by the Board, on July 29, 1937. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to the parties. During the course of the hearing, exceptions were taken by the parties to various rulings of the Trial Examiner. The Board has reviewed the conduct of the hearing and the rulings of the Trial Examiner and finds that no prejudicial errors were committed.

On August 12, 1937, the Trial Examiner duly filed his Intermediate Report. He found that the respondent had discharged Leo Lewis for the reason that he had joined and assisted the Union. He found further that by virtue of such discharge the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. The Trial Examiner recommended that the respondent cease and desist from its unfair labor practices and, in addition, offer reinstatement to Leo Lewis with back pay. A motion for rehearing and exceptions to the Intermediate Report were subsequently filed by the respondent. The motion for rehearing is hereby denied.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSINESS

Lamb Glass Company is an Ohio corporation which owns and operates at Mt. Vernon, Ohio, a plant for the manufacture of glass bottles. A large part of the raw materials used by the respondent in the production of bottles are purchased by it in states other than Ohio and from 85 to 88 per cent of its finished products are shipped by the respondent to customers located outside the State of Ohio.¹ Some of its bottles are delivered to Cuba.

The products of the respondent are sold both by its own salesmen and by jobbers located in various cities throughout the United States. All of its bottles are manufactured pursuant to special order, the bottles carrying special lettering for the individual customers.

The respondent is the third largest producer of milk bottles in the United States. Its total sales for the year 1936 amounted to \$1,170,588.60. During the same period it purchased materials amounting to \$180,282.46. Approximately 260 workmen are employed by the respondent in its Mt. Vernon plant.

¹ The chief raw materials used by the respondent are sand, soda-ash, lime, borax, feldspar, and lumber. Borax is received from California, feldspar from North Carolina, and lumber from the South. Lime and sand are purchased in Ohio. About 90 per cent of the soda-ash comes from Ohio and the balance from Michigan.

II. THE UNION

Federation of Flat Glass Workers of America is a labor organization affiliated with the Committee for Industrial Organization.

III. THE UNFAIR LABOR PRACTICES

Early in April 1937, following unsuccessful attempts by various employees of the respondent to obtain wage increases, a movement to organize a labor union was commenced among such employees. This movement made considerable headway and on April 29, at a meeting attended by over 100 of the respondent's employees, a temporary organization was set up and Leo Lewis elected its temporary president. At this same meeting it was determined to affiliate with the Union. An account of this meeting including an announcement of the decision of the workers to affiliate with Federation of Flat Glass Workers of America and of the election of Lewis as temporary president was published in the Mt. Vernon daily newspaper of April 30. Five days later, on May 5, 1937, Lewis was discharged.

Rex M. Lamb, the respondent's president, stated at the hearing that he had discharged Lewis because he had heard a report that Lewis had been dishonorably discharged by the Bessemer-Cooper Company, another Mt. Vernon concern, eight years before for stealing a box. Lamb testified that after hearing the report he had requested the manager of the Bessemer-Cooper Company to confirm it and, upon receiving a reply that the report was true, he had discharged Lewis without giving him any opportunity to explain the incident.² It is important to note that although Lamb was repeatedly questioned at the hearing in regard to the source of his information concerning Lewis, he was unable to remember the name of the person who had supplied it.

Lewis had been working for the respondent for almost three years at the time of his discharge. His foreman testified that Lewis had a very agreeable personality and had always done his work in an efficient and satisfactory manner. While working for the respondent Lewis had received an increase in pay.

In view of the admittedly efficient record which Lewis had established while working for the respondent and of the respondent's evasiveness in answering questions respecting the source of the report concerning the Lewis incident at the Bessemer-Cooper Company, it is difficult to believe the respondent's testimony that the discharge was due to the discovery that Lewis had been dismissed for stealing by another concern eight years before. When this testimony is con-

² Lamb made no claim that the box was an expensive one nor did he contradict Lewis' testimony that it was an old tool box which had actually been given to him by his foreman.

sidered in the light of Lewis's election just before his discharge as head of a newly organized union, it seems clear that his election and union activity, and not the incident of eight years before, were the effective reasons for the discharge. We find that the respondent discharged Leo Lewis because he had joined and assisted the Union. The respondent has discriminated against its employees in regard to hire and tenure of employment, and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Lewis has secured no other regular or substantially equivalent employment since the time of his discharge, and his only income has been from odd jobs. Inasmuch as his employment was terminated by an unfair labor practice, he at all times thereafter retained his status as an employee of the respondent within the meaning of Section 2 (3) of the Act.

IV. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described 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.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law:

1. Federation of Flat Glass Workers of America is a labor organization, within the meaning of Section 2 (5) of the Act.

2. Leo Lewis was at the time of his discharge, and at all times thereafter, an employee of the respondent, within the meaning of Section 2 (3) of the Act.

3. The respondent, by discriminating in regard to the hire and tenure of employment of Leo Lewis, thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

5. The afore-mentioned unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

On the basis of the above findings and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Lamb Glass Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from discharging or refusing to reinstate any of its employees, or from in any other manner discriminating in regard to hire or tenure of employment of any of its employees, in order to discourage membership in Federation of Flat Glass Workers of America or any other labor organization of its employees;

2. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Offer to Leo Lewis immediately full reinstatement to his former position, without prejudice to his seniority or other rights and privileges;

(b) Make whole said Leo Lewis for any loss of pay he has suffered by reason of his discharge by payment to him of a sum of money equal to that which he would have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount he has earned during such period;

(c) Post immediately notices to its employees in conspicuous places throughout its plant stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

(d) Notify the Regional Director for the Eighth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.