

DECISIONS AND ORDERS OF THE NATIONAL LABOR RELATIONS BOARD

In the Matter of THE MUSKIN SHOE COMPANY and UNITED SHOE
WORKERS OF AMERICA, BALTIMORE DISTRICT, AFFILIATED WITH THE
COMMITTEE FOR INDUSTRIAL ORGANIZATION

Case No. C-432.—Decided July 5, 1938

Shoe Manufacturing Industry—Interference, Restraint, and Coercion: anti-union statements; shut-down of plant during working hours to permit attendance of employees at "Citizens' Committee" antiunion meeting; distribution of antiunion pamphlets on company time and property; questioning employees regarding union affiliation and activity; surveillance of union meeting—*Discrimination:* discharges; for union membership and activity; charges of dismissed, as to two employees—*Reinstatement Ordered:* discharged employees—*Back Pay:* awarded.

Mr. Reeves R. Hilton, for the Board.

Mr. Eli Frank, Jr., and *Mr. Emanuel Gorfine* of Baltimore, Md., for the respondent.

Mr. George Martin, for the Union.

Mr. Raymond J. Compton, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Charges and amended charges having been filed by United Shoe Workers of America, Baltimore District, affiliated with the Committee for Industrial Organization, herein called the Union, the National Labor Relations Board, herein called the Board, by Bennet F. Schaffler, Regional Director for the Fifth Region (Baltimore, Maryland) issued its complaint dated November 12, 1937, against The Muskin Shoe Company, Westminster, Maryland, the respondent herein, alleging that 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 National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and upon the Union.

The complaint alleged in substance that the respondent discharged Kenneth Leaf, Jack Hodges,¹ Lorraine Gore,² and Alice Snyder, because they and each of them joined and assisted the Union, thereby discriminating in regard to the hire and tenure of employment of these persons and discouraging membership in the Union; that in and by said discharges, the respondent interfered with, restrained, and coerced its employees in rights guaranteed them under Section 7 of the Act. The complaint further alleged that the respondent intimidated, restrained, and coerced its employees, and in other ways has attempted to prevent them from joining a labor organization of their own choosing. On November 20, 1937, the respondent filed an answer denying the material averments of the complaint and alleging affirmatively that the discharges had been for cause.

Pursuant to notice, a hearing was held in Westminster, Maryland, on November 22 and 23, 1937, before D. Lacy McBryde, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. Upon motion of counsel for the Board, the Trial Examiner dismissed the allegations of the complaint with respect to Alice Snyder, it appearing that she had received satisfactory reemployment with the respondent. This ruling is hereby affirmed.

On February 16, 1938, the Trial Examiner filed an Intermediate Report, a copy of which was duly served on all parties. He found that the respondent had interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them by Section 7 of the Act; that it had discharged Kenneth Leaf and Jack Hodges because of their union affiliation and activities; and that by such acts it 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. He found that Lorraine Gore had not been discharged for union activity or membership, but had been laid off because of curtailed production. He recommended that the respondent cease and desist from its said unfair labor practices; that it reinstate Leaf and Hodges, with back pay, to their former positions; and that it take certain other action to remedy the situation brought about by the unfair labor practices. On February 23, 1938, the respondent filed its Exceptions to the Intermediate Report, and requested opportunity for oral argument before the Board. On March 29, 1938, oral argument on the Exceptions and record

¹ Referred to in the record as Jackson Hodges

² Referred to in the record as Blanche Lorraine Gore.

was had before the Board in Washington, D. C., by the respondent and the Union. The respondent filed with the Board a memorandum brief in support of its Exceptions.

The Board has reviewed the rulings of the Trial Examiner on motions and objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has also considered the Exceptions of the respondent to the Intermediate Report and in so far as they are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, a corporation organized under the laws of the State of Maryland, maintains and operates shoe manufacturing plants at Westminster, Millersburg, and Baltimore, Maryland. This proceeding is concerned only with the Westminster plant. It employs approximately 500 workers, and has a production capacity of 6,000 pairs of shoes per day. The raw materials used at the plant in the course of manufacture consist principally of leather, rubber, and textile products. Ninety-five per cent of these goods are obtained outside the State of Maryland, particularly New England, New York, and the Middle West, and are transported to the plant by railroad and truck. In turn, approximately 95 per cent of the manufactured product is shipped to points in States other than the State of Maryland, the principal volume of sales being consigned to New York and Missouri.

II. THE ORGANIZATION INVOLVED

United Shoe Workers of America, Baltimore District, is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership all production employees of the respondent, excluding supervisors, foremen, and watchmen.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

The Union began its organization of the employees in the Westminster plant in April 1937. A plant organizing committee composed of a number of the employees was formed by the Union to aid in soliciting members. A local branch of the Union was set up at the

plant and regular meetings were held by it from April until about the middle of July. The respondent was at all times aware of this union activity.

During this period, the respondent, through its supervisory force, displayed marked interest in the organization of its employees by the Union. On several occasions in May, Dyer, foreman of the Making and Finishing Department, questioned Hodges, one of the members of the organizing committee, about his union activity. Dyer informed Hodges: "Mr. Hack knows every move you people make. He has spies for that purpose." The evidence shows that about that time, King, foreman of the Cutting Room, and Chaney, his assistant, had sat in an automobile directly across the street from the place where the Union was holding a scheduled meeting, and were able to observe the employees who attended. Dyer also told two employees, Martin and Barber, to warn Hodges that he should "keep out of this Union business" or he would lose his job. Another foreman, Weinberg, told Kroop, president of the organizing committee, that he should "not take any principal part in it." Reference was to the Union.

In June 1937 the plant superintendent, Bowker, told Kenneth Leaf, president of the local union organization and its most active organizer, that the Committee for Industrial Organization, with which it was affiliated, was composed of "murderers" and "gangsters", and that "Under these large strikes you can see where they [referring to the workers] are being murdered." At the hearing, Bowker denied having made any adverse statement concerning the Committee for Industrial Organization. However, upon the record, particularly in the light of Bowker's expressed view and acts taken with respect to the "Citizens' Committee" meeting, set forth below, we entertain no doubt that he had so expressed himself to Leaf.

On July 29, 1937, the respondent received a letter from a group of individuals residing in Westminster known as the "Citizens' Committee of Westminster." Upon receipt of the letter, Hack, manager of the plant, consulted with Bowker concerning his opinion thereof. The letter was addressed to the respondent and stated:

A group of citizens of Westminster would like to meet your factory workers at the Armory at 3:15 o'clock. We would appreciate it if you would make arrangements so that they will be able to attend this meeting.

On the side of the letter, the following appeared: "Committee of Arrangements—W. Frank Thomas, Walter H. Davis, John H. Cunningham, Jesse E. Stoner, Edwin S. Gehr." Bowker said to Hack: "I know all these men whose names appear here. They are a responsible group of men and we should cooperate with them in their

desire." That afternoon, Bowker closed the plant and issued instructions that the employees were to gather in the factory yard. The employees were assembled and the afore-mentioned letter was read to them. Upon being told by Bowker that they had permission to leave the plant, a substantial majority departed to attend the "Citizens' Committee" meeting at the Westminster Armory.

At this meeting, the employees were addressed by several speakers of some prominence in Westminster. A local banker told them that he did not want to see any trouble in Westminster. By "trouble" was meant labor trouble at the respondent's Westminster plant. Another speaker "spoke openly about labor unions; called all the organizers of Westminster communists, Reds, and everything he could think of; said that if an organizer rapped on your door, to ward them off and tell them never to come back again; and that they come here, these organizers, and take money out of the worker's pockets, just stick their hands right in their pockets and take it away."

It is contended by the respondent that it had no knowledge whatsoever of the purpose of the meeting and was merely cooperating with the "Citizens' Committee" in permitting the employees to attend it during working hours. We find it inconceivable that the respondent could have lent its support to the meeting by granting its employees express permission to attend it during working hours without knowledge of the purpose for which the meeting was being held. We are convinced that the respondent had such knowledge.

On July 30, 1937, one Raver, an employee in the Packing Department, was called into the main office of the respondent's plant and there received over the telephone a request that he come at once to the home of one Mitten, an insurance agent in Westminster. Raver then returned to his department and asked his foreman if he might leave the plant. Upon receiving such permission, Raver proceeded to Mitten's home in Westminster where Mitten gave him certain pamphlets for distribution among the employees at the plant. Immediately after his return to the plant that same afternoon, Raver stopped at his table to remove his coat, and what later proved to be the pamphlets were "stuck around his belt." After removing the coat and putting on an apron, Raver proceeded to the plant office, which he entered. Upon emerging therefrom, he distributed the pamphlets among the employees in the packing department, during working hours and in the presence, and with the apparent permission, of the foreman, Hack. At the hearing, Raver denied having gone into the respondent's office after his return to the plant, but admitted having entered the office previously to receive the telephone message and that he had put the pamphlets "under my apron, and stuck them under my belt." In view of this testimony of Raver, and the general circumstances surrounding the occurrence, we are

satisfied that Raver, upon his return, did proceed to the plant office with the pamphlets before distributing them. We are equally convinced that the respondent knew the nature of the pamphlets and consented to their distribution on its time and property.

The pamphlets in question were entitled "Communism's Iron Grip on the C. I. O.," and purported to have been published by the Constitutional Educational League, Inc., New Haven, Connecticut. Their contents, for the most part, consisted of quotations from a speech delivered by Congressman Clare E. Hoffman in the House of Representatives on June 1, 1937. In the back of the pamphlets, information was given as to where and at what price additional copies thereof might be obtained, preceded by the statement:

IN THE FACE OF THIS CIO CHALLENGE

Loyal citizens will want to **DO SOMETHING ABOUT IT.** Accordingly, the Constitutional Educational League invites cooperation in its endeavor to give this pamphlet a wide distribution.

It is evident from the pamphlet itself that it was prepared as anti-union literature and any distribution thereof by an employer to his employees would have the necessary effect of coercion and intimidation within the meaning of the Act. Before the Introduction there is printed a full-page picture of the secretary-general of the Communist party of America, under which appears this statement: "He offers their plans for 'industrial unionists' and John L. Lewis carries that program into action." Throughout the pamphlets appear various news pictures, captioned in heavy bold-face type. A few instances will illustrate: On page 27, appears the picture of a mob surrounding what is purportedly a mail truck and bears this inscription: "The **MAIL** must **NOT** go thru—**CIO.**" On page 39, under the pictures of a wounded police officer and that of a wounded worker, respectively, appear the following: "**I TRIED TO MAINTAIN THE LAW** but the **CIO** said **NO!**" On page 45, a further illustration depicting a line of workers receiving their pay bore this caption: "**JOIN THE CIO AND HELP CLOSE THIS WINDOW IN YOUR FACTORY.**"

By permitting the distribution of the pamphlets on its time and property, the respondent indicated to its employees that it had adopted, as its own, the antiunion contents thereof, and that they should be guided accordingly.

The record and foregoing events clearly show that coincident with the efforts of the Union to organize the employees in Westminster, the respondent through its supervisory force engaged in determined action to combat the Union. There is little doubt but what the overt

interest shown by the respondent in the progress of the Union and its organizers, coupled with the hostile and threatening antiunion statements made to employees by its superintendent and foremen, had the desired effect of helping to defeat the activities of the Union. Apart from these direct attacks launched at individuals interested in carrying on the union organization work, the respondent sought to have its employees as a whole persuaded that the Union was detrimental to their interests. This it did by closing the plant and granting express permission for the employees to attend the "Citizens' Committee" meeting, a permission tantamount to an instruction to do so and an approbation of the purpose of the meeting. Likewise, the disapproval of the Union implicit in the respondent's permitting the distribution of the pamphlets on its time and property was directed to the same end of fostering antiunion sentiment.

We find that the respondent, by the acts above set forth, has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

B. *The discharges*

Kenneth Leaf and *Jack Hodges* were employees at the Westminster plant; Leaf a shoe "treer" for 4½ years, Hodges a "bleacher" for 1 year. Both men became interested in and joined the Union shortly after the membership campaign at the plant was begun. The two served on the organizing committee, and Leaf was made president of the local branch of the Union in Westminster. The union affiliation and activities of the men proved of concern to the respondent. Some time in June the plant superintendent, Bowker, had the conversation, above described, with Leaf, in which Bowker took occasion to characterize and denounce the Committee for Industrial Organization as murderers and thieves. About the same time Dyer, the foreman, inquired of Hodges, as above mentioned, about the Union, and likewise told several employees to caution Hodges that he would lose his job if he continued in the Union.

On July 16 the respondent discharged Hodges. Dyer told Hodges, "I got to lay you off . . . Pressure is being put on me from higher up. You can read between the lines. It would be better for you to resign. The Company will hold nothing against you . . . I will see that you get between \$50 and \$100 to pay your transportation and your family's until you get another job." Upon refusing to resign, Hodges was discharged. At the hearing Dyer testified that he had discharged Hodges of his own accord upon instructions to "thin down" his department. He admitted that Hodges was a good worker, that he was sorry to see him go, and that he had offered Hodges financial assistance. In the light of these admissions and

the record, we have no doubt that Dyer had expressed himself to Hodges in the manner above stated.

Three days later, on July 19, Leaf was discharged together with five other employees, all active members of the Union. Leaf was told that business was falling off and that the departure of certain employees for a 2-week National Guard encampment required a curtailment in the respondent's operations. The following day, Leaf filed a charge with the Board alleging that he had been discriminatorily dismissed by the respondent for union activity. On July 21 a special committee of the Union consisting of employees from the various departments of the plant called upon the respondent and insisted that Leaf, Hodges, and the others who had been discharged with Leaf, be immediately reinstated. Thereupon, these employees were returned to their former positions.

In the succeeding week, on July 29, the Citizens' Committee held its working-hour meeting for the plant employees. On July 30 Leaf and Hodges were discharged by Bowker.

At the time of their second discharge, Leaf and Hodges were told that the respondent had found it necessary to make places for the employees who were returning from the National Guard camp. No other reason was assigned. Two "treers" junior in service to Leaf were retained. The evidence shows that none of the employees so returning did the same work which either Leaf or Hodges performed. It also satisfactorily appears that the respondent had followed a policy of not discharging or laying off any of its male employees during slack periods, but instead had permitted them to divide the available work among themselves.

At the hearing, the respondent took the position that the discharges were justified on grounds other than the return of the guardsmen, and that such other grounds also had occasioned the discharges. Testimony was introduced in behalf of the respondent to the effect that Leaf was loud, boisterous, and offensive in his conduct; that in March 1937 he made a threat of assault against one of the foremen; that in March he sold liquor to employees in the plant. Further testimony was introduced that Hodges conducted a baseball "pool" during working hours and unnecessarily left his work for visits to other departments. The record shows that Leaf was never insubordinate to his superiors although on some occasions Bowker had reprimanded him for being too noisy; that while Leaf had made the threat in question he had apologized to the foreman for so doing and the matter had thus ended; that he had sold some liquor in March but upon being then told by the respondent not to continue had stopped selling and had not sold any since. The baseball "pool" had been begun at the plant in 1936 and met with

the acquiescence of the respondent. The conduct of the pool had never been prohibited, and Dyer himself participated in it. Hodges' visits to the other departments were made with the permission of his foreman and in connection with a soft-baseball league which had been formed among the employees. The work of both Leaf and Hodges was competent.

Prior to and at the time of their respective discharges on July 30, 1937, Leaf and Hodges were paid on a piece-work basis, Leaf earning between \$20 and \$23 a week and Hodges, a weekly average of \$18. Since July 30, 1937, both Leaf and Hodges have been unemployed.

We are satisfied that Leaf and Hodges were discharged on July 30 because of their union affiliation and activities. The hostility which the respondent had shown toward that Union's organization of its employees in the very week of the dismissal points directly to the true reason for the discharges. The evidence establishes that the respondent had determined upon ridding itself of these union leaders the first time it discharged them, that in thereafter reinstating them upon the insistence of their fellow workers it in no wise had receded from its decision, that after subjecting its employees to the antiunion tirades of the speakers at the Citizens' Committee meeting and to the contents of the pamphlets distributed by Raver it promptly proceeded in its original purpose of discharging the two men. The respondent's intention in the matter was not overly concealed. Bowker had denounced the Union to Leaf; Dyer had cautioned that Hodges would lose his job if he persisted in continuing with the Union, and at the time of the first discharge had told Hodges to "read between the lines" and suggested that he accept some money for an acquittance. The various reasons for the discharges which the respondent has advanced are not persuasive. The record does not satisfactorily show why the return of the guardsmen should have been of consequence, it appearing that none of them did the kind of work which Leaf or Hodges performed, that the respondent has followed a practice of dividing available work in slack periods among all employees rather than discharging any, and that in any event two "treers" junior in service to Leaf were retained at the same time that Leaf was discharged. The other reasons assigned in this proceeding but not told the men at the time of their discharge relate essentially either to closed incidents or matters having the tacit approval of the respondent.

We find that the respondent, in discharging Leaf and Hodges, discriminated in regard to their tenure of employment, thereby discouraging membership in the Union, and that by said discharges the respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

Lorraine Gore was employed in the stitching room at the plant for approximately a year. She joined the Union but was not active in its affairs. The record does not show that her union affiliation was known to the respondent. On August 1, 1937, Gore was laid off along with several other girls in her department. The reason given for the lay-offs was the seasonal curtailment in production. Gore was told that as soon as production arose she would be recalled to work. None junior in point of service to her was retained at the time of her lay-off. There is no conclusive showing that the respondent had any reason to discharge Gore other than the one given. Accordingly, we shall dismiss the allegations of the complaint with respect to Lorraine Gore.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that 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.

Upon the basis of the foregoing findings of fact, and upon the entire record in the proceeding, the Board makes the following:

CONCLUSIONS OF LAW

1. United Shoe Workers of America, Baltimore District, is a labor organization, within the meaning of Section 2 (5) of the Act.
2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.
3. By discriminating in regard to the hire and tenure of employment of Kenneth Leaf and Jack Hodges, and thereby discouraging membership in a labor organization of its employees, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the findings of fact 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,

The Muskin Shoe Company, a corporation, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Shoe Workers of America, Baltimore District, or any other labor organization of its employees by discriminating in regard to hire or tenure of employment or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right 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 and other mutual aid and protection, as guaranteed in Section 7 of the Act.

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

(a) Offer to Kenneth Leaf and Jack Hodges immediate and full reinstatement to their former positions, without prejudice to their seniority rights and other rights and privileges;

(b) Make whole said Kenneth Leaf and Jack Hodges for any loss of wages which they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum of money equal to that which he normally would have earned as wages during the period from the date of his discharge until the date of the offer of reinstatement, less the amount, if any, which he may have earned during that period;

(c) Post immediately, and keep posted for a period of thirty (30) consecutive days, notices in conspicuous places throughout its Westminster plant stating that the respondent will cease and desist in the manner set forth in 1 (a) and (b), and that it will take the affirmative action set forth in 2 (a) and (b), of this order; and

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

And it is further ordered that the allegations of the complaint with respect to Lorraine Gore and Alice Snyder be, and the same hereby are, dismissed.