

WEST BROS., INC. *and* (MRS.) MARGARET S. PECK. Case No. 15-CA-485. April 24, 1953

DECISION AND ORDER

On March 4, 1953, Trial Examiner David London issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (1) of the Act, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further found that the Respondent had not engaged in any unfair labor practice in violation of Section 8 (a) (3) of the Act and recommended dismissal of that allegation of the complaint. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report.

The Board¹ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, West Bros., Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees as to their union membership, activities, and sympathies, promising its employees benefits if they refrain from joining a union or participating in union activities; directly, or indirectly, threatening its employees with discharge if they continued their union membership or activities.

(b) In any like manner, interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 991, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining and other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

¹Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel. Members Houston, Styles, and Peterson.

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

(a) Post in its office at Mobile, Alabama, copies of the notice attached to the Intermediate Report and marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by Respondent, be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for the Fifteenth Region in writing, within ten (10) days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the Respondent violated Section 8 (a) (3) of the Act, be, and it hereby is, dismissed.

²This notice shall be amended by substituting the words "A Decision and Order" for the words "The Recommendations of a Trial Examiner" in the caption thereof. In the event that this order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Intermediate Report

STATEMENT OF THE CASE

Upon a charge duly filed by Margaret S. Peck, the General Counsel of the National Labor Relations Board, on December 24, 1952, issued a complaint against West Bros., Inc., herein called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the charge, complaint, and notice of hearing were duly served on the appropriate parties.

With respect to the alleged unfair labor practices, the complaint alleged, in substance, that since on or about November 22, 1951, Respondent (a) threatened to discharge and terminate the employment of employees who engaged in activity on behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 991, AFL, herein called the Union; (b) promised to raise the pay of employees if they would cease their union activity; (c) promised to better the working conditions of its employees if said employees would cease their union activities; and (d) by other acts, conduct, and conversations, interfered with, threatened, and coerced its employees with respect to their right to engage in activities on behalf of the Union. The complaint further alleged that Respondent on or about April 19, 1952, discharged Margaret S. Peck and has since that date failed or refused to reinstate her to her former or substantially equivalent position for the reason that she joined or assisted the Union, or engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection. By its answer, Respondent admitted that it had discharged Mrs. Peck on or about April 19, 1952, but otherwise denied the commission of any unfair labor practices. The answer further pleaded that Mrs. Peck was discharged "because of discourtesy to the patrons of the Company and inefficiency in the handling of her duties," and further pleaded that Mrs. Peck was a supervisor within the meaning of the Act and not entitled to the protection thereof.

Pursuant to notice, a hearing was held January 13-14, 1953, at Mobile, Alabama, before the undersigned Trial Examiner. All parties appeared and were represented by counsel, or pro se, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to argue orally at the conclusion of the evidence, and to file briefs. The parties waived oral

argument and none has filed a brief. Upon the entire record in the case,¹ and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is a Mississippi corporation, maintaining its principal office and place of business in Hattiesburg, Mississippi, and terminal offices in Mobile, Alabama, and other cities where it is engaged in the business of a common carrier by motor vehicle of property between its several terminals and depots in the States of Alabama, Louisiana, and Mississippi. In the course and conduct of its business during the calendar year 1951, which is representative of all times material herein, Respondent transported goods, wares, and merchandise over its line to and between its terminals, warehouses, and depots in Alabama, Mississippi, and Louisiana, having a value in excess of \$400,000. Of the freight so carried and designated to consignees in the State of Alabama, all such shipments originated outside the State of Alabama. Outgoing shipments originating at its terminals in Alabama were carried by Respondent to points outside the State of Alabama. Respondent admits, and I find, that it is engaged in commerce within the meaning of Section 2 (6) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At the hearing Respondent admitted, and I find, that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 991, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE ALLEGED UNFAIR PRACTICES

A. Background and sequence of events

For sometime prior to November 1, 1950, the business of Respondent at Mobile was handled by W. Price-Williams as its "Local Contract Agent." On or about the latter date, Respondent terminated its relationship with Price-Williams and took over the direct operation of that terminal. In that conversion, however, Respondent retained in its employ the office staff previously employed by Price-Williams consisting of Mrs. Peck, the charging party herein, Mrs. Marie Blakney, and also continued the part-time services of Edmond S. Peck, husband of Mrs. Peck.²

In January 1952 the Union started an organizational drive among the office employees of various truck freight carriers in Mobile. During that month, 3 union meetings were held, all of which were attended by the 3 office employees of Respondent aforementioned. At the last of these meetings, all 3 signed application cards to join the Union.

In about mid-January 1952, Jack L. Watkins, Respondent's district agent in charge of the Mobile terminal, asked Mrs. Peck if she had joined the Union to which she answered affirmatively. On the following day, Morris Alpert, business agent for the Union, came to Respondent's office and, in the presence of Watkins, told Mrs. Peck "that he was going to organize the office" and asked her to type "an invitation to a meeting of all the motor freight office employees in Mobile for the purpose of organizing." Alpert asked Watkins "if it would be all right for [her] to type the letter," and when Watkins gave his consent, provided it didn't interfere with her work, she typed the requested letter.

On or about February 1, 1952, over-the-road drivers of various motor carriers, including those employed by Respondent, engaged in a strike lasting approximately 8 days. As a result, no freight moved in or out of Respondent's Mobile terminal, but Mrs. Peck and Mrs. Blakney nevertheless reported for work at the office and lost no pay during that period. While the strike was in progress, Harvey E. West, Respondent's president, visited the Mobile office

¹ The official transcript of testimony herein is corrected by striking line 12 from page 140 thereof, and by inserting the following between lines 11 and 13 of said page:

Trial Examiner London: Overruled.

A: I did.

² During his part-time employment from the summer of 1950 to February 1952, by Price-Williams and Respondent, Mr. Peck was regularly employed by the State of Alabama. His services to Price-Williams and Respondent were rendered spasmodically and irregularly, in the evening, after he "got through with [his] regular work."

on or about February 4, and told Mrs. Peck and Mrs. Blakney that he had "some distressing news" which he wanted to discuss with them. He asked them whether it was true that they "were trying, . . . wanted to join a union." When both answered affirmatively, he asked "what the trouble was" and was informed that they had been "over worked" and had been required to work too many hours. West told them "that he had a union on the dock but he didn't want it in the office," and promised to get them additional full-time help and cut their hours. He asked, and they agreed, that he be given 30 days to adjust their grievance and if at the end of that time they weren't satisfied and "continued to feel about the union like [they] did," he would rather that they resign, and he would give them recommendations so that they could find other employment. He also assured them that he "would do more for them than Morris Alpert ever would." The part-time services of Mr. Peck were discontinued at about that time and, on February 12, Lawrence Williams was brought from another of Respondent's offices and installed as a full-time office worker at Mobile.

On an occasion early in March 1952, when Mr. Peck went to Respondent's office to drive his wife to their home, Watkins engaged him in conversation. During the course thereof, Watkins asked him how he "felt about unions" to which Peck replied that he was in favor of such organizations. Watkins "then referred to Mrs. Peck's interest in trying to organize . . . the union of office workers" and informed Peck that "West Brothers does not approve of the unions in the office . . . and asked[him]. . . to discourage Mrs. Peck from her union activities "

At about noon of Saturday April 19, 1952, Watkins handed Mrs. Peck a letter bearing Watkins' signature, advising her she was being discharged. The letter gave the following explanation for the termination:

It is with regret that this notice is hereby issued, but it appears to the undersigned that you have been completely unhappy with your position for some time and regardless of efforts by the management to coordinate the various functions of our office, and in spite of additional help added, nothing seems to be sufficient. Therefore, it is necessary to make this change in an effort to get smoother, more satisfactory operation in our office.

Your ability as far as rates is concerned has never been doubted, and you may rest assured that the undersigned will give you good recommendations in this respect.

Mr. Peck and Mrs. Peck talked to West at Hattiesburg on the telephone late the same afternoon and informed him of the discharge. West told them both that he knew nothing about the matter but would talk to Mrs. Peck on his visit to Mobile the following week. Mrs. Peck never returned to Respondent's office but was paid for the following week nevertheless. At the beginning of the succeeding week, she accepted employment as Mobile district agent for Jordan Truck Lines and has been employed there steadily ever since.

B. Concluding findings

On the entire record I find that Respondent violated Section 8 (a) (1) of the Act by (a) Watkins' denied interrogation of Mrs. Peck in mid-January 1952 whether she had joined the Union; (b) West's interrogation of Mrs. Peck and Mrs. Blakney on or about February 4 whether they were trying, or wanted, to join a union; (c) West's promises of benefit to Mrs. Peck and Mrs. Blakney to better their working conditions if they changed their "feelings" for the Union; and (d) West's veiled threat to discharge them if they did not accept his alternative offer to allow them to resign at the end of 30 days if they still insisted on union adherence.³

Turning now to the alleged discriminatory discharge of Mrs. Peck, the complaint alleges that she was discharged because "she joined or assisted the Union or engaged in concerted activities" protected by the Act. Respondent, on the other hand, pleads that Mrs. Peck "was discharged because of discourtesy to the patrons of the Company and inefficiency in the handling of her duties," but that, in any event, she was a supervisor within the meaning of the Act and therefore not entitled to its protection.

³Findings (b), (c), and (d) above are based on the credited, composite testimony of Mrs. Peck and Mrs. Blakney. West's denial of these incidents went merely to refutation of their testimony that he told them that he "heard that they had joined a union or [had] any discussion with them with reference to union activities" and is not credited. West did not deny that during the course of the conversation he "might have mentioned . . . distressing news" to the two women but that if he did, it was with reference to the pending strike of the drivers. That subject, however, could hardly have been "news" to Mrs. Peck or Mrs. Blakney.

While the violations of Section 8 (a) (1) heretofore found may be considered in determining whether or not Respondent is guilty of the alleged discrimination, they are not sufficient, in and of themselves, to compel the conclusion that Mrs. Peck was discriminatorily discharged. It was still incumbent on the General Counsel to establish by a preponderance of the evidence that she was discharged because of her union activities.

The only union activity in which Mrs. Peck engaged was her attendance at the union meetings, and to sign an application, in mid-January, to join the Union, an application which she "never followed through." Watkins was advised of her application to join the Union but, nevertheless, on the following day gave her permission to type the letter to other terminal office employees inviting them to the union meeting. Though Mrs. Peck was not discharged until April 19, the record discloses no other union activity of any kind or nature in the intervening period of more than 3 months by either Mrs. Peck, the Union, or anyone else. If Respondent were intent on engaging in reprisal for Mrs. Peck's union activity, an apparently innocent opportunity to at least lay her off for a period of 8 days presented itself at the end of January when the drivers were engaged in a systemwide strike. Instead, she was paid in full for that period. Similarly, there was no reprisal against Mrs. Blakney or Mr. Peck, both of whom had attended the same union meetings and had also signed applications to join the Union. Mrs. Blakney voluntarily terminated her employment in November 1952. Mr. Peck's part-time services were terminated in mid-February when he was replaced by Williams, a full-time officeworker, to satisfy the demands of Mrs. Peck and Mrs. Blakney.⁴

West had nothing to do with Mrs. Peck's discharge and did not even know of it until after the event. Watkins, who imposed it, was not shown to have any union animus. While his interrogation of Mrs. Peck in mid-January has been found to be violative of the Act, it was followed on the next day by a grant of permission to type an invitation to other office employees of other carriers to join the Union.

Mrs. Peck readily admitted at the hearing that she was freely addicted to the use of profane language. The evidence establishes that on occasions when she answered the telephone in response to calls of customers, or other persons, she would lay the receiver down while securing the information called for, and indulge in profane comments concerning the calling party.⁵ Though the use of profanity by all the employees was not uncommon, Mrs. Peck was apparently the worst offender. Watkins, though testifying to her competence as a rate clerk, had warned her about her "language, especially when . . . catching the phone, where customers might hear cursing and things of that nature." Earlier, he had discussed Mrs. Peck's shortcomings and faults with West and was granted authority to handle the situation as Watkins thought best. On April 19, while out on the territory, Watkins called the office to get some information from the dock foreman. While waiting to be transferred to that extension, he overheard Mrs. Peck indulging in most violent profanity. This, he testified, "was the straw that broke the camel's back." He returned to the office and discharged Mrs. Peck.

On the entire record, and my observation of the witnesses, I am convinced and find that Mrs. Peck was discharged for the reasons assigned by Respondent. In any event, the burden of proof was not on Respondent to establish that Mrs. Peck was discharged for a nondiscriminatory reason, nor can a violation of the Act be established on suspicion alone. Strachan Shipping Co., 87 NLRB 431; Punch & Judy Togs, Inc., 85 NLRB 499. Viewed in its entirety, the evidence here fails to constitute that preponderance by which it is necessary for the General Counsel to establish that Respondent was illegally motivated in discharging Mrs. Peck. It is, therefore, concluded and found that by discharging Mrs. Peck, Respondent did not engage in discrimination within the meaning of Section 8 (a) (3) of the Act.

In view of the finding just announced, I deem it unnecessary to detail at length the considerations which have brought me to a conclusion on the remaining issue presented by the record--was Mrs. Peck a supervisor within the meaning of the Act. Whether an individual is such a supervisor depends on the existence of authority, in the interest of the employer, to perform any of the acts specified in the margin.⁶ On the entire record, I find that Mrs. Peck possessed none of the required authority.

⁴No claim was made that Mr. Peck was discriminatorily discharged.

⁵Illustrative of her profanity was her admission that she had referred to callers as a "son of a bitch," which counsel more politely characterized as those whose "ancestry [was] linked very closely to the maternal ancestors of the canine family."

⁶"The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Section 2 (11) of the Act.

Watkins, when questioned by Respondent's counsel concerning Mrs. Peck's duties, testified as follows: "Well, her major job was, of course, rates. She made the payroll. She caught some of the telephone calls. On rare occasions she dispatched the trucks some. She handled some OS & D. work (overages, shortage, and damage), especially before [Williams] was employed. She handled correspondence."

Respondent further contends, because Mrs. Peck "was in charge of the station" during 3 or 4 short, intervening periods when there was a change in terminal agents, that she thereby acquired supervisory status. The record, however, will not sustain a finding that during those periods Mrs. Peck performed any of the duties mentioned in Section 2 (11) of the Act. In any event, these occasions were so sporadic in nature that they cannot be deemed sufficient to classify her as a supervisor. *N.L.R.B. v. Quincy Steel Casting Company*, 200 F. 2d 293 (C.A. 1); *Colonial Fuel Oil*, 99 NLRB No. 157; *Bonwit-Teller, Inc.*, 84 NLRB 414.

West testified that when Respondent took over the direct operation of the Mobile terminal on November 1, 1951, he told Mrs. Peck that she would be office manager and could hire such additional people as were needed for the job. Mrs. Peck's denial of the grant of such authority is credited. I find it inconceivable to believe that she had the authority to hire, and yet failed to exercise it. Mrs. Peck impressed me as a strong character who would not hesitate to exercise any authority she possessed, especially, if by its exercise she would be relieved of the overtime work of which both she and Mrs. Blakney complained. Mrs. Blakney testified that Mrs. Peck never "directed in the office what was to be done in the day's work," either generally or specifically, and that she, Mrs. Blakney, was "responsible" to the terminal agent who was "in charge of the whole office."

When Watkins was asked to describe Mrs. Peck's duties, he detailed no tasks which were supervisory in nature, except his generalized observation that "she was supposed to be office manager." All of Respondent's payroll records however, carried Mrs. Peck as "rate clerk," a classification made under specific instructions from officials at Respondent's main office. In any event, in determining status, job titles or labels are not controlling. Office managers, as such, have been held not to be supervisors within the meaning of the Act. *Warren Petroleum Corporation*, 97 NLRB 1458.

Nor is it of controlling significance that Mrs. Peck dispatched Respondent's drivers to proceed to specified destinations in Mobile to pick up freight shipments. The only reason that Mrs. Blakney did not engage in dispatching was that she was not well enough acquainted with the city to perform that task. In any event, the Board has repeatedly held, as I do in the instant case, that the dispatch of drivers is work that is "routinely repetitive and clerical in nature," and not supervisory. *Auto Transports, Inc.*, 100 NLRB 272; *Gulf Oil Corporation*, 100 NLRB 1007; *Sacony-Vacuum Oil Company, Inc.*, 100 NLRB 90.

On the entire record I find that Mrs. Peck was not a supervisor within the meaning of the Act.

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

CONCLUSIONS OF LAW

1. Respondent's activities, occurring in connection with its operations as described 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 thereof.

2. The Union is a labor organization within the meaning of Section 2 (5) of the Act

3. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act, which unfair labor practices affect commerce within the meaning of Section 2 (6) and (7) of the Act.

4. Respondent has not engaged in discrimination within the meaning of Section 8 (a) (3) of the Act.

[Recommendations omitted from publication.]

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that.

WE WILL NOT interrogate our employees concerning their union membership, sympathies, or activities; promise them benefits if they refrain from such activities; or threaten them with discharge, directly or indirectly, if they participate in such activities.

WE WILL NOT in any like manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 991, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining and other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or refrain from becoming members of the above-named union, or any other labor organization, except to the extent that the right to refrain may be affected by a lawful agreement requiring membership in a labor organization as a condition of employment.

WEST BROS., INC.,
Employer.

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

W. T. GRANT COMPANY *and* RETAIL CLERKS INTERNATIONAL ASSOCIATION, A.F.L. Case No. 6-CA-585. April 24, 1953

DECISION AND ORDER

On March 6, 1953, Trial Examiner George Bokat issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint. Thereafter, the Respondent filed exceptions to the Intermediate Report.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Styles, and Peterson].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board had considered the Intermediate Report, the Respondent's exceptions, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the