

7. In thus refusing to bargain collectively with the above-named Union as the exclusive representative of the employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

**Thatcher Glass Manufacturing Company, Inc. and Robert Edger and American Flint Glass Workers' Union of North America, AFL-CIO, and its agent George M. Parker, and Local 135, American Flint Glass Workers' Union of North America, AFL-CIO. Cases Nos. 3-CA-950 and 3-CB-268. May 23, 1957**

### DECISION AND ORDER

On November 26, 1956, Trial Examiner Thomas N. Kessel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report together with a supporting brief, and the Respondents filed briefs in support of 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 [Chairman Leedom and Members Bean and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made 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 briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations contained in the Intermediate Report.<sup>1</sup>

[The Board dismissed the complaint.]

<sup>1</sup> The Charging Party, Robert Edger, was laid off by Respondent Company on the demand of Respondent Union because of Edger's refusal to make certain "death benefit" or "insurance" payments to the Union. The complaint did not allege, and the General Counsel specifically stated at the hearing that he was not contending, that the discharge was unlawful because the "death benefit" and "insurance" payments were not "periodic dues." The sole issue as stated by the General Counsel was whether the existing collective-bargaining contract between the Respondents contained a union-shop provision. In view of the narrow issue raised by the General Counsel, we do not decide whether a discharge for the reasons assigned would be unlawful if such issue was properly before the Board for decision.

### INTERMEDIATE REPORT

#### STATEMENT OF THE CASE

Upon a charge and amended charge in Case No. 3-CA-950 filed by Robert Edger, an individual, against Thatcher Glass Manufacturing Company, Inc., herein called the Company, and upon a charge and amended charge in Case No. 3-CB-268 filed by 117 NLRB No. 225.

the same Robert Edger against American Flint Glass Workers' Union of North America, AFL-CIO, and its agent, George M. Parker, and Local 135, American Flint Glass Workers' Union of North America, AFL-CIO, herein collectively called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Third Region (Buffalo, New York), issued on July 10, 1956, an order consolidating the above-captioned cases and complaints alleging that the Respondents named therein had engaged in and were engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the formal documents and notices of hearing were duly served upon the parties.

With respect to the unfair labor practices, the complaint against the Company alleges that it had terminated the employment of its employee Robert Edger and refuses to reinstate him because he was not a member in good standing of the Union, thereby violating Section 8 (a) (3) of the Act. It further alleges that the Company's manager, Harry Mullany, and its foreman, Al Abrams, violated Section 8 (a) (1) of the Act by threatening employees with loss of their employment for failure to maintain membership in good standing in the Union. The complaint against the Union alleges that through its responsible officials it caused or attempted to cause the Company to discharge the aforesaid Robert Edger, thereby violating Section 8 (b) (2) of the Act, and also threatened employees of the Company with loss of their employment for failure to maintain membership in good standing in the Union, thereby violating Section 8 (b) (1) (A) of the Act.

The Company's answer, amended at the hearing, admits that it laid off Edger but denies that such termination or other conduct set out in the complaint against it constituted statutory violations. The Union's answer admits that it caused the Company to discharge Edger but denied commission of the other conduct in the complaint against it alleged as violative of the Act. It further denies that by causing Edger's discharge it had committed a statutory infraction.

Pursuant to notice, a hearing was held at Elmira, New York, on September 18, 1956, before the Trial Examiner duly designated to conduct the hearing. All the parties were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. After the hearing closed, briefs were filed by the Company and the Union which have been carefully considered. Motions made at the hearing by the Company and the Union, as to which rulings were reserved, are disposed of in accordance with the conclusions and recommendations herein.

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

#### FINDINGS OF FACT

##### I. THE COMPANY'S BUSINESS

The complaint against the Company alleges and the Company's answer admits that it manufactures glass containers at its principal plant at Elmira, New York, and that it also engages in these operations in its other plants located in California, Indiana, and Pennsylvania; that in 1955 materials valued in excess of \$1,000,000 were shipped across State lines to the Elmira plant, and that in the same period it shipped from Elmira to destinations in other States finished products valued in excess of \$1,000,000.

##### II. THE LABOR ORGANIZATIONS INVOLVED

American Flint Glass Workers' Union of North America, AFL-CIO, and its Local 135 are labor organizations admitting the Company's employees to membership. George M. Parker is admitted by the Union's answer to have been at all times material hereto the International vice president and agent of the foregoing parent labor organization.

##### III. THE ALLEGED UNFAIR LABOR PRACTICES

These facts are clear and uncontested. Robert Edger was laid off by the Company on April 10, 1956, at the request of the Union, having before then been suspended from membership in the Union for withholding certain "death benefit" or "insurance" payments required by the Union from its members as a condition for maintaining good standing therein. The Company's action was taken in the belief that its contract with the Union contained a union-shop clause which compelled Edger's layoff upon notification from the Union as to his suspension for failing to make the foregoing payments.

The General Counsel contends solely that the Union's request and the Company's consequent termination of Edger's employment were unlawful because there was

no union-security agreement in existence between them legally to warrant their conduct. It should here be emphasized that the General Counsel expressly stated at the hearing that his theory of violation in this case is limited to the foregoing contention, and that this theory is not premised upon a contention that the payments demanded by the Union and withheld by Edger did not constitute periodic dues. There was consequently no litigation in this case of the question that Edger's suspension by the Union and his subsequent termination from employment resulted unlawfully from his refusal to pay the Union other than periodic dues. There is furthermore no contention that the conduct under consideration was committed pursuant to an illegal union-security arrangement and this question also was not litigated. Thus, the determinative question is only this: Was there in existence between the Company and the Union a union-security agreement requiring employees to maintain membership in good standing in the Union as a condition of employment in accordance with the provisions of Section 8 (a) (3) of the Act? If such agreement existed, Edger's termination by the Company and the Union's request therefor were legally defensible and the complaints against the Company and the Union must be dismissed.

The narrow question thus presented compels consideration only of the evidence pertaining to the union-security agreement which the Company and the Union assert in defense to this proceeding. The Company belongs to the Glass Containers Manufacturers Institute, an association of employers which bargains with the Union on an associationwide basis with a resultant single contract derived annually from such bargaining covering all the affected employees of the employer members. The most recent contract was effective from September 1, 1955, until August 31, 1956, and is the contract which subsisted at the time when the events concerning Edger's termination occurred. The only reference in the contract which may in any way be said to relate to union security is contained in its preamble. This is the pertinent language:

This contract . . . is a union shop contract through which the Manufacturers recognize the Union as the sole collective bargaining agent for all employees . . . , in accordance with existing Federal and State statutes.

The Company and Union argue that by agreeing to establish a union shop in accordance with existing Federal statutes they have clearly provided for compulsory union membership subject to the limitations of Section 8 (a) (3) of the Act; that it was not necessary to accomplish this result by specific inclusion in the contract of all the terms of Section 8 (a) (3), but that this was effectively accomplished through incorporation of these terms by reference; and that, if there is any ambiguity in meaning, such doubt is dissipated by evidence in the record showing the existence and application of a lawful agreement consistent with the foregoing interpretation. The General Counsel's only argument, as stated orally at the beginning of the hearing, is that the Company and Union have no union-security agreement at all notwithstanding the union-shop reference in their contract. Presumably, the General Counsel's position is that this reference is so vague and uncertain as to permit no meaningful construction, and certainly not the construction asserted by the Company and the Union.

At the hearing evidence was received to clarify the meaning of the disputed provision. The 1947 company-union contract, subsisting before enactment of the Taft-Hartley amendments, stated in its preamble that

This contract, . . . is a union shop contract, . . . in accordance with the National Labor Relations Act.

The same contract also provided for the preferential hiring of members of the Union for certain positions. The first contract between the parties executed in 1948 after enactment of the Taft-Hartley amendments dropped the preferential hiring provision. The union-shop reference in the preamble of the earlier contract was also amended to state that the new contract provided for a union shop "in accordance with the National Labor Relations Act, as amended by the Labor-Management Relations Act of 1947." This precise language appeared in the preamble of each succeeding annual contract until changed to its present form, as stated above, in the 1954 contract. In addition, the 1948 contract included the following final provision:

#### RESOLUTION

Those references to Union Shop and Union Shop provisions hereby used in this Contract shall only become effective upon notice or certification from the National Labor Relations Board that the Union has complied with the provisions of Section 8 (a) (3) of the Labor-Management Relations Act of 1947.

A Board-conducted election in 1948, after execution of the foregoing contract, among all the employees employed by the Association employers, including the Company's employees, resulted in a vote in favor of a union shop, and the requirements of such arrangement then were imposed by the contracting parties upon the affected employees. According to the uncontradicted testimony of the Company's vice president, Harry J. Mullany, who from 1948 to 1953 had been manager of the Company's Elmira plant, the Company's officials and supervisors were officially instructed in 1948 by the Company's vice president in charge of labor relations as to the procedures to be applied in the hiring of employees in compliance with the law. The instruction was that pursuant to the union-shop provision of the new contract new employees subject to its coverage were required as a condition of continued employment to become members of the Union after 30 days' employment. Mullany further testified without contradiction that the Company's practice in the administration of the 1955 contract was to require membership in the Union of new employees only after 30 days' employment and that such new employees when hired were informed of this requirement. He was unaware of any instance during his tenure as vice president in charge of labor relations in which the Union sought the discharge by the Company of an employee for failure to become a member of the Union before completion of 30 days' employment.

Mullany further related that the Association negotiator had in 1948 proposed inclusion in the contract of a requirement that employees become members of the Union after 30 days' employment, but that this proposal was withdrawn in favor of the "union-shop" language in the preamble of the contract upon the insistence of the union negotiator, who maintained that this language adequately expressed the intent of the parties to establish a union-security arrangement in compliance with Taft-Hartley requirements. Mullany also testified that the same point was discussed, though not elaborately, during the annual negotiations for 2 or 3 years after 1948 but that such discussions amounted to a mere reaffirmation of the understanding between the parties that they had a union-security arrangement by which they were abiding in compliance with law. There came a time when this matter ceased to be a subject of discussion during negotiations.

The Board construes union-security provisions in collective-bargaining contracts in accordance with the intent of the parties, and where that intent is obscured by inartistic drafting and ambiguous phrasing the Board considers other evidence in the record to determine the meaning of the disputed provisions in accordance with the mutual intent of the parties.<sup>1</sup> Assuming the inartistry and ambiguity of the preamble in the 1955 company-union contract, I am satisfied from a consideration of the language therein and from the entire record that it reveals, as intended by the Company and Union, a valid union-security agreement consistent with the Act's requirements.

First, the term "union shop" as contained in the preamble must be construed as connoting agreement by the parties that membership of the covered employees in the Union is made a condition of their continued employment. I unhesitatingly give such connotation to this term in its context for this is its clearly understood meaning in labor parlance and I cannot perceive any other possible meaning which could be derived from its usage in the contract.<sup>2</sup> Next, the phrase "in accordance with existing Federal and State statutes" constitutes a clear incorporation into the contract by reference of the pertinent provisions of the Act, which in this situation would necessarily be the Section 8 (a) (3) proviso requiring grant of a 30-day grace period to employees before they are compelled to join the Union.<sup>3</sup> I accordingly construe the preamble of the 1955 company-union contract as denoting an agreement requiring the Company's employees to belong to the Union as a condition of employment

<sup>1</sup> *Snyder Engineering Corporation*, 90 NLRB 783, *Wagner Iron Works*, 104 NLRB 445

<sup>2</sup> Bulletin No 908, entitled "Union-Security Provisions in Collective Bargaining," issued by the United States Department of Labor, Bureau of Labor Statistics, at p. 10, defines "union shop" as follows "Basically, a union shop requires union membership of all employees as a condition of continued employment though not of being hired." The widespread application of the "union-shop" concept as a form of union security and labor relations is reflected in these statistics published by the Bureau of National Affairs, Inc, in a document entitled "Basic Patterns in Union Contracts," third edition, 1954: "Most frequent form of union security is the union shop, requiring all, or nearly all, employees in a unit to belong to the union. Thus, full and modified union-shop clauses constitute over four-fifths of all union-security provisions. Three years ago, they were found in 50 percent of contracts, 58 percent now."

<sup>3</sup> See *Snyder Engineering Corporation*, *supra*.

subject to the limitation that such membership is not required before completion by them of at least 30 days' employment. This is a lawful union-security agreement.

The foregoing conclusion is reinforced by the clear evidence detailed above, showing that the parties intended in 1948 to reach such agreement, that they have in all succeeding contracts continued their agreement in virtually the same form, and that they have always administered the contract in a manner consistent with their intention.

Having found that at all times material to this case there was in existence a lawful union-security agreement between the Company and the Union requiring Edger's membership in good standing in the Union as a condition of his employment, and that the Union caused and the Company effectuated his termination of employment because he failed to maintain membership in good standing in the Union, I conclude that the Company and the Union did not thereby violate Section 8 (a) (3) or 8 (b) (2) of the Act as alleged in the complaint. With respect to the remaining allegations of violations based upon alleged threats to Edger and other employees of loss of employment for failure to make the death benefit payments to the Union and consequent suspension from the Union, as these allegations rest also upon the sole contention that there was not in existence a lawful union-security agreement, they, too, must fall. I find that the 8 (a) (1) and 8 (b) (1) (A) allegations against the Company and the Union have not been sustained.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

#### CONCLUSIONS OF LAW

1. Thatcher Glass Manufacturing Company, Inc., Elmira, New York, is engaged in and at all times material herein has been engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. American Flint Glass Workers' Union of North America, AFL-CIO, and Local 135, American Flint Glass Workers' Union of North America, AFL-CIO, are labor organizations within the meaning of Section 2 (5) of the Act. George M. Parker is the agent of the foregoing parent labor organization.

3. The allegations of the complaint that the above-named Company and labor organizations have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) and (1) and Section 8 (b) (2) and (1) (A) of the Act have not been sustained.

[Recommendations omitted from publication.]

### **Pittsburgh Plate Glass Company<sup>1</sup> and International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. Case No. 5-RC-2088. May 23, 1957**

#### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Sidney Smith, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>2</sup>

<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> We find it unnecessary to determine whether or not the hearing officer properly revoked subpoenas granted the Intervenor, United Glass & Ceramic Workers of North America, AFL-CIO. The information sought under the subpoenas was to be used for the purpose of showing that the Petitioner is not a "traditional representative" of employees here involved. This case does not involve craft severance; rather it concerns employees at a new plant who have not previously been represented for collective-bargaining purposes. Accordingly, the Petitioner's status as a "traditional representative" of craft employees is not in issue. *Mock, Judson, Voehringer Company of North Carolina, Inc.*, 110 NLRB 437, at 441; *E I du Pont de Nemours and Company (Dana Plant)*, 117 NLRB 1048, foot-