

Rockwell Manufacturing Company and Charles W. Hale**Rockwell Manufacturing Company and Billy D. Million. Cases**
Nos. 5-CA-1216 and 5-CA-1227. May 11, 1959

DECISION AND ORDER

On February 10, 1959, Trial Examiner Albert P. Wheatley 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. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations 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 brief, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions.¹

1. The Trial Examiner found, and we agree, that Respondent violated Section 8(a) (1) of the Act by the following conduct: (a) Plant Manager Alfonso's interrogation of employee Hale concerning the latter's union activities, Alfonso's request that Hale engage in surveillance of union activities, and his warnings to Hale that anybody "mixed up in a union" would be discharged and that the plant would be moved if the Union organized it; (b) Supervisor Wolf's warning to employees that "they'd better leave the Union alone"; (c) Alfonso's interrogation of Million as to who was trying to organize the plant; and (d) President Kaye's threat in his speech to the employees to move the plant if the Union organized it.

2. The Trial Examiner found, and we agree, that the Respondent violated Section 8(a) (3) and (1) of the Act by its discharge of employee Million on September 17, 1957. We find no merit in the Respondent's contention that Million was only temporarily laid off because, in addition to the facts reported in the Intermediate Report, the record shows that, when Million requested a layoff slip a week or two after the discharge for purposes of unemployment insurance, he was told that he had been discharged.

¹ As the complaint alleges, and the answer admits, that Respondent annually ships goods and materials valued in excess of \$100,000 to customers located outside the State of Virginia, we agree with the Trial Examiner that it will effectuate the policies of the Act to assert jurisdiction herein.

3. The Trial Examiner found, and we agree, that the Respondent discharged employee Hale on September 19, 1957, in violation of Section 8(a) (3) and (1) of the Act. In addition to the facts contained in the Intermediate Report, the record shows that Alfonso, who discharged Hale, learned on the evening of September 17, following Million's discharge, that employees would strike on the following day and that Alfonso himself observed Hale and other employees, including Million, outside the plant during working hours on September 18. We find, accordingly, that when the Respondent discharged Hale before he had been replaced, it knew that he had not reported for work on September 18 because he was engaging in a strike.

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Rockwell Manufacturing Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in, or activities on behalf of, United Construction Workers, Division of District 50, United Mine Workers of America, or any other labor organization, by discharging employees or discriminating in regard to their hire, tenure of employment, or any term or condition of employment.

(b) Discharging employees or discriminating in regard to their hire, tenure of employment, or any term or condition of employment, because they have engaged in concerted activities for the purposes of collective bargaining or other mutual aid or protection.

(c) Interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, or to form, join, or assist labor organizations, by interrogating employees concerning self-organization or concerted activities, or by threatening employees with economic reprisals because of such activities.

(d) In any other manner interfering with, restraining, or coercing 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 other concerted activities for the purpose of collective bargaining or any other mutual aid or protection, or to refrain from any or all of 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.

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

(a) Offer to Billy D. Million and Charles W. Hale immediate and full reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed.

(b) Make whole Billy D. Million and Charles W. Hale for any loss of pay they may have suffered by reason of the discrimination against them, in the manner specified in the Intermediate Report.

(c) Preserve, and upon request, make available to the National Labor Relations Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to determine the amount of back pay due and the rights of employment under the terms of this Order.

(d) Post at its place of business in St. Paul, Virginia, copies of the notice attached hereto marked "Appendix A."² Copies of such notice, to be supplied by the National Labor Relations Board's Regional Director for the Fifth Region, shall, after being duly signed by representatives of Respondent, be posted upon receipt thereof and maintained for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by other material.

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

² 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."

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discourage membership in, or activities on behalf of, United Construction Workers, Division of District 50, United Mine Workers of America, or in or on behalf of any other labor organization, by discriminating in any manner in regard to terms or conditions of employment.

WE WILL NOT discharge any of our employees or discriminate in regard to their hire, tenure of employment, or other conditions of employment, because of membership in or activities on behalf of the above-named labor organization or because they have engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL offer to Billy D. Million and Charles W. Hale immediate and full reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed.

WE WILL make whole Billy D. Million and Charles W. Hale for any loss of earnings suffered as a result of their discharges.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to engage in, or refrain from engaging in, union or concerted activities for the purpose of collective bargaining or other mutual aid or protection.

All our employees are free to become, remain, or to refrain from becoming or remaining, members of United Construction Workers, Division of District 50, United Mine Workers of America, or any other labor organization.

ROCKWELL MANUFACTURING COMPANY,
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.

INTERMEDIATE REPORT AND RECOMMENDATIONS

ISSUES

The principal issues herein are: (1) whether Billy D. Million and Charles W. Hale were unlawfully discharged on or about September 17 and 19, 1957, respectively, and (2) whether Rockwell Manufacturing Company, herein called Respondent, unlawfully interfered with, restrained, or coerced its employees by threats and interrogations.

FACTS

At the change of shifts on Friday, September 13, 1957, a union representative (apparently a representative of the International Ladies' Garment Workers' Union, AFL-CIO) distributed a pamphlet, concerning union organization, at Respondent's garment manufacturing plant in St. Paul, Virginia. Employee Sam Phillips received such a pamphlet and gave it to Million. The following day (September 14) Million, Hale, and Harold Johnson made a futile effort to locate a representative of this union.

On Monday morning (September 16, 1957) Million and Hale contacted John Mason, field representative for United Mine Workers' of America, District 50,¹ herein called the Union or District 50. Mason talked to these employees about how to organize at Respondent's place of business and gave them some union cards. Thereafter Million, Hale, and two other employees (Frank Puckett and James Bratton) actively sought signatures to the cards.

After the visit with Mason and after taking his (Million's) wife to a doctor, Million, in accordance with the prevailing custom or practice, called Respondent's place of business and reported that he would not be working that night (September 16). That evening Million and Hale talked to the day shift employees en route from Respondent's place of business and endeavored to get signatures to the cards they (Million and Hale) had obtained from Mason.

On Tuesday morning (September 17, 1957) Respondent's general manager, Joseph Alfonso, sent for Shipping Supervisor William F. Dingus (Hale's immediate superior) and asked him about "the union rumors that were going around." Dingus told Alfonso that he had "heard something about it, that I [Dingus] thought

¹ Million, a night shift worker, was not on duty at this time. Hale, a day shift worker, had been excused.

Bill Million and Bill Hale were trying to organize." Alfonso told Dingus Respondent would "get rid of anybody that was connected with the Union" and that he (Dingus) should "tell him [Alfonso] if I [Dingus] heard anything about the union activities" and that he (Alfonso) wanted to talk to Hale. Immediately after this conversation Dingus sent Hale to Alfonso. Alfonso interrogated Hale about the union activities and when Hale said he did not know about such activities told him (Hale)—

"if the Union comes in here," he said, "we'll all lose our jobs." He said, "we don't want a union running our business," he said, "we know how to run it." He said, "you know, if anybody gets mixed up in a union, I'll have to get rid of them."

And he said, "I want to tell you what I want you to do." He said, "when you go back to work, back there," he said, "I want you to watch the people in the shipping department, and if you see anyone congregate, people congregate together, to get in with them and find out what they are talking about, to keep your eyes and ears open, and tell me, come to me, if you hear anything about the Union."

Q. Did he say anything about what would happen at the plant if the Union won?

A. He said the plant would move back North if the union tried to come in, "back where we came from," which I think was North.

On Tuesday (September 17, 1957) Million reported for work as usual (at 4 p.m.). At the break (lunch) period—around 8 p.m.—Hale, Frank Puckett and James Bratton (the day shift workers) engaged in organizing activities among Respondent's women employees as they (the women employees) ate their lunch immediately outside of Respondent's plant. Also, at this time Hale spoke to Million as he (Million) stood in a doorway and asked him how he was getting along regarding signatures to the union cards. Million answered that he did not have any cards with him and Hale then gave him some and Million went back into the plant. Later that night, supervisor of the night shift, Paul Wolf, came down stairs to where Million and others were working and addressed the employees to the effect that "they'd better leave the Union alone." Million said to Wolf that "if there's a union, I'd be one of the first to join."²

During or shortly after the break period noted above (about 8:30 p.m.) an unidentified female employee telephoned General Manager Alfonso at his home and told him the women workers had been annoyed by 3 or 4 men during their lunch break. Alfonso came to the plant (arriving there about 10 p.m.) and made an investigation but found nothing out of the ordinary at that time.

As Million was clocking out at the end of his shift on Tuesday, September 17, 1957 (at midnight) Plant Foreman John Meade told him to wait that the general manager wanted to speak to him. Million testified that Alfonso then told—

the women in the sewing department he was cutting out the sewing department that night, and wanted the women to come back in the next morning, asked them if they could come back in. And they agreed that they could.

After addressing the women, Alfonso, according to Million, called him (Million) into his (Alfonso's) office and asked—

what was going on around the plant. I told him I didn't know what he was talking about. He said, "Yes, you know what I'm talking about." I told him, no, sir, I didn't. And he asked me did I know who was behind trying to organize the plant. I told him no. And he told me he was going to have to lay me off for a week or two until he found out who was doing the organizing. And that's all he said that night.

Q. Nothing else said in that conversation? What did you do then?

A. I went home.

During the latter part of August or the first part of September 1957, Million had been transferred to the night shift (4 p.m. to midnight) at his own request in order to enable him to finish high school. Some shifting around had been made in the plant to accommodate him in this particular. After a few days Million ceased going

² Based upon the testimony of Million, Wolf did not testify herein.

to high school and Respondent learned of this fact. However, the record does not reveal when Respondent became so aware. Alfonso's testimony concerning the events at the plant on Tuesday (September 17) is far from clear. But it appears to be that Respondent had planned to reduce the number of employees and the number of working hours in the pleating department³ (the department where Million worked) and when he (Alfonso) arrived at the plant and found that the employees had not been laid off he (Alfonso) told the women workers that certain changes were being made and they should come back in the morning for details. Alfonso testified further that he asked Million about "strange persons around there" and after Million responded that he did not know anything about such matters, he (Alfonso) said to Million "Well, I think better we wait a while because we have to—we arrange the whole business, and being that you don't go to school we'll call you back in a week or so."⁴ Alfonso denied that he had any conversation with Million or Hale about the Union and denied that he was aware of any union activity at the plant prior to the receipt of the Union's letter (hereinafter referred to) on September 19. Alfonso did not deny the testimony of Dingus noted above. In the light of Dingus' testimony, the sequence of events narrated in this report, the abrupt terminations of the employment of the kingpins of the union activities within a few days of the beginning of their organizing efforts, the failure of Alfonso's testimony concerning the timing of the termination of Million to stand up under close examination, the varying positions of Respondent concerning Million (Alfonso testified that he laid off Million, Respondent's answer to the complaint asserts he voluntarily quit) and the events hereinafter set forth, the Trial Examiner credits Million's version of the events herein and rejects the denials of Alfonso noted above.

As noted above, under Million's and under Alfonso's version of the events at midnight on September 17, Million was informed that his layoff would last a week or two. Respondent has not recalled him and he has not applied to Respondent directly for reinstatement. Million testified that he did not apply because in the light of the remarks made to him at the time of the termination of his employment and the events subsequent thereto such an application would have been futile. The Trial Examiner concurs and so finds.

On Wednesday, September 18, 1957, Million picked up Hale, Frank Puckett, and James Bratton and, as he was taking them to work, told them what had happened. These four employees decided to strike to get Million's job back and to get recognition for the Union. That morning at the parking lot used by the employees these four men tried to persuade other employees to join them in striking and to join the Union. However, they were not successful in getting others to join the strike. When it came time to start work, General Manager Alfonso motioned and called to the employees to come in and go to work. Everyone did, except Million, Hale, Puckett, and Bratton. Shortly thereafter Herman D. Adkins, regional director for District 50, went to Respondent's plant office and asked to see General Manager Alfonso. Adkins was told Alfonso was not in. Adkins then tried to telephone Alfonso but got the same answer. Adkins then (about 9 a.m.) sent a telegram addressed to Alfonso and reading as follows:

I have tried to contact you by telephone and in person as of this day, have been unable to do so. Some members of our Union that work in your plant have been laid off and I understand some other people have been talked to concerning the interest in our Union. We believe this is an unfair labor practice. We intend this for an official notice that we are interested in the employees of your St. Paul plant and request a meeting with you immediately. An answer from you will be appreciated to the address below.

Later that day Adkins sent Alfonso a second telegram. This one reading:

In regards to my telegram to you this morning and my being unable to reach you by telephone, this is to officially request recognition of our Union for your employees at your St. Paul Virginia plant. An answer from you will be appreciated.

Still later that day Adkins sent Alfonso a letter requesting recognition and negotiations. This letter was received by Respondent in due course of mail on September 19, 1957. As noted above, Alfonso denied being aware of union activities prior to receipt of this letter.

³ The record herein does not reveal the details of any such plans.

⁴ Million denied that Alfonso said anything about school.

On Thursday, September 19, 1957, Hale, Puckett, and Bratton reported for work but as they were about to punch the time clock they were told by General Manager Alfonso "wait a minute, boys. Before you clock in, I want to talk to you." Alfonso then sent for Shipping Supervisor Dingus (Hale's immediate supervisor) and Plant Foreman John Meade (immediate supervisor of Puckett and Bratton) and asked them if Hale, Puckett, or Bratton had permission to be off on Wednesday (September 18, 1957). Dingus and Meade answered in the negative and Alfonso then said to Hale, Puckett, and Bratton "well boys, I don't know where you were yesterday, you wasn't here for work, and I made different arrangements about your jobs."⁵ These employees then shrugged their shoulders and left Respondent's place of business. They have not been reinstated.

On Friday, September 20, 1957, Respondent assembled its employees and through its president, Manny Kaye, advised them against becoming union members. Kaye read a prepared speech and there is disputed testimony as to whether he went beyond the written text (which is not violative of the Act) and added that if the Union came in Respondent would move its manufacturing operations elsewhere. Shipping Supervisor Dingus and cutting department employee Dorothy Hughes testified the additional statement was made. General Manager Alfonso testified

Q. Did he [Manny Kaye] say anything except what was written on that paper?

A. Right. He was reading from it.

Kaye did not testify at the hearing herein and no other witnesses gave testimony concerning Kaye's remarks. The Trial Examiner credits the testimony of Dingus and Hughes and finds that Kaye threatened to move Respondent's manufacturing operations if its employees became union members.

Conclusions

On the basis of the facts found above there is no doubt that in terminating the employment of Million, Respondent was motivated by antiunion considerations. Hale, Puckett, and Bratton by concertedly ceasing to work (on Wednesday, September 18, 1957) in protest against the termination of Million's employment were engaging in an activity protected by the National Labor Relations Act, as amended, herein called the Act, and the discharge of Hale for engaging in such activities and because of Respondent's antiunion considerations was clearly a violation of the Act. The discharges involved herein (the discharges of Million and Hale) were violative of Section 8(a)(1) and (3) of the Act, in that they interfered with the exercise of the rights guaranteed in Section 7 of the Act and discouraged membership in the Union.

Also, on the basis of the facts found above there is no doubt that Respondent interfered with, restrained, or coerced its employees by threats and interrogations and thereby violated Section 8(a)(1) of the Act.

ULTIMATE FINDINGS AND CONCLUSIONS

In summary, the Trial Examiner finds and concludes:

1. The evidence adduced in these proceedings satisfies the Board's requirements for the assertion of jurisdiction herein.⁶
2. United Construction Workers, Division of District 50, United Mine Workers of America is a labor organization within the meaning of Section 2(5) of the Act.
3. The evidence adduced establishes that Respondent interfered with, restrained, or coerced employees in the exercise of rights guaranteed in the Act and thereby violated section 8(a)(1) of the Act.
4. The evidence adduced establishes that Respondent discriminated against Billy D. Million and Charles W. Hale and thereby violated Section 8(a)(1) and (3) of the Act.
5. The aforesaid activities are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

⁵No other arrangements had been made for the handling of Hale's job. This was Alfonso's way of expressing to the employees that they were discharged—Respondent's answer to the contrary notwithstanding.

⁶Respondent engages in St. Paul, Virginia, in the manufacture, sale, and distribution of slips, sheets, and pillow cases and related items, and annually causes large quantities of materials to be transported in interstate commerce.