

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 Labor Management Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in International Ladies' Garment Workers' Union, AFL-CIO, or in any other labor organization of our employees, by discriminating in regard to their hire or tenure of employment, or any term or condition of their employment.

WE WILL NOT coercively, or otherwise unlawfully, interrogate our employees as to their union activities or attendance at union meetings.

WE WILL NOT engage in surveillance of union meetings.

WE WILL NOT threaten our employees with reprisals, including loss of employment and a shutdown of the plant, if the above-named Union, or any other, succeeds in organizing the employees.

WE WILL NOT in any other 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 the above-named Union, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

G & S MANUFACTURING, 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.

Conso Fastener Corporation and Textile Workers Union of America, AFL-CIO

Conso Fastener Corporation and Minerva den Haese. Cases Nos. 4-CA-1492 and 4-CA-1482. June 9, 1959

SUPPLEMENTAL DECISION AND ORDER

On April 22, 1958, the Board issued its Decision and Order (120 NLRB 532) in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in unfair labor practices in violation of Section 8(a) (1) and (3) of the Act and that the Respondent did not violate Section 8(a) (5) of the Act, as alleged in the complaint. Thereafter, on November 21, 1958, the Board issued an order reopening record and remanding proceeding in which it directed that a further hearing be held before Trial Examiner C. W. Whittemore "for the limited purpose of permitting the Respondent to cross-examine only those witnesses for the General Counsel whose pre-trial statements were not made available to the Respondent by the General Counsel at the original hearing," and that the Trial Examiner prepare and serve a Supplemental Intermediate Report with respect to the alleged violations of Section 8(a) (1) and (3) of the Act.

On March 25, 1959, the Trial Examiner issued his Supplemental Intermediate Report, recommending that the testimony of witness J. J. Madden at the original hearing be stricken, that all findings based upon Madden's testimony be vacated, and that in all other respects the Board's Decision and Order of April 22, 1958, shall stand. Thereafter, the Respondent filed exceptions to the Supplemental Intermediate Report, a copy of which is attached hereto, and a supporting brief.

The Board¹ has reviewed the rulings made by the Trial Examiner at the reopened hearing and finds that no prejudicial error was committed.² The rulings are hereby affirmed. The Board has considered the Supplemental Intermediate Report, the exceptions and brief, and the entire record in this proceeding,³ and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the modifications noted below.

We agree with the Trial Examiner's ruling that the testimony given at the original hearing by J. J. Madden, who was not available at the reopened hearing, be stricken.⁴ Accordingly, we hereby strike the Board's finding that the Respondent violated the Act "by Erhardt's threats of reprisal and promises of benefit to Madden." However, we shall delete from our cease and desist order only the language relating to promises of benefit, as the finding of unlawful threats of reprisal by the Respondent is based upon the testimony of several witnesses other than Madden.

The Board amended the Decision and Order of April 22, 1958, as follows:

1. By deleting from paragraph 1(c) of the Order the words "or promising of benefits if they withdrew from such activities."

¹ 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].

² Although the Board directed that, at the reopened hearing, the Respondent be permitted to cross-examine those witnesses whose affidavits in the possession of the General Counsel were not made available to the Respondent by the General Counsel at the original hearing, the Trial Examiner did not permit the Respondent to cross-examine witness Den Haese. However, we agree with the Trial Examiner's ruling, as it is clear from the record that a copy of Den Haese's affidavit, which was furnished to the Respondent at the original hearing by the Union's representative, was an identical copy of Den Haese's affidavit in the possession of the General Counsel and that the Respondent had an opportunity to cross-examine Den Haese fully at the original hearing with respect to the affidavit.

In any event, the matter on which the Respondent sought to cross-examine Den Haese, as specified in its offer of proof, was irrelevant to the question then at issue, which was whether the Respondent discharged her in violation of Section 8(a)(3) of the Act.

³ The Respondent's request for oral argument is hereby denied as in our opinion the entire record, the exceptions, and the brief adequately present the issues and positions of the parties.

⁴ We also agree with the Trial Examiner's findings with regard to witnesses Cooper and Puchalski.

2. By deleting from the second paragraph of the Notice to All Employees the words "or promise them benefits if they withdraw therefrom."

SUPPLEMENTAL INTERMEDIATE ORDER

STATEMENT OF THE CASE

On September 27, 1957, the duly designated Trial Examiner issued his Intermediate Report in the above-entitled proceeding, and on April 22, 1958, the National Labor Relations Board issued its Decision and Order. On November 21, 1958, the Board issued an order reopening record and remanding proceeding directing, in part, that a further hearing be held before the same Trial Examiner "for the limited purpose of permitting the Respondent to cross-examine only those witnesses for the General Counsel whose pre-trial statements were not made available to the Respondent by the General Counsel at the original hearing!"

Pursuant to notice, a hearing was held before the Trial Examiner at Philadelphia, Pennsylvania, on January 30, 1959. A brief has been received from counsel for the Respondent.

At the hearing ruling was reserved upon two motions by the Respondent: (1) to strike the entire testimony given by witness John J. Madden at the original hearing; and (2) to recommend that the Board vacate its Order of April 22, 1958. Disposition of said motions is made by the findings and recommendations appearing below.

Upon the record as a whole, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

At the reopened hearing General Counsel's opening statement was unchallenged by counsel for the Respondent as to the following matters: (1) Pursuant to the Board Order the latter counsel was provided with the affidavits of 15 individuals who had been witnesses at the original hearing; and (2) subsequently General Counsel had received from the Respondent a request that the following witnesses be present at the resumed hearing for further cross-examination: Minerva den Haese, James Coyle, Helen Puchalski,¹ John Madden, Dora Cooper, and Thelma Remster.

At the reopened hearing, however, counsel for the Respondent indicated a desire to call only John Madden, Den Haese, Cooper, and Puchalski.

John Madden

Also at the outset of the reopened hearing General Counsel stated that "we have sought to locate Mr. Madden but without success." Counsel for the Respondent thereupon said: "It was my intention to cross-examine Mr. Madden, to continue his cross-examination, using the material which appeared in his statement as a starting place for examination," and moved that "his entire testimony be stricken." As noted heretofore, ruling upon this motion was reserved at that time. Upon consideration, and having reviewed the Intermediate Report as adopted by the Board, the Trial Examiner now grants the motion to strike, and in a later section herein will make certain recommendations as to findings based upon Madden's testimony at the original hearing.

Den Haese

This witness was present at the reopened hearing, as requested by counsel for the Respondent, and was called by him. The Trial Examiner interposed his own objection, however, and declined to permit further cross-examination of her. The reasons for this ruling are made clear in the record. In substance, they are as follows: (1) When asked by the Trial Examiner if he would concede that the pre-trial statements of this witness turned over to him in response to the Board's order were identical in text to those which had been made available to him by the counsel for the Union at the original hearing, counsel replied: "I do not concede it but I'm not challenging it"; (2) at the original hearing on July 22, 1957, counsel for the Charging Union stated: "Representing both Mrs. Den Haese and Mr. Coyle personally, I have obtained copies of all these statements from General Counsel, which I would like to state for the record I will make available to Mr. Berliner (counsel for the Respondent) any time he would like to look at them"; and (3) on July 30,

¹The spelling of this witness' last name is as it appears in the transcript of the original hearing.

1957, Den Haese was fully cross-examined on the documents provided by counsel for the Union, which were marked for identification but not offered in evidence as Respondent's Exhibits Nos. 16-A and 16-B.

The Trial Examiner's ruling, in substance, was as follows:

Well, the purport of your argument, as I recall it, was you've been deprived of the opportunity of having these affidavits for cross examination. Now, the facts are so far as Den Haese was concerned you were not deprived of it. You had access to it. The record clearly shows that she was cross examined on that. Now, whatever you may have argued at that time or whatever the Board may have understood from your argument, the facts are in the record. You did have available that document, she was cross examined on the basis of it. Now, at a time two years later to call this witness and put her through further cross examination I consider to be unfair to the witness.

Counsel thereupon made the following oral offer of proof:

. . . my purpose in continuing the cross examination of Miss Den Haese was to demonstrate that prior to October 29, 1956, as of which date she was deemed to have had her job unlawfully withheld from her, she was offered another job and declined to accept another job. . . .²

The Trial Examiner reaffirmed his earlier ruling.

Dora Cooper

As to this witness counsel for the Respondent merely questioned her as to the circumstances of her being interviewed by a Board agent before signing the affidavit and then offered in evidence a single paragraph therefrom, as follows:

I went to the meeting of the 2nd floor employees where Earhart (Erhardt) told us about giving us a paid holiday on Labor Day. He told us that he didn't think in a free country that we had to sign or carry cards.

The Trial Examiner fails to discern, nor does counsel for the Respondent in his brief specifically urge, that the foregoing quotation from the witness' affidavit contradicts or is inconsistent with her original testimony. The Trial Examiner is not aware of any rule which requires that a witness be found incredible merely because her oral sworn testimony, at a hearing, is somewhat more detailed than a preliminary statement made by her on another occasion.

Helen Puchalski

As to this witness, counsel for the Respondent questioned her as to two specific items. She conceded that in her testimony at the original hearing, she quoted Erhardt as saying, "These people are promising you paid holidays and things like that," but that her affidavit contained no such quotation. For the same reason as noted in the case of Cooper, above, the Trial Examiner does not consider that Puchalski's testimony at the original hearing lost its credibility value merely because her prehearing statement was to this extent less detailed. In any event, the point is immaterial. No reference to the remark quoted above as an unfair labor practice is made in the Intermediate Report.

As to the other point, counsel for the Respondent pointed to the following quotation from her affidavit: "Erhardt said, 'If the union don't get in, I won't want you people.'" On the occasion of her original testimony, the same witness quoted Erhardt as saying, "You know if the union gets in, I won't want you people."

Concerning this latter point, the Intermediate Report shows that the finding of this coercive statement on the part of Erhardt was based upon not only Puchalski's testimony, but that of others also present, and that Erhardt denied none of the specific statements attributed to him. It is also noted in that report (footnote 2) that Den Haese also used the negative in quoting Erhardt, but the Trial Examiner found "Whether that provision was stated in the affirmative or negative, the threat would have meaning, and in either event Erhardt's testimony contains no specific denial." Whether Puchalski failed to understand Erhardt or to recollect her understanding with grammatical precision is not determinative, in the opinion of the Trial Examiner, of this witness' credibility. And in any event, as noted, the finding in the Intermediate Report does not rest upon her testimony alone.

[Recommendations omitted from publication.]

² The Trial Examiner here suggests that this matter becomes relevant only at a time of compliance with the Board's Order, and in determining the amount of back pay due.