Bee Gee Window Co. and Twin Tilt Window Co. *and* Ronald Watts

International Hod Carriers', Building and Common Laborers' Union of America, Laborers District Council of Western Pennsylvania and Local 1058, AFL-CIO *and* Ronald Watts.
Cases Nos. 6-CA-1819 and 6-CB-643. July 20, 1960

DECISION AND ORDER

On March 17, 1960, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceedings, finding that the Respondents had engaged in and were engaging in unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Respondent Union has filed exceptions to the Intermediate Report and a brief in support of the exceptions.

The Board [1] has reviewed the rulings of the Trial Examiner made at the hearing and, except with respect to the motion to dismiss the complaint, finds no prejudicial error was committed. The rulings are hereby affirmed except as to the aforesaid motion. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and finds merit in certain of the Respondent Union's exceptions. Accordingly, the Board adopts the findings, conclusions, and recommendations of the Trial Examiner, only to the extent consistent with the following:

On January 23, 1959, the Respondent Union and the Respondent Company entered into a collective-bargaining agreement covering the latter's employees. The contract contained a union-security clause whose legality, apart from the circumstances connected with the execution of the contract, is not challenged. At the time the agreement was made the Union represented, as found by the Trial Examiner, a coerced majority of employees. The Charging Party filed unfair labor practice charges against the Union on August 4, 1959, and against the Company on August 14, 1959, in both cases more than 6 months after the date of execution of the contract.

The General Counsel contended that the enforcement and maintenance of the contract, but not its execution, were unlawful. At the hearing the Respondent moved to dismiss the complaint alleging that Section 10(b) of the Act required such action.[2] The Trial Examiner

[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 [Members Rodgers, Bean, and Fanning].

[2] In relevant part Section 10(b) provides:

> . . . no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board . . . .

denied the motion. Since the issuance of the Intermediate Report, the Supreme Court has held in a case substantially identical with the present one that, where a contract is valid on its face, the enforcement and maintenance of such contract cannot be found unlawful because of circumstances connected with its execution when Section 10(b) precludes a finding that the execution was unlawful.[3] In the present case, the General Counsel has conceded that because of the late filing of the unfair labor practice charges the Board cannot find that the execution of the contract was illegal. In accord with the Supreme Court's holding in the *Bryan* case, we shall dismiss the complaint.

[The Board dismissed the complaint.]

[3] *Local Lodge 1424, International Association of Machinists, AFL–CIO* v. *N.L.R.B.* (*Bryan Manufacturing Company*), 362 U.S. 411.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Charges having been filed and served in each of the above-entitled cases; an order consolidating the cases, a consolidated complaint, and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board; and answers having been filed by the above-named Respondents, a hearing involving allegations of unfair labor practices in violation of Section 8(a)(1), (2), and (3) and 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, was held in Pittsburgh, Pennsylvania, on February 8, 1960, before the duly designated Trial Examiner.

The parties were represented by counsel. General Counsel argued orally and filed a proposed recommended order. A brief has been belatedly received from the Union.

Motions to dismiss upon which ruling was reserved at the conclusion of the hearing are disposed of by the following findings, conclusions, and recommendations.

Upon the record thus made, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT COMPANIES

Bee Gee Window Co. and Twin Tilt Window Co. are Pennsylvania corporations, are jointly owned, operated, and controlled, and are located in Pittsburgh, Pennsylvania. They are engaged at the same premises in the manufacture of windows. Annually they receive materials, for use in such manufacture at the Pittsburgh plant, valued at more than $50,000 from points outside Pennsylvania, and annually ship outside the State products valued at more than $50,000.

The parties concede, and it is found, that the Respondent Companies are engaged in commerce within the meaning of the Act.

II. THE RESPONDENT LABOR ORGANIZATIONS

International Hod Carriers', Building and Common Laborers' Union of America, Laborers District Council of Western Pennsylvania and Local 1058, AFL–CIO, are labor organizations within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and major issues*

The issues arise from the stipulated fact that on January 23, 1959, the Respondent Companies recognized, and entered into an exclusive recognition agreement with, the Respondent Unions. General Counsel contends, and the Respondents deny, that the execution and maintenance of this agreement were in violation of the several subsections of the Act heretofore cited. In substance, General Counsel urges his

claim of unfair labor practices upon the grounds that at the time the contract was entered into: (1) the few employees then on the payroll did not constitute "a representative complement of employees"; (2) the employees had been coerced into authorizing the Unions to represent them; and (3) the Respondent Companies had rendered unlawful assistance and support to the Respondent Unions.

B. *The relevant facts*

The following facts are established by undisputed evidence.

Theodore Engleman is the one official of the Respondent Companies here involved in specific and material acts.[1]

Engleman began hiring for his new enterprise of windowmaking on December 17 or 18, 1958. At that time he hired Charles Strauser to be the superintendent of the operations and Ralph Alexander and Irving Losman as employees. About January 21, 1959, he hired two more: Joseph Wuschunowski and John Buczkwoski. These five individuals constituted the entire working force at the time the contract was entered into on January 23, 1959. By March 27 and April 30, 1959, there were, respectively, 33 and 37 employees on the roll.

For some years before Engleman had purchased these two concerns—Bee Gee and Twin Tilt, which had previously been located in Ohio—he had been operating a business known as the Adelman Lumber Company and had had a collective-bargaining agreement with the Respondent Unions covering Adelman's employees. When Thomas Pecora, business agent of Local 1058, learned of Engleman's plans to take over the two other companies in the late fall of 1958, he approached Engleman and told him that since his union had a contract with his Adelman operations he would expect that "any company he would bring here in the same building . . . would have to be [employ] Union help. . . ." [2]

Engleman in fact did move his windowmaking companies and equipment to the upper floors of a building where his Adelman enterprise was already operating on lower floors.

Before Engleman hired employees for the windowmaking project, Pecora gave him union authorization cards, told him "we would force him to (put) union men on in this plant," and, as to the cards, "I would expect to have them signed, have the employees sign them that he would hire."

Although, according to Pecora, Engleman "objected to it," the latter nevertheless made signing of the cards a condition of employment when hiring employees Alexander and Losman in December, and Wuschunowski and Buczkowski in January. Engleman also asked Strauser to sign a card and he did so, although employed to be the superintendent and placed on salary. Both Wuschunowski and Buczkowski were told when hired by Engleman that they must join the Respondent Unions in order to work there. Shortly after Alexander went to work Engleman called him into the office and told the employee he "wanted" him to sign a card, and Alexander complied.

According to Pecora, on January 23 after he "had made the Company get the signatures" to five cards, including that of the superintendent, the contract was signed. After the contract was executed and through appointed stewards the Unions obtained "authorizations from every man that was hired" by the Respondent Companies. The same cards included signatures authorizing deductions of initiation fees and dues.

As noted earlier, the contracting parties to this exclusive recognition agreement are, for the Companies, the Bee Gee Window Co and Twin Tilt Window Co., and for the Respondent Unions "The Laborers' District Council of Western Pennsylvania on and in behalf of Local 1058 affiliated with the I.H.C.B. & C L.U. of America." It requires membership in the Unions as a condition of employment, and provides for quarterly deductions, in advance and upon written authorization of employees, of union initiation fees and monthly dues and the immediate remission of such moneys to the Unions.

Until on or about August 14, 1959, when the original charges in this case were filed, initiation fees and dues were deducted from employees' pay and turned over to the Respondent Unions.

C. *Conclusions*

The above facts amply support the allegations of the complaint. Extensive discussion is needless. Engleman was not a witness and offered no explanation for

[1] Except that the contract bears the signature of one "Norman Wolff, Sec."

[2] The quotations are from Pecora's testimony.

his action, coercive in nature, of requiring his first four employees to sign union cards. Pecora candidly admitted that he gave Engleman cards to have signed and told him that he would "force" him to hire only union men. Employees thus had no choice, if they wished to work at this new plant, in selecting their own bargaining agent, and joining the Unions was made a condition of their employment. This hiring conduct on the part of Engleman constituted: (1) discrimination in terms of employment to encourage membership in a labor organization; (2) aid and assistance to a labor organization; and (3) interference, restraint, and coercion of employees in the exercise of rights guaranteed by the Act. And the Respondent Unions, by Pecora's admitted conduct, caused the Respondent Companies to violate Section 8(a)(3) of the Act and also restrained and coerced employees in the exercise of their legal rights.

Any agreement executed on the basis of such coerced and assisted representation would, of course, be unlawful.[3] And Pecora's admitted conduct, in forcing Engleman to obtain card authorizations *before* signing the contract in question, clearly deprives of any possible merit the claim that the employees of the Respondent Companies were already covered by any contract with Adelman. Since in this case the execution itself of the contract was unlawful, because of prior conduct by the parties, and although the evidence fully warrants the added conclusion, it appears unnecessary to base its illegality also upon subsequent events—the hiring of more employees with the resultant situation of the Union not having been, at the time the contract was entered into, an agent of "a representative complement of employees."

Having been unlawful from the moment of its execution, the contract itself became an instrument of additional coercion upon employees thereafter hired, by virtue of its requirement that they join the Unions as a condition of employment.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents set forth in section III, above, occurring in connection with the operations of the Respondent Companies 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 the free flow of commerce.

V. THE REMEDY

Having found that the Respondents have engaged in unfair labor practices the Trial Examiner will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the contract of January 23, 1959, is an unlawful agreement. It will be recommended that it be set aside[4] and that the Respondent Companies withdraw and withhold all recognition of the Respondent Unions, unless and until the latter shall have demonstrated exclusive representative majority status pursuant to a Board-conducted election. It will also be recommended, in view of the joint coercive conduct on the part of the Respondents in forcing employees to join the Unions, that the Respondents jointly and severally refund to all present and former employees all dues, initiation fees, and other moneys unlawfully exacted from them.[5]

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. Bee Gee Window Co. and Twin Tilt Window Co. are a single employer within the meaning of Section 2(2) of the Act.
2. International Hod Carriers', Building and Common Laborers' Union of America, Laborers District Council of Western Pennsylvania and Local 1058, AFL–CIO, are labor organizations within the meaning of Section 2(5) of the Act.
3. By their conduct described above in section III, the Respondent Companies have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1), (2), and (3) of the Act.

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[3] See *A Custcn, Inc*, 122 NLRB 1242; *N.L.R.B* v *Link-Belt Company*, 311 U.S. 584.

[4] This recommendation will not require the employers to vary the wages, hours, and other substantive provisions granted under this agreement.

[5] See *Harold Hibbard, et al., d/b/a Hibbard Dowel Co.*, 113 NLRB 28.

4. By their conduct described above in section III, the Respondent Unions have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.
5. 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.]

Liberty Coach Company, Inc. *and* Millmen Local 2768, United Brotherhood of Carpenters & Joiners of America, AFL-CIO.
Case No. 10-CA-4229. July 20, 1960

DECISION AND ORDER

On January 8, 1960, Trial Examiner C. W. Whittemore 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 and a supporting brief, a request for oral argument, and a motion to dismiss or in the alternative to reopen the record before an unbiased Trial Examiner.

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 Fanning].

The Board has reviewed the rulings of 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 Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner,[1] with the following corrections, additions, and modifications.

1. *The Respondent's union hostility:* We agree with the Trial Examiner that, in precipitately closing its plant and laying off its employees on or about July 25, 1959, immediately after a majority of employees came to work wearing union buttons for the first time, the

[1] We find without merit the Respondent's allegations of bias and prejudice on the part of the Trial Examiner. We are satisfied, on the basis of our scrutiny of the entire record, that he conducted the hearing fairly, that his credibility findings are not clearly erroneous, and that most of his factual findings, as well as his ultimate conclusions, are supported by the record. See *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F. 2d 362 (C.A. 1); *Sealtest Southern Dairies*, 126 NLRB 1223; *Lewisville Flooring Company*, 108 NLRB 1442, 1445; *The Raser Tanning Co.* v. *N L R.B.*, 276 F. 2d 80 (C.A. 6), enfg. 122 NLRB 640, a proceeding heard by the same Trial Examiner. The Respondent's motion to dismiss and its alternative motion to reopen the record are, therefore, hereby denied. Its request for oral argument is also denied because the record and the Respondent's exceptions and brief, in our opinion, adequately set forth the issues and the positions of the parties.