

**Harptone Manufacturing Corporation and Walter Maliauski.**

*Cases Nos. 22-CA-487 and 22-CA-505. July 22, 1960*

## DECISION AND ORDER

On March 17, 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 to the Intermediate Report and a brief in support thereof.

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 Rodgers and Jenkins].

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 has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations, as modified herein.<sup>1</sup>

## ORDER

Upon the entire record in these cases, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

The Respondent, Harptone Manufacturing Corporation, Newark, New Jersey, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in Luggage Workers Union, Local 62, International Leather Goods, Plastic & Novelty Workers Union, AFL-CIO, or in any other labor organization, by discharging employees or otherwise discriminating in regard to hire or tenure of employment or any term or condition of employment.

(b) Discharging or otherwise discriminating against employees because they have filed charges or given testimony under the Act.

(c) Coercively interrogating any employee concerning his union affiliation, activity, or sympathy, or making threats of economic reprisal to encourage or discourage union membership or activity.

<sup>1</sup> Since Maliauski was unlawfully discharged the first time on August 28, 1959, his seniority and other rights and privileges should be determined as of that date.

Maliauski should be made whole for the first unlawful discharge from August 28, 1959, to September 3, 1959, the latter being the date Maliauski was first offered reinstatement. Maliauski should also be made whole for the second unlawful discharge from the date of his discharge, September 25, 1959, to the date of offer of reinstatement.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form 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 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Offer to Walter Maliauski immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him, in the manner set forth in the section of the Intermediate Report entitled "The Remedy," as modified herein.

(b) Upon request, make available to the Board or its agents, for examination and copying, all records necessary in analyzing the amount of backpay due and the right of reinstatement required by this Order.

(c) Post at its Newark, New Jersey, plant, copies of notice attached hereto marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by the Respondent or its representative, be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Twenty-second Region, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

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<sup>2</sup>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

### 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 you that:

**WE WILL NOT** encourage membership in Luggage Workers Union, Local 62, International Leather Goods, Plastic & Novelty



Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENT

Harptone Manufacturing Corporation is a New York corporation maintaining its principal office and place of business in Newark, New Jersey, where it is engaged in the manufacture, sale, and distribution of musical instrument cases and chests.

During the year ending June 30, 1959, the Respondent purchased and shipped to its plant from points outside the State of New Jersey materials valued at more than \$100,000, and during the same period shipped from its plant to points outside the State products valued at more than \$275,000.

The Respondent is engaged in commerce within the meaning of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

Luggage Workers Union, Local 62, International Leather Goods, Plastic & Novelty Workers Union, AFL-CIO, is a labor organization admitting to membership employees of the Respondent.

### III. THE UNFAIR LABOR PRACTICES

#### A. *Setting and major issues*

The issues of this proceeding relate only to the clear fact that employee Walter Maliauski was twice discharged by the Respondent in August and September 1959. General Counsel contends that he was fired on the first occasion because he would not join the Luggage Workers Union and on the second occasion because he had filed a charge with the Board concerning his first dismissal. The Respondent by its answer and witnesses claims a considerable number of varied reasons for the latter dismissal while admitting, in effect, the alleged motive for the first.

#### B. *The facts*<sup>1</sup>

Maliauski was hired by the Respondent first in mid-July 1959, being employed by Morris Brooks, president of the firm. He operated woodworking machines and, according to Brooks' own testimony, was a "satisfactory" employee during the "trial period" of the first 30 days.

Maliauski was first fired on August 28 because he declined to join, as Brooks insisted he must in order to retain his employment, the Luggage Workers Union, with which the Respondent had a contract.

Although that document is not in evidence, it appears that the contract at that time contained a union-shop clause, requiring membership as a condition of continued employment after 30 days.

Upon being discharged, Maliauski filed a charge relating to it with the Regional Office of the Board. Investigation revealed that the Union had not been in compliance within the preceding 12 months with Section 9(f), (g), and (h) of the Act, a fact conceded by the Respondent at the hearing. Apparently convinced that this failure to comply rendered the union-shop clause unenforceable, the Respondent called Maliauski back to work on September 4, 1959, and a new contract was entered into, which also contained a union-shop provision. It is assumed that in the meantime the Union came into compliance with the above-noted provisions of the Act. Maliauski, however, was recalled as a *new* employee, thereby being deprived of the seniority rightfully earned during his approximately 6 weeks of previous employment.

When reporting back to work the employee was told by Phillip Hartman, general foreman, that "the Labor Board was down here for about 3 days," that a new contract had been signed, and that he would be required to join it after 30 days. The employee said he understood, and would comply. The same day Brooks approached the employee, told him he must join the Union after 30 days, and accused him of causing "us a lot of trouble with the Labor Board" since there "were

<sup>1</sup> The findings in this section are based mainly upon the credible testimony of Maliauski, a good part of which is undisputed. Where inconsistent with or in contradiction to the employee's testimony, versions given by the Respondent's witnesses are not credited. As the record shows, much of their testimony was mutually contradictory, in some parts almost incoherent, and in conflict with inherent probabilities.

investigators down there about 3 days in a row." He further suggested that Maliauski might "intend" to quit, and if he did so he would give him a good recommendation.

Upon receiving his first pay after reinstatement, Maliauski discovered that he had not been paid for his overtime work. He took up the question of shortage with Vice President Norman Hartman. The latter, after looking into the matter, angrily told Maliauski, in effect, that since he had not yet joined the Union, and had no individual contract with the Company, "we don't have to pay you." Hartman further declared that having been an army officer he knew "how to handle guys" like Maliauski. Hartman continued to berate the employee until the latter asked if he was trying to "get me in a situation here where you would have something on me so you can fire me." Hartman replied, "Oh, no, we are not going to fire you this time. This time we are going to make you quit. We have ways to make you quit."

On Saturday morning, September 19, Maliauski was one of the few employees working overtime under Foreman Landesman. During the morning, after an argument with the foreman, employee DeFronzo became angry and declared he was going to quit. Maliauski followed DeFronzo to the timeclock, urging him to calm down and work the day out. While trying to persuade him to stay, Maliauski was approached by General Foreman Phillip Hartman who demanded to know what was going on. Maliauski asked Hartman if he could speak to DeFronzo for a few minutes, but Hartman became angry and demanded:

Who do you think you are? Do you want to run this shop? Because you made a complaint to the Labor Board you are still carrying a chip on your shoulder.

Maliauski again tried to get permission to continue talking with DeFronzo, but Hartman continued "yelling." Finally Maliauski went back to his machine, declaring: "You'll get yours."

Later that day, or on the following Monday, Maliauski was called to Brooks' office. Brooks told him that he was giving the bookkeeper a "hard time," apparently referring to the employee's insistence upon receiving pay which Hartman, as a witness, admitted was owing him "on several occasions." Brooks then berated him for going to the Labor Board, and declared that he "must represent somebody" or "you wouldn't go through all this trouble reporting this matter to the Labor Board." Maliauski declined to argue, asked to go back to his work, and did so.

On September 25, several days later, Brooks again called him into the office and said, "We are going to let you go." Maliauski asked why. Brooks replied:

We have a new contract and everything is perfectly legal. And within 3 weeks if we are not satisfied with your work we could let you go. This time, we are letting you go and there is nothing you could do about it to the Labor Board.

Maliauski asked Brooks what the real reason was. Brooks replied that his work was unsatisfactory and added, "Now we are even." Brooks gave him a check already made out, and the employee left the plant.

### C. Conclusions

The facts above amply establish a *prima facie* case sustaining General Counsel's allegations.

Both the answer and the testimony of the Respondent in support of its denial of the complaint's allegations as well as of its claimed affirmative reasons for discharging Maliauski on each of the two occasions are so replete with self-contradictions as to deprive them of persuasive probative weight.

As to the first discharge, on August 28, the answer contains this statement:

[Maliauski] was told that he could not work until he joined the Luggage Workers Union. He thereupon insisted that he was being discharged. This is refuted by the fact that we reinstated him upon his agreeing to join the Union.

The same answer claims that the complaint's allegation that Maliauski was queried by the Respondent's agents as to his membership in a labor organization—

is incorrect as we have no interest in whether or not he does or does not belong to any particular Union. All we are interested in is that he join the Union after thirty days. . . .

As a witness, Brooks said that upon discharging Maliauski on the second occasion—

My exact words to him was that my foreman had complained that he was not satisfied with his work, and I also have seen that he wasted a lot of time. "I'm sorry," I said, "before we are [were] forced to keep you because of your

belonging to the union, I'm within my rights to let you go within the thirty-day trial period."

Elsewhere in his testimony Brooks said that between September 19 and 26 "I found out that Mr. Joe Landesman was definitely not satisfied with his work, see."

Yet his previous testimony was to the effect that from the time of his hiring, in mid-July, until first fired on August 28, Maliauski was a satisfactory employee. In proffering his many and extravagant reasons why the employee was "unsatisfactory," Brooks said on direct examination:

1. "He was careless in his type of work." (On cross-examination he could cite no instance of carelessness.)

2. "His foreman complained to me he had damaged gauges." (On cross-examination he admitted that he did not learn of damaged gauges until *after* the final discharge.)

3. "Whenever he got paid, he immediately stopped in the middle of his work, started checking his pay. . . ." (Clearly a reasonable act, since another management witness admitted that he was underpaid "on several occasions.")

The Trial Examiner concludes and finds that: (1) There is no merit to the Respondent's claims as to the dismissals of Maliauski; (2) the employee was discriminatorily discharged on August 28, 1959, to encourage membership in the Union; (3) he was again discharged on September 25, 1959, because he had filed a charge with the Board; and (4) by said discharges, by management's voiced insistence that he join the Union before the August 28 discharge, by its threats to cause him to quit upon his return to work, and by rehiring him on September 4, 1959, as a new employee deprived of his seniority and other rights and privileges, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by the Act.<sup>2</sup>

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

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

It will be recommended that the Respondent offer immediate and full reinstatement to Walter Maliauski to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the unlawful dismissals, by payment to him of a sum of money equal to that which he would have earned as wages from the date of the discharges to the date of the offer of reinstatement, less his net earnings during such period, in a manner consistent with Board policy set forth in *F. W. Woolworth Company*, 90 NLRB 289.

In the opinion of the Trial Examiner the above-described unfair labor practices indicate an opposition on the part of the Respondent to the purposes of the Act generally. Therefore, in order to make effective the interdependent guarantees in Section 7 of the Act, thereby minimizing industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed employees by Section 7 of the Act.

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. Luggage Workers Union, Local 62, International Leather Goods, Plastic & Novelty Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

<sup>2</sup>The Trial Examiner has not ignored the fact, and does not suggest, that it is consistent with reasonable discipline in a plant for an employee to tell a superior "you'll get yours." However, undisputed circumstances show that the remark, ambiguous in nature, was provoked by the treatment accorded the employee upon being returned to work. There is no claim that Maliauski was in any disrespectful during the 6 weeks of his employment before management first unlawfully discharged him.

2. By discharging Walter Maliauski on August 28, 1959, to encourage membership in the said labor organization, and by discharging the same employee on September 25, 1959, because he had filed a charge with the National Labor Relations Board, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (4) of the Act.

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

4. 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.]

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**Thompson Ramo Wooldridge, Inc. and Local Union 11, International Brotherhood of Electrical Workers, AFL-CIO, Petitioner.** *Case No. 21-RC-6332. July 22, 1960*

### 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 Floyd C. Brewer, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. Petitioner seeks to represent a craft unit of maintenance electricians<sup>1</sup> at the Employer's Canoga Park plant. The Employer objects to the requested unit on the grounds, among others, that: (1) The category of employees sought does not have true craft characteristics and in any event, there are other categories of employees who possess and exercise similar skills; and (2) no unit can be appropriate if confined only to one of the four operations in the western area.<sup>2</sup>

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<sup>1</sup> The petition would also include construction electricians, helpers, and/or apprentices. However, as there are no employees in these classifications, we shall make no determination as to their unit placement.

<sup>2</sup> The plants in its western area are. Canoga Park, Reseda, and Beverly Hills, California, and Denver, Colorado. The record indicates that the Employer also has plant facilities at Rome, New York. However, the Employer would not include this plant's employees in any of its unit contentions.