

**Cooperative Mills, Inc. and Local 847, International Hod Carriers', Building and Common Laborers' Union of America, AFL-CIO.** *Case No. 5-CA-1804. October 2, 1961*

DECISION AND ORDER

On April 24, 1961, Trial Examiner Owsley Vose 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 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 McCulloch and Members Rodgers and Fanning].

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds 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 this case, and hereby adopts the findings,<sup>1</sup> conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the 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, Cooperative Mills, Inc., Seaford, Delaware, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local 847, International Hod Carriers', Building and Common Laborers' Union of America, AFL-CIO, or in any other labor organization of its employees, by discharging or refusing to reinstate them, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(b) Warning employees that loss of employment or other adverse consequences will result from the organization of the mill, promising

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<sup>1</sup> The Trial Examiner inadvertently found that employee Robbins was unlawfully interrogated and discharged by Superintendent Ricks. However, the record shows that Foreman Anthony, concededly a supervisor, had engaged in these acts. While we accordingly correct this inadvertence, it in no way affects the Trial Examiner's ultimate findings or our concurrence therein.

employees benefits to induce them to abandon their union activities, coercively questioning employees about their union sympathies and activities, and keeping, or indicating to employees that it is keeping, union activities under surveillance.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and 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 by 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 Bruce E. Robbins, Jr., 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 as a result of his discharge, in the manner set forth in the section of the Intermediate Report entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other data necessary to analyze and compute backpay.

(c) Post at its mill at Seaford, Delaware, copies of the notice attached hereto marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to 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 Fifth Region, in writing, within 10 days from the date of this Order, what steps it has 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, we hereby notify our employees that:

WE WILL NOT discourage membership in Local 847, International Hod Carriers', Building and Common Laborers' Union of America, AFL-CIO, or in any other labor organization of our employees, by discharging them or in any other manner discriminating against them in regard to their hire and tenure of employment or any term or condition of employment.

WE WILL NOT warn employees that loss of employment or other adverse consequences will result from the organization of the mill, promise employees benefits to induce them to abandon their union activities, coercively question employees about their union sympathies and activities, or keep, or indicate to our employees that we are keeping, union activities under surveillance.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right of self-organization, to form labor organizations, to join or assist Local 847, International Hod Carriers', Building and Common Laborers' Union of America, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and 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 by Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

WE WILL offer to Bruce E. Robbins, Jr., reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and we will make him whole for any loss of pay suffered as a result of his discharge.

All our employees are free to become or remain or to refrain from becoming or remaining members of Local 847, International Hod Carriers', Building and Common Laborers' Union of America, AFL-CIO, or any other labor organization.

COOPERATIVE MILLS, 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.

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

## STATEMENT OF THE CASE

This proceeding, in which the parties were represented by counsel, was held before the duly designated Trial Examiner in Salisbury, Maryland, on January 17, 1961, upon the complaint of the General Counsel, as amended, and answer of Cooperative Mills, Inc., herein referred to as the Respondent.

The issues litigated at the hearing were whether the Respondent, by discharging Bruce E. Robbins, Jr., on August 24, 1960, has violated Section 8(a)(3) and (1) of the Act, and, by other acts and conduct, has further violated Section 8(a)(1) of the Act.

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

## FINDINGS AND CONCLUSIONS

## I. JURISDICTIONAL FINDINGS

The Respondent, a Virginia corporation, is engaged in the manufacture of animal and poultry feed at Seaford, Delaware. In the course of its operations, the Respondent receives shipments of raw materials from out-of-State sources valued in excess of \$50,000 a year. The Respondent annually ships more than \$150,000 worth of finished products to points outside of Delaware. I find, as the Respondent admits, that it is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. THE LABOR ORGANIZATION INVOLVED

Local 847, International Hod Carriers', Building and Common Laborers' Union of America, AFL-CIO, hereinafter referred to as the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES <sup>1</sup>

## A. Preliminary statement; the Respondent's supervisory hierarchy

William Ricks, the superintendent, is in charge of the Respondent's mill, in which about 35 men are employed. Edward Anthony, a foreman, assists Ricks in carrying out his supervisory functions. The parties have stipulated that Ricks and Anthony are supervisors within the meaning of the Act. At least two other employees, Paul Wilson and William Faulkner, give instructions to employees concerning their work and shift them about from one job to another within the mill. The complaint, as amended at the hearing, alleges that Paul Wilson is a supervisor within the meaning of the Act.<sup>2</sup> The Respondent denies this allegation. In my opinion the General Counsel has failed to establish that Wilson is a supervisor within the meaning of the Act. There is no evidence that Wilson has authority to hire, discharge, or discipline employees, or to adjust their grievances. Hence, if Wilson is to be found a supervisor, it must be attributed to his having authority responsibly to direct employees through the use of independent judgment. The preponderance of the testimony, however, fails to establish such authority. While Wilson frequently told employees what to do, there is nothing to show that he was doing anything more than relaying Anthony's orders on to the men. The record fails to establish that the instructions which Wilson gave to the employees resulted from the exercise of independent judgment on his part. Accordingly, the General Counsel's contention concerning Wilson's status as a supervisor under the Act is rejected.

<sup>1</sup> The Respondent, although represented by counsel at the hearing, did not call any witnesses in its behalf. Consequently, the findings set forth below are based on the uncontradicted testimony of the witnesses for the General Counsel.

<sup>2</sup> Section 2(11) of the Act provides as follows.

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

*B. Sequence of events; interference, restraint, and coercion*

Seeking a better job, Bruce Robbins, Jr., and another employee at the mill looked up Raymond Closser, the business agent of the Union at Greenwood, Delaware, for the purpose of obtaining information about the availability of employment on construction work then being done for the Du Pont Company. After being informed that no work was presently available at Du Pont, the discussion turned to the prospects of organizing the Respondent's mill. Robbins favored the idea and became Closser's contact man at the mill.

A series of meetings of the men was held, commencing on August 11, 1960. About 20 of the Respondent's employees attended this first meeting. Robbins was active in informing the other employees about this and subsequent meetings. He talked to employees both at the mill and at their homes. At the second meeting on August 18, 19 employees signed union authorization cards. Meetings were held about every week until September 30, when the Board held an election at the mill.

After attending the union meeting on August 18, Arley Larrimore went to Superintendent Ricks, told him about the organizing activities which were in progress, and reported to him the names of the employee leaders in the union movement. Among those named were Robbins.

On August 24, Robbins was abruptly discharged under circumstances set forth in greater detail below.

Not long after Robbins was discharged Superintendent Ricks stopped employee Carl E. Truitt, Jr., as he was leaving the mill, and asked him what he thought about the union activities then going on. When Truitt stated, "Well, I guess I'm Southern States,"<sup>3</sup> Ricks replied as follows:

What they are trying to do, you know, . . . if they get in, they want something in the contract about 32 hours guaranteed work, . . . I could put the basis back on 32 hours, but, . . . The ones that I know are for me, I can see they get their 40 hours, and the ones that don't, I won't give them. In other words, the ones for Southern States will get the full time.<sup>4</sup>

Shortly thereafter Truitt went back to Ricks' office and informed him he was "for the Union," that he wanted him to know because he had told him "different before." Ricks' response was as follows:

I want you to know the fact if the Union comes in it will be on a cut and dried basis. There will be certain rules set up, and if you step over one way or the other . . . it will probably mean you will have to go.

About the first of September Charles Littleton went to work for the Respondent. At the time of his hiring Superintendent Ricks mentioned that "some of the boys are trying to get the Union . . . they were up for a good job, they messed themselves up."

In the latter half of September, Superintendent Ricks asked employee Warren E. Conaway what he thought about the Union. When Conaway answered that he had not "thought too much about it," Ricks suggested that if he "didn't know much about the Union [he] should go to one or two of the meetings and see what was going on." Ricks added at this point that "he had a fellow that went to the meetings and told him what went on."

The election was scheduled for 2 p.m. on September 30. That morning, Superintendent Ricks spoke to several employees about the Union. Shortly before lunch Ricks told James R. Sullivan that "if the Union came in there, that everything would be put on a level basis, and that they wouldn't be allowed to help nobody." Ricks further informed Sullivan that employees would be assigned jobs according to their seniority, and that if he could not do the work he "might lose [his] job." Ricks said he would "most likely" be assigned to operate the scale sewing machine, an operation which required the recording of the various quantities of feed being processed. As Sullivan could not read or write, he would have been unable to perform this operation.

Ricks also had a long conversation that morning with Leroy B. West. West had worked for the Respondent a total of 5 years; however, there had been a break in his service while he worked elsewhere. Ricks asked West what he thought was going to happen that afternoon and what he thought about the Union. When West gave

<sup>3</sup> The Respondent's mill is also known as the "Southern States" mill.

<sup>4</sup> Although Truitt was not sure exactly when this conversation occurred, he thought it happened "soon after" Robbins' discharge

a noncommittal answer, Ricks inquired whether West was aware that "if the Union got in that they would have to go according to service, and being that [he] quit that time and lost [his] first service . . . [he] might lose [his] job . . . to guys that had more service, that [he] would still have a job, but . . . there would be guys over [him] that had more service."

That morning before the election, Ricks also asked Roland B. Tull how he felt about the Union. Tull replied that he was in favor of it if it is the right kind of union. Whereupon Ricks rejoined, "Well, you know your seniority, if the Union comes in, I will have to put you on a different job which you might not like." Ricks also stated on this occasion that "there was a raise to come through" but "since this has come up that has all been stopped for the time being."

The Union lost the election which was held that afternoon.

As found above, Superintendent Ricks, in thinly veiled terms, warned employees that if the shop became organized they would likely lose their jobs, would suffer a reduction in working hours, or would have to observe strict working rules under penalty of discharge. On one occasion Ricks indicated that nonunion employees would benefit from a continuance of the regular 40-hour week whereas union supporters would be reduced to 32 hours. Such threats of reprisals and promise of benefit, in my opinion, constitute interference, restraint, and coercion in violation of Section 8(a)(1) of the Act.

Superintendent Ricks' warnings are not to be deemed without coercive effect by reason of the fact they were in part couched in terms of the consequences of his agreeing to union bargaining demands. Had the Union made any demands on the Respondent, there might have been some basis for regarding some of Ricks' statements as expressions of views, argument, or opinion, which are protected by Section 8(c) of the Act. However, the Union had made no demands on the Respondent. The clear implication of the language actually used by Ricks, when reasonably construed, was that employees would suffer as a consequence of the mills becoming organized. Under the circumstances Ricks' statements had coercive impact and, accordingly, were not within the protection of Section 8(c) of the Act.

In the context of Ricks' warnings and promise of benefit, and in view of the discriminatory discharge of Robbins, as found below, Superintendent Ricks' questioning of employees about their union sympathies also constituted interference, restraint, and coercion in violation of Section 8(a)(1) of the Act. Finally, Ricks' statement to Conaway that he had an employee who attended union meetings and reported to him what went on, in the circumstances of this case, also violated Section 8(a)(1) of the Act. As held in *Des Moines Foods, Inc.*, 129 NLRB 890, statements indicating to employees that union meetings and activities are under employer surveillance place such activities under an unlawful restraint and, accordingly, are violative of Section 8(a)(1).

#### C. The discharge of Bruce E. Robbins, Jr.

Robbins was hired by the Respondent on February 8, 1954. As indicated above, Robbins was discharged on August 24, 1960. The events on the day of his discharge are as follows:

Shortly after Robbins started up his pellet mills on the morning of August 24, he observed standing nearby an empty drum in which one of the chemical ingredients used in some of the Respondent's feeds—"B. H. T."—had been received at the mill. This drum, which was made of heavy cardboard and was bound with narrow metal bands at the top and bottom, was about the size of a 20-gallon trash can of the kind commonly used around the home. Robbins mentioned the drum to Harry Parrish, a fellow employee, and raised the question with him as to whether he should take it home. Parrish, not sharing Robbins' doubts about the matter told him "it wouldn't hurt, it was no good anyway." Robbins then set the drum aside so he could pick it up when he went home to lunch. About 9:30 that morning Robbins was transferred over to another operation in a different part of the mill. It involved the catching of pellets dropped to the first floor. He performed this operation until 2 or 3 minutes before noon that morning when he was instructed to stop until after lunch. It appears that the feed had become jammed or plugged up on this occasion. Robbins left the mill 2 minutes before noon to go home to lunch on that day. On his way out Robbins picked up the drum and took it home with him.

Robbins returned to work at 12:30 p.m. He started up his pellet mills in accordance with instructions given him before lunch by William Faulkner. At 12:45 p.m. Robbins was summoned to Superintendent Ricks' office. Foreman Anthony was in the office when he arrived. There the following ensued, as Robbins credibly testified:

He [Ricks] asked me why I left a couple minutes before dinnertime. I told him our job was done over there until after dinner and I figured it would be all right to leave.

Then he asked me about the barrel. . . . He asked me why I took the barrel. I told him I spoke to Harry Parrish and figured it wasn't any good, so I took it home . . . as it was going to be thrown in the trash.

He said "I am going to have to let you go," and that was it.

Robbins had taken a drum home on one or more previous occasions and nothing had been said to him by any representative of management. He had seen other employees taking drums home and had never heard of anyone being reprimanded for doing so. Robbins had frequently seen these empty drums being taken to the dump on the trash truck. William C. Pauley credibly testified that he had taken seven or eight drums home in the course of his 3 or 4 years' employment at the mill. Both Robbins and Pauley testified that they had never been given any instructions regarding the taking of drums. There is no evidence that the Respondent ever put these empty drums to any use.

As found above, Robbins was one of the employees who initially approached the union business agent. Thereafter, he acted as contact man between the business agent and the employees, talking to them both at the mill and at their homes about union matters. Robbins' activities as one of the leaders in the union movement were reported to Superintendent Ricks by Arley Larrimore not long after the union meeting on August 18.<sup>5</sup> Less than a week after receiving this report, Ricks precipitately discharged Robbins, an employee of more than 6 years' standing.

Superintendent Ricks, as found above, was opposed to the organization of the mill by the Union. He had warned employees that loss of employment and other adverse consequences would follow the organization of the mill. He had pointed out to a new employee when he hired him, about a week after Robbins' discharge, how "some of the boys" had "messed" their chances for "a good job" by "trying to get the Union" in.

Since the Respondent did not put on any defense in this case, there is no affirmative sworn testimony by any representative of management as to the reasons for Robbins' discharge. We are left to infer, from Ricks' conversation with Robbins at the time of his discharge, what these were. Apparently it is the position of the Respondent that Robbins was discharged for leaving the plant 2 minutes early for lunch and for taking home with him an empty, used, cardboard chemical container. The suggestion that Robbins was discharged because he had left the mill 2 minutes early for lunch is not persuasive. Had Robbins returned to his own department, he would have no more than had time to turn on his pellet mills when it would have been time to turn them off for lunch. Ricks' reliance on this trivial event suggests that he was on the lookout for a pretext for getting rid of Robbins.

With regard to Robbins' having taken the empty drum home, the only testimony suggesting that the taking of such drums was not routine on the part of the employees is that of Robbins, himself, whose question of employee Parrish indicates that he was not wholly sure he should take the drum. All the other evidence bearing on this point indicates that there was no real basis for Robbins' doubts in this regard. It was not an uncommon practice for employees to take these drums home. The Respondent had never issued any instructions prohibiting such a practice. No employee, so far as the record shows, had ever been previously reprimanded or disciplined for engaging in such a practice. There is no suggestion in the record why the Respondent should object to employees taking these drums home. As far as the record shows, these empty drums had served the purpose for which they were designed and were only destined for the dump heap anyway. On this record, I cannot believe that, but for Robbins' recent efforts to bring a union into the mill, the Respondent would have regarded this incident as seriously as it apparently did.

Under all the circumstances, particularly in view of the timing of Robbins' discharge—within a few days after Robbins' activities in support of the Union were reported to Ricks—and the hostility to the Union which is implicit in Ricks' statements and warnings to the men, I find that Ricks seized upon the drum incident as a pretext for getting rid of one of the leaders in the union activity at the mill, and that he hoped thereby to put a damper on the whole union movement. Accordingly, I conclude that Robbins' discharge was violative of Section 8(a)(3) of the Act.

<sup>5</sup> While Larrimore did not place the date of this report exactly, I find under all the circumstances that it was reported to Ricks within a day or so of the meeting.

## 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 among the several States, 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, my recommended order will direct it to cease and desist from the unfair labor practices herein found, and to take certain affirmative action designed to effectuate the policies of the Act.

My recommended order will also provide that the Respondent offer Bruce E. Robbins, Jr., immediate and full reinstatement to his former or substantially equivalent position, without loss of seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of the discrimination to the date of the offer of reinstatement, less his net earnings during said period, and in a manner consistent with Board policy set out in *F. W. Woolworth Company*, 90 NLRB 289.

My recommended order will also direct that the Respondent preserve and, upon request, have available to the Board or its agents, for examination and copying, all payroll and other records necessary to analyze the amounts of backpay due under the terms of my recommended order.

The unfair labor practices herein found are such as to indicate an attitude of opposition to the purposes of the Act generally, and, accordingly, the commission of these and unfair labor practices in the future is reasonably to be anticipated from such past conduct. In these circumstances, the preventive purposes of the Act may be thwarted unless the remedy is coextensive with the threat. To effectuate the policies of the Act, therefore, it will be provided that the Respondent cease and desist from infringing in any manner upon the statutory rights of its employees.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

## CONCLUSIONS OF LAW

1. Local 847, International Hod Carriers', Building and Common Laborers' Union of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
2. By discriminating in regard to the hire and tenure of employment of Bruce E. Robbins, Jr., thereby discouraging membership in the above-named labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.
3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in 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.]

**Kasco Trucking Corp. and Local 816, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Master Truckmen of America, Inc. and Amalgamated Union, Local 5, Independent, Parties in Interest.**  
*Case No. 2-CA-7771. October 2, 1961*

## DECISION AND ORDER

On June 19, 1961, Trial Examiner Ramey Donovan issued his Intermediate Report in the above-entitled proceeding, finding that the