

WE WILL NOT discourage membership in Oil, Chemical and Atomic Workers International Union, AFL-CIO, or in any other labor organization, by discharging, laying off, refusing to reinstate, or otherwise discriminating against employees because of their union or concerted activities.

WE WILL offer to Gordon Maack 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 earnings he may have suffered as a result of his being laid off and refused reinstatement.

WE WILL NOT threaten employees with reprisals in employment or promise or offer them inducements or benefits in connection with their union or concerted activities.

WE WILL NOT by any of the foregoing, or by any like or related conduct, interfere with, restrain, or coerce employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively, and to engage in concerted activities for their mutual aid or protection, or to refrain from any or all such activities.

WE WILL NOT interfere with the efforts of Oil, Chemical and Atomic Workers International Union, AFL-CIO, to represent our employees or seek to become such representative. All our employees are free to become or remain members of this Union, or any other labor organization, or to refrain therefrom.

SUPERIOR GRAPHITE 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.

Burrell Metal Products Corp. and District Lodge 76, International Association of Machinists, AFL-CIO. *Case No. 3-CA-1570. December 4, 1961*

DECISION AND ORDER

On September 13, 1961, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and is 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. He further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter the General Counsel filed exceptions to the Intermediate Report and a supporting memorandum.

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, Fanning, and Brown].

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 memorandum, and the entire record in

this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

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, Burrell Metal Products Corp., Franklinville, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with discharge or other economic loss or reprisal for reasons of union membership or activities.

(b) Interrogating employees concerning union membership and activities in a manner constituting interference, restraint, or coercion within the meaning of Section 8(a)(1) of the Act.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed in Section 7 of the Act.

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

(a) Post at its South Main Street plant in Franklinville, New York, copies of the notice attached hereto marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by the Respondents' representative, be posted by the Respondent 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.

¹ In recommending dismissal of that portion of the complaint which alleges violations of Section 8(a)(2) of the Act, the Trial Examiner concluded (1) that a so-called grievance committee was not a labor organization within the meaning of Section 2(5) of the Act, and (2) that there was no basis for finding that the Respondent sponsored, supported, or otherwise interfered with the administration of this employee group. The General Counsel filed exceptions as to both points. The record fully supports the Trial Examiner's findings and conclusions with respect to (2), namely, that on March 22, 1961, a meeting was arranged between Respondent and a group of striking employees; that this meeting concerned itself primarily with a discussion of the strikers' grievances; that in the discussion of the possible formation of a "grievance committee" the Respondent made no concessions, promises, or threats; and that the Respondent was not affording recognition to this group, or bargaining with them, as the representative of its employees. Accordingly, even if we were to assume that the "grievance committee" is a labor organization as defined in Section 2(5) of the Act, as we find nothing in the record which constitutes a violation of Section 8(a)(2) of the Act, we shall dismiss the allegations of the complaint which relate thereto.

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."

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

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges violations of Section 8(a)(2) of the Act.

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 our employees that :

WE WILL NOT threaten our employees with discharges or other economic loss or reprisals for reasons of union membership and activities.

WE WILL NOT interrogate our employees concerning union membership and activities in a manner constituting interference, restraint, or coercion within the meaning of Section 8(a)(1) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form, join, or assist District Lodge 76, International Association of Machinists, AFL-CIO, or any other labor organization, 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 of such activities.

All of our employees are free to remain, or to refrain from becoming or remaining, members of District Lodge 76, International Association of Machinists, AFL-CIO, or any other labor organization.

BURRELL METAL PRODUCTS CORP.,
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

The complaint herein, as amended, alleges that the Company has violated Section 8(a)(2) of the National Labor Relations Act, as amended, 73 Stat. 519, by promoting and interfering with the administration of the grievance committee in that it participated in an employees' meeting and suggested formation of the grievance committee, with knowledge of District 76's organizational activities permitted the grievance committee to conduct a meeting on company property, permitted the grievance committee to interrogate employees, and accorded disparate treatment to District 76; and Section 8(a)(1) of the Act by said alleged acts and by interrogating employees

concerning their union activities and sympathies, threatening reprisals, and negotiating with employees concerning terms and conditions of employment when it had knowledge of District 76's organizational activities.

Without admitting various allegations relating to commerce, existence of labor organizations, and agency, the answer, as amended, admits that various employees stated grievances at a meeting with the Company, but denies that the Company committed any unfair labor practices as alleged. A hearing was held before Lloyd Buchanan, the duly designated Trial Examiner, at Olean, New York, on July 11 and 12, 1961.

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

FINDINGS OF FACT (WITH REASONS THEREFOR)

I. THE COMPANY'S BUSINESS AND THE LABOR ORGANIZATION INVOLVED

It was admitted and I find that the Company, a New York corporation, with principal place of business at Franklinville, New York, is engaged in the fabrication and assembly of metal office equipment and furniture; and that during the year preceding issuance of the complaint herein it manufactured, sold, and shipped, from its place of business in interstate commerce directly to points outside the State of New York, finished products valued at more than \$100,000. I find that the Company is engaged in commerce within the meaning of the Act.

From the evidence adduced, which is clear and uncontradicted and need not here be detailed, I find that District 76 is a labor organization within the meaning of the Act.

Despite the allegation concerning a meeting of the grievance committee, thus referred to on March 22, 1961, the General Counsel's position at the hearing was that the committee which was at that time *proposed*, and whose formation was mentioned or discussed on that date, is the only grievance committee before us. Since that committee was not thereafter actually formed, we cannot find that it was a labor organization within the meaning of the Act.

As for the group of employees who met with the Company on March 22, the clear disclaimer at the hearing that it was the grievance committee referred to supersedes any contrary impression which the complaint may have suggested. We need therefore not determine whether that group was a labor organization or an *ad hoc* group which undertook to state various grievances to the Company.¹ Without favoring me with argument or brief, the General Counsel stated at the hearing that he relies on *Philamon Laboratories, Inc.*² I can but guess that his reference was to the finding in that case concerning two committees as labor organizations; but the authority cited is not in point since we have just seen that the General Counsel in the instant case limited himself to one committee, and that one only *in posse*.

II. THE UNFAIR LABOR PRACTICES

A. Supervisors

Bishop, a foreman, assigns and checks the work of 10 or 11 employees on the night shift; he has done similarly with respect to 15 or 20 when he worked on the day shift. He also sets up machines and transfers men from job to job as needed. When an employee in Bishop's department was disciplined, that was done by Sullivan, the plant superintendent, not by Bishop. It was stipulated also that through Bishop management expresses or conveys terms of overtime, promotion, termination, and related decisions concerning personnel. This does not indicate that Bishop is a supervisor within the meaning of the Act although, unlike the rank-and-file employees, he (and Tingue, *infra*) is a salaried employee and does not punch a timeclock. But with 10 or 11 under him on the night crew, even if Sullivan occasionally worked late or frequently returned for a time in the evening, it does not appear that anyone other than Bishop actively directs those rank-and-file employees. Bishop's duties and status were similar when he was foreman on the day shift. If his supervision and authority are limited so that as foreman he is merely a strawboss and not a supervisor within the meaning of the Act, he is the Company's sole go-between and is recognized as the conduit (a word which counsel employed and which the cases recognize) or representative of responsible management. Thus when an employee wants to leave the plant early, he asks Bishop; when working overtime, employees ask and receive from Bishop permission to take a break. Here is an element of direct authority.

¹ Cf. *Latex Industries, Incorporated*, 132 NLRB 1, at footnote 3.

² 131 NLRB 80.

Although he has no authority to hire or fire, Bishop is the one who told employee Morris when the latter was fired. (Whether he can effectively recommend firing is not clear.) Under these circumstances Bishop's words carry weight and he is the Company's representative so that it is liable for his remarks to the employees whom he thus directs.³ All of this is aside from any consideration which may be given to the admission in the answer prior to amendment, that Bishop and Tingle are supervisors within the meaning of the Act.

While, unlike Bishop, Tingle is not the Company's sole representative on the shift, his being the day shift, it appears that there are 15 to 20 rank-and-file employees under him and that his duties are similar to Bishop's. The men's contacts are with Tingle and, through him, with management. Thus on one occasion, Reynolds asked Tingle for permission to leave so that he could see a doctor, and received such permission. Vis-a-vis the men under him, Tingle represented the Company, and was the conduit through whom it expressed decisions. I find, as with Bishop, that the Company was responsible for Tingle's remarks.⁴

B. *The alleged violation of Section 8(a)(1)*

Employee Jesse Townsend testified that on March 14 Bishop came up to him at work, asked how he felt about a union, and continued with a threat that Townsend would be fired if he had anything to do with it. According to former employee Webber, in December 1960, he suggested to Bishop the formation of a union in the plant; Bishop advised that he forget it, warning that if Webber started one or even talked about a union, he would be fired. On March 13 and 14 Bishop again threatened Webber with discharge in connection with union organizational activities. The violation was no less such because it referred to activity on company property in the absence of distinction between working and nonworking time. On March 15, Tingle remarked that he knew that Webber had cards and warned that the latter was going to get himself in trouble. Similarly on March 14 Bishop remarked to employees Pullman and Prosser that someone was signing men for the Union but that, after they had signed, these would not be employed any more. (Pullman took this as a joke.) The next day, Bishop told Pullman that the plant would have to close if a union came in, and continued by asking whether Pullman had had any cards signed that evening.

Bishop denied generally and in the language of the complaint the interrogation and threats attributed to him. Only concerning his conversation with Townsend on March 14 did he make a specific denial as he testified that Townsend asked for his opinion and he gave it. Bishop's reliability with respect to such denials can be measured by his further denial that he had any knowledge before the employees struck on March 22 that they were trying to organize. He thereafter admitted that during the week ending March 11 he overheard employee Krotge speak of union cards. This admission followed Bishop's denial that he had overheard Krotge, and was elicited only after he had been shown a prior statement which he had executed. His explanation on the stand that he had confused Krotge with another employee does not alter the fact that he had earlier known of employees' organizational activity. Tingle did not testify.

As to whether any of Bishop's remarks, specifically those to Pullman, were "interpreted" by the employee as Bishop's personal views rather than the Company's, the employee's interpretation is not the test. The question is whether, regardless of an individual's interpretation, the remarks have the tendency to interfere with lawful concerted activities; and I find that Bishop's remarks do. There is no evidence that he offered these remarks as strictly his own and not those of the Company. The instances here cited adequately support the allegations of violation of Section 8(a)(1) by interrogation and threats.

It was further alleged that Phillips, a director of the Company, discussed and negotiated with the employees on March 22 with respect to terms and conditions of employment, at a time when the Company was aware of the organizational activities of District 76. That this limited attempt to terminate the strike tended to undermine the Union is not at all clear. As we shall see in connection with the alleged violation of Section 8(a)(2), when Phillips spoke to the strikers about meeting with Smith, the company president, there was no suggestion of any claim of majority representation by District 76. As for discussion by Smith and McCutcheon, another director, with the employees, this refers to the meeting on the afternoon of March 22, which is alleged separately as a violation of Section 8(a)(2) and will be considered in that connection.

³ *Florida Steel Corporation (Tampa Forge and Iron Division)*, 131 NLRB 1179 (re Libby).

⁴ *Id.* (re Audley McKenzie).

C. *The alleged violation of Section 8(a)(2)*

Apparently as the result of Phillips' suggestion that morning, 8 or 10 striking employees met with Smith on the afternoon of March 22, at which time the employees presented various grievances. The first allegation of violation in this connection is that the Company suggested the formation of the grievance committee. But as brought out by the General Counsel, one of the employees, not the Company, suggested formation of the committee. Any suggestion by Smith that the committee be composed of four rather than three members, and a jocular statement (obviously so) in connection with observance of employees at work are minimal and are mentioned here to indicate that they have not been "overlooked." In the language of the answer, no action was taken and no promises made, Smith explaining that he did not proceed further because of the telegram from District 76. No more impressive is the testimony of other unlawful assistance to the grievance committee. We can charitably dismiss these general claims without further comment.

While withdrawing other allegations, the General Counsel might well have included that of disparate treatment of District 76 and the grievance committee, concerning which no proof was submitted and no argument made.

A separate allegation of unlawful support is that the Company permitted the grievance committee to meet and discuss terms and conditions of employment when it had knowledge of District 76's organizational efforts. It was made clear at the hearing that this meeting is the same as the one referred to *supra*, in Smith's office. We have seen that at this meeting the striking employees merely presented grievances; discussion was limited, and no conclusions or agreements were reached. As for the Company's knowledge of organizational activities, this does not prevent the submission and even the consideration of grievances. All of this is aside from Smith's testimony, with a plausible explanation, that he did not know that the Machinists were involved in the strike at all: the signs which he had seen referred to Webber's discharge, and he thought that the Steelworkers, who had appeared on the scene in 1959, had again entered the picture.

In this connection it must be remembered that not until after the meeting had been arranged and in fact after it had begun did the Company receive District 76's telegram claiming majority and requesting bargaining; that union had not been unlawfully ignored in the arrangement for the meeting. We must rely on Smith's testimony concerning receipt of the telegram from District 76. Certainly we could not fix a time of receipt on the basis of the testimony that the telegram had been prepared that morning, without proof of when it had actually been sent out or delivered.

If only because there was repeated reference to them at the hearing, mention should be made of the signs which the pickets carried from the commencement of the strike on the morning of March 20. At first these were merely "On Strike" and "Unfair" signs. Later that day, Mellott, the district organizer for District 76, brought from Buffalo signs which bore the name of District 76 or the International Association of Machinists, AFL-CIO. Protesting the discharge of an employee, and whatever the strikers' grievances, the signs carried on March 20 and on the 22d also, including those which bore the imprimatur of District 76, characterized the Company as unfair. But those signs bore no claim of majority representation; nor does it appear that the employees were striking for recognition of District 76 or any other labor organization. (Were a finding necessary as to when signs which mentioned the Machinists first appeared, we could note the testimony of several of the General Counsel's witnesses, including Mellott, that the signs carried were made by the employees themselves except for those which were brought out by Mellott later on March 20. On the other hand it was claimed that two signs from District 76 were early brought to the picket line by Webber.) Nor does the original charge herein, received by the Company before the meeting of March 22, cast any light on the matter before us. That charge merely alleged a discriminatory discharge; it did not claim representation rights for District 76.

There is no basis for finding that the Company sponsored, supported, or otherwise interfered with the administration of the grievance committee.⁵

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Company set forth in section II, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and

⁵ Cf. *Signal Oil and Gas Company*, 131 NLRB 1427.

tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that the Company has engaged in and is engaging in certain unfair labor practices affecting commerce, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It has been found that the Company, by interrogating and threatening employees in connection with union activity, interfered with, restrained, and coerced its employees in violation of Section 8(a)(1) of the Act. I shall therefore recommend that the Company cease and desist therefrom and from any like or related conduct.

For the reasons stated in the subsection entitled "The alleged violation of Section 8(a)(2)," I shall recommend that the complaint be dismissed insofar as it alleges violation of that section of the Act.

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

CONCLUSIONS OF LAW

1. District Lodge 76, International Association of Machanists, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. By interrogating and threatening employees in connection with union activity, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. The aforesaid labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Company has not engaged in unfair labor practices within the meaning of Section 8(a)(2) of the Act.

[Recommendations omitted from publication.]

New Laxton Coal Company¹ and United Mine Workers of America (Ind.), Petitioner. *Case No. 10-RC-4667. December 4, 1961*

SECOND SUPPLEMENTAL DECISION, ORDER, AND THIRD DIRECTION OF ELECTION

On February 28, 1961, the Board issued a Supplemental Decision, Order and Direction of Election herein² finding appropriate the following bargaining unit: "All employees at the Employer's Clinchmore, Tennessee, coal mine, excluding office clerical employees, engineering and technical employees, professional employees, guards, foremen, and all supervisors as defined in the Act."

Thereafter, on March 30, 1961, the Board issued an Order Amending Decision and Direction of Election, postponing the directed election herein pending disposition of unfair labor practice charges which had been filed. On August 7, 1961, the Board issued a Second Direction of Election, based on advice from the Regional Director that the unfair practice case had been closed on compliance with a settlement agreement. On August 18, 1961, C & P Coal Company, herein re-

¹ The Employer's name, formerly C & P Coal Company, appears as amended in accordance with our decision herein.

² 130 NLRB 910.