

Local No. 4, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association, AFL-CIO and Viddie Stravinski and Avon Sheet Metal Co., Party to the Contract.
Case No. 22-CB-518. December 28, 1962

DECISION AND ORDER

On October 4, 1962, Trial Examiner Paul Bisgyer 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 attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.¹

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom 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 and the entire record in the case, including the Respondent's exceptions and brief, and hereby adopts the findings, conclusions, and recommendations² of the Trial Examiner as herein modified.

In the section of the Intermediate Report entitled "*Concluding findings*," the Trial Examiner concluded that the Respondent caused the Employer to lay off the Charging Party for nonpayment of a union fine, in violation of Section 8(b) (2) and (1) (A) of the Act. We agree. In the "Conclusions of Law," "Recommended Order," and "Appendix," however, the Intermediate Report indicates that the Respondent laid off the Charging Party. These statements in the Intermediate Report are corrected to show that the Respondent caused the layoff.³

ORDER

The Board adopts the Recommended Order of the Trial Examiner as corrected.

¹ The Respondent's request for oral argument is denied as, in our opinion, the record, including the Respondent's exceptions and brief, adequately presents the issues and positions of the parties.

² For the reasons set forth in his dissent in *Isis Plumbing & Heating Co.*, 138 NLRB 716, Member Leedom would not grant interest on the backpay or the fine.

³ No. 3 of the "Conclusions of Law" shall read, in place of "By laying off . . .," "By causing the layoff . . ."; No 1(a) of the "Recommended Order" shall read, in place of "Laying off . . .," "Causing the layoff . . ."; and the first paragraph of the "Appendix" shall read, in place of "WE WILL NOT lay off . . .," "WE WILL NOT cause the layoff . . ."

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding was heard by Trial Examiner Paul Bisgyer on August 23 and 24, 1962, in Newark, New Jersey, on complaint of the General Counsel issued on the basis of a charge filed on May 14, 1962, and the answer of Local No. 4, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association, AFL-CIO, herein called the Respondent. In substance, the complaint, as amended at the hearing, alleges that the Respondent violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, by causing Avon Sheet Metal Co., herein called Avon, to lay off Viddie Stravinski, the Charging Party, on or about May 14, 1962, for the reasons that he failed to pay a fine which the Respondent had imposed upon him for violating a union rule. In its amended answer, the Respondent, among other things, denies the commission of any unfair labor practices and affirmatively asserts that its alleged conduct was protected by the Act. Although afforded an opportunity to argue their positions orally and to file briefs, the parties did not avail themselves of it. The Respondent's motion to dismiss the complaint made at the close of the hearing, on which I reserved ruling, is now denied in accordance with my findings and conclusions set forth below.

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

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE COMPANY INVOLVED

Avon, a New Jersey corporation located in Newark, New Jersey, is engaged in the business of providing and performing roofing and sheet metal work at construction sites. During the calendar year ending December 31, 1961, Avon in the course of its business operations performed services as a subcontractor for Frank Briscoe Co., Inc., for which it was paid more than \$50,000. Frank Briscoe Co., Inc., in turn, is a general contractor engaged in the construction of industrial, office, and other buildings. During the same calendar year 1961, Briscoe purchased materials valued in excess of \$500,000 of which materials exceeding \$50,000 in value were purchased and shipped directly to its operations in New Jersey from sources outside that State.

Accordingly, I find that Avon is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Question presented*

It is too well settled to require discussion that the Act forbids employers and unions to impair employees' job tenure for nonpayment of fines or assessments imposed by their union.¹ The question here presented is purely a factual one—whether the Respondent caused the Charging Party's layoff for failing to pay a fine that it levied against him for violating one of its rules. As usually happens in cases of this type, there is a sharp conflict in testimony regarding the critical events in question.

B. *The evidence*

Viddie Stravinski has been in Avon's employ as a roofer for about 6 years and a member of the Respondent for about 11 years. At the time of the events here involved, the Respondent and Avon were parties to a union-security agreement covering a unit in which Stravinski belonged.²

¹ Section 8(a)(3) and 8(b)(2); *The Radio Officers' Union of the Commercial Telegraphers Union, AFL (Bull Steamship Company) v. NLRB*, 347 U.S. 17, 40-41

² The Respondent does not invoke this agreement as a defense to the charge herein. Nor could it since the proviso to Section 8(a)(3) only sanctions enforcement of union-security agreements for nonpayment of initiation fees and periodic dues but not fines and assessments.

About February or March 1962,³ Stravinski was assigned to a job by his foreman. Presumably—or at least so it was found by the Respondent's executive board—this assignment should have gone to another employee who had greater yard seniority and Stravinski should therefore have rejected the assignment. On charges filed against him, the Respondent's executive board on April 2 found Stravinski guilty of violating a union rule and fined him \$76.50, representing the 2 days' work lost by the senior employee. Thereafter, Respondent's Business Agent John Critchley unsuccessfully sought to collect the fine from Stravinski,⁴ even enlisting the assistance of Leo Kotler, Avon's president. Indeed, Kotler credibly testified, in substance, that before the date of Stravinski's layoff, Business Agent Critchley had communicated with him several times; that Critchley told him that he had given Stravinski a deadline of several weeks within which to pay his \$76.50 fine; that Critchley requested him (Kotler) to lay off Stravinski if he failed to pay the fine, and that, when he (Kotler) declined the request because he had no reason for taking such action, Critchley replied that he would come down and do it himself.⁵

Since Stravinski failed to pay his fine, Critchley visited Avon's yard on May 14, as he had previously advised Kotler he would do, and spoke to Kotler in the Company's office. According to Kotler's testimony, Critchley stated that he came to lay off Stravinski unless he paid him the money he owed the Union and that he (Critchley) had to take this action himself because Kotler would not. Kotler further testified that he did not object to Critchley's contemplated action because it was solely a union matter which was out of his "jurisdiction." Critchley, on the other hand, testified, in effect, that on this occasion he only inquired of Kotler whether he had any success in persuading Stravinski to pay his fine and that in reply to Kotler's negative answer, he told Kotler that Stravinski was taxing the Union's patience. As previously indicated, I accept Kotler's account as more accurate and consistent with the pattern of events.

Following this conversation, Business Agent Critchley entered the yard where Avon's employees, as was customary, were congregated before starting work. Stravinski testified that, while speaking to Victor Washko, a coworker, Critchley approached him and told him that he could not go to work because his fine was still unpaid and that he (Stravinski) replied, "O.K. Jack." Corroborating Stravinski, Washko testified that on this occasion he heard Critchley tell Stravinski that he was going to hold him back from work and at that point he (Washko) walked away because he did not believe it was any of his business to remain.⁶ Critchley denied instructing Stravinski to leave his job. According to Critchley, he visited Avon's yard, not to see Stravinski, but, as indicated above, to find out from Kotler whether he had more success than he (Critchley) had in persuading Stravinski to pay his fine. He further testified that he happened to speak to Stravinski that morning only because as he (Critchley) was leaving the yard he saw Stravinski at the gate and used that opportunity to remind Stravinski of his default in the payment of his fine, which was endangering his right to union benefits, such as hospitalization, and that he (Critchley) could no longer prevent his suspension from the membership roles.

³ All the events material herein occurred in 1962.

⁴ Although the Respondent adduced some testimony that Stravinski was also delinquent in the payment of his dues, it does not urge that it caused his layoff for this reason. Indeed, such a contention would be of dubious validity in view of the fact that on April 26, at least, the Respondent had rejected Stravinski's tender of 3 months' dues because he did not include the amount of his fine.

⁵ Concerning a conversation he had with Kotler before the critical May 14 episode in this case, Critchley testified that he requested Kotler to speak to Stravinski and impress upon him that he was risking loss of union benefits if he did not pay the money he owed the Union. He denied, however, ever asking Kotler to lay off Stravinski. Although Kotler did not demonstrate a facility for remembering dates of various conversations which, in part, explains some of the confusion in his testimony, I find that his testimony recited in the text of this report credible and consistent with the pattern of the events found herein.

⁶ Although Stravinski stated in a pretrial affidavit, given to a Board agent when he filed the charge in this case on May 14, that no one was present during his above conversation with Critchley, he corrected this statement at the hearing by testifying that Washko was present. Critchley contradicted this testimony. Washko, who impressed me as a truthful and disinterested witness not given to fabricating testimony, however, confirmed Stravinski's testimony in this respect. Moreover, Stravinski's misstatement in his affidavit could reasonably be reconciled with his and Washko's testimony in that Washko was not present during the *entire* conversation because Washko left when he realized the personal nature of the discussion.

I find it difficult to believe Critchley's asserted limited purpose of his visit to Avon's plant. Obviously, if such were his purpose and no other, the telephone would do very well as it did on other occasions when Critchley communicated with Kotler. On the other hand, I find Stravinski's and Washko's versions of the occurrence more in accord with the realities of the situation and plausibly explains the events that followed.

After Critchley left the yard, Stravinski informed Avon's President Kotler that Critchley had laid him off. This information simply evoked Kotler's expression of regrets that he could do nothing about it. Stravinski thereupon stated that he was going to the Board's Regional Office to see what they could do for him.⁷ Later that day Stravinski filed the charges in this case.

The next day, May 15, Stravinski reported for work. Before permitting him to do so, Kotler stated that he (Kotler) would first have to call the Respondent, suggesting at the same time that Stravinski pay the fine. Shortly thereafter Kotler told Stravinski that he had telephoned Business Agent Critchley and informed him that Stravinski's fine would be in the mail the next day and that Critchley replied that Stravinski could return to work. Stravinski then resumed work without any further interference from the Respondent. A money order for \$76.50, the amount of the fine, was mailed to the Respondent on or about May 19.⁸

C. Concluding findings

It is clear from the foregoing findings of fact that in order to force Stravinski to pay the fine imposed upon him for violating a union rule the Respondent arrogated to itself control over his job tenure without the slightest objection from his employer who viewed Stravinski's delinquency strictly as a union matter outside the Company's "jurisdiction." However, as the Supreme Court pointed out in *The Radio Officers' Union of the Commercial Telegraphers Union, AFL v N.L.R.B.*,⁹ "The policy of the Act is to insulate employees' jobs from their organizational rights" and obligations.¹⁰ Thus, no matter how commendable its efforts may be to have its members maintain their good standing and thereby preserve their union benefits, the Act forbids the union to bring about their layoff for non-payment of a fine. Therefore, having caused Stravinski's layoff for such a reason, I find that the Respondent caused Avon to discriminate against him within the meaning of Section 8(b)(2) of the Act. I further find that, by thus demonstrating control over an employee's job tenure to compel payment of a fine, the Respondent also restrained and coerced employees in violation of Section 8(b)(1)(A) of the Act.

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 Company 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 its free flow.

V. THE REMEDY

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

Since the Respondent, by means prohibited by the Act, forced Stravinski to pay his fine of \$76.50, I recommend that the Respondent refund this sum of money to him. I also recommend that the Respondent reimburse Stravinski for the day's pay lost by him by reason of the discrimination, less his net earnings for that day. In accordance with the decision of a majority of the Board in *Isis Plumbing &*

⁷ The foregoing findings are based on the combined testimony of Stravinski and Kotler. Whatever variance there is in their respective testimony, it relates to inconsequential matters.

⁸ These findings are based on Stravinski's undisputed testimony, which I credit. His confusion regarding the date the money order was mailed does not affect my findings.

⁹ 347 U. S. 17, 40.

¹⁰ The only exception is that contained in the proviso to Section 8(a)(3) of the Act which authorizes employers and labor organizations to enter into certain union-security agreements. However, the Act specifically restricts the utilization of such agreements to compel payment of initiation fees and periodic dues. *The Radio Officers' Union of the Commercial Telegraphers Union, AFL v. N. L. R. B.*, *supra*, at 40-41.

Heating Co.,¹¹ interest at 6 percent per annum shall be added to the amount of backpay due from May 14, 1962, the day Stravinski was unlawfully deprived of his employment.¹² Moreover, I find that the reasons which impelled the Board majority to award interest on backpay equally applicable to the refund of the fine. I therefore also recommend that interest at 6 percent per annum be allowed from the date Stravinski paid the fine to the Respondent.

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. Avon Sheet Metal Co., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, Local No. 4, United Slate, Tile and Composition Roofers. Damp and Waterproof Workers Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By laying off Viddie Stravinski from his job with Avon Sheet Metal Co., for nonpayment of a fine imposed upon him for violating a union rule, the Respondent caused an employer to discriminate against an employee in violation of Section 8(a)(3) of the Act and thereby engaged in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

4. By the foregoing conduct, the Respondent also restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act and thereby committed unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that the Respondent, Local No. 4, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Association, AFL-CIO, Newark, New Jersey, its officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Laying off Viddie Stravinski, or any other employee of Avon Sheet Metal Co., for failing to pay any fine imposed upon him or otherwise causing or attempting to cause said employer to discriminate against any employee in violation of Section 8(a)(3) of the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights 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.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Refund to Viddie Stravinski the sum of \$76.50 paid by him in satisfaction of the fine imposed upon him and make him whole for any loss of earnings suffered by reason of the discrimination against him, in the manner set forth in "The Remedy" section of the Intermediate Report.

(b) Post in the Respondent's business offices and meeting halls, copies of the attached notice marked "Appendix."¹³ Copies of said notice, to be furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by the Respondent's authorized 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 members are customarily

¹¹ 138 NLRB 716.

¹² Since only 1 day's backpay is involved there is no necessity for computing interest from the last day of the calendar quarter, as provided in *Istis Plumbing & Heating Co.*, *supra*.

¹³ In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "Pursuant to a Decree of the United States Court of Appeals. Enforcing an Order" shall be substituted for the words "Pursuant to a Decision and Order."

posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(c) Sign and mail sufficient copies of said notice to the Regional Director for the Twenty-second Region for posting by Avon Sheet Metal Co., at all locations where notices to its employees are customarily posted, if the Company is willing to do so.

(d) Notify the said Regional Director, in writing, within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.¹⁴

¹⁴ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL MEMBERS OF LOCAL NO. 4 UNITED SLATE, TILE AND COMPOSITION ROOFERS, DAMP AND WATERPROOF WORKERS ASSOCIATION, AFL-CIO, AND TO ALL EMPLOYEES OF AVON SHEET METAL CO.

Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT lay off Viddie Stravinski or any other employee of Avon Sheet Metal Co., for failing to pay any fine imposed upon him or otherwise cause or attempt to cause the said Employer to discriminate against any employee in violation of Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as authorized in Section 8(a)(3) of the Act.

WE WILL refund to Viddie Stravinski the amount of the fine he was compelled to pay us and we will make him whole for any loss of pay he may have suffered because of the discrimination against him.

LOCAL NO. 4, UNITED SLATE, TILE AND COMPOSITION
ROOFERS, DAMP AND WATERPROOF WORKERS AS-
SOCIATION, AFL-CIO,

Labor Organization.

Dated----- By-----
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 614 National Newark Building, 744 Broad Street, Newark, New Jersey, Telephone No. Market 4-6151, if they have any question concerning this notice or compliance with its provisions.

Victory Plating Works, Inc. and International Association of Machinists, District Lodge No. 24, AFL-CIO. Case No. 36-CA-1121. December 31, 1962

DECISION AND ORDER

On May 9, 1962, Trial Examiner James R. Hemingway 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 attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report.