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**Wausau Concrete Company, Inc. and International Hod Carriers,
Building and Common Laborers Union of America. Case No.
18-CA-1469. April 16, 1963**

DECISION AND ORDER

On January 29, 1963, Trial Examiner Joseph I. Nachman issued his Intermediate Report in the above-entitled proceeding, finding that Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Intermediate Report. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief; and the Respondent filed an exception to the Trial Examiner's failure to make a particular fact finding, together with a brief in support of the Intermediate Report.

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 Rodgers and Leedom].

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 exceptions and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

[The Board dismissed the complaint.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding heard before Trial Examiner Joseph I. Nachman at Wausau, Wisconsin, on November 6 and 7, 1962,¹ involves allegations that Wausau Concrete Company, Inc., herein called Respondent, discriminatorily discharged two employees. No independent Section 8(a)(1) activity is involved. All parties were present at the hearing and were afforded full opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally on the record. Oral argument was presented by Respondent, both Respondent and the General Counsel submitted briefs, all of which have been duly considered.

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

¹ The original and amended charges were filed on August 2 and September 17, 1962, respectively; the complaint issued September 17, 1962.

FINDINGS OF FACT²

I. THE UNFAIR LABOR PRACTICES INVOLVED

A. *The Union's organizational activity and Respondent's knowledge thereof*

Respondent's business is seasonal. The peak season runs from about mid-April to about mid-October. The record does not disclose the precise number of employees in the plant. It does appear that employment varies from 18 to 28 in the concrete division, and from 2 to 4 in the corrugated metal department. This is apparently during the peak season. There are some yard, shipping, and receiving employees, as well as truckdrivers and helpers, but the number of these does not appear. Employees who are laid off during the winter season are offered employment when the weather opens in the spring. Lloyd Dickinson and Kenneth Kelch, the two alleged discriminatees, had worked for Respondent since 1959 and 1960, respectively. As in the past, they were laid off with the advent of the 1961-62 winter season, and were called back to work in April 1962. While thus in layoff status, they discussed, between themselves, the possibility of organizing Respondent's employees, and early in June³ arranged for a representative of the Union to meet with them. Their first meeting with such representative occurred on June 18, when Michael McMahon, the Union's organizer, asked Dickinson and Kelch to obtain a list of Respondent's employees. The following day Dickinson and Kelch took down the names of such employees from timecards kept adjacent to the timeclock, and at the next meeting with McMahon, during the evening of June 25, delivered to him the requested list of names. At that time a further meeting was scheduled for June 28. Between June 25 and 28, McMahon attempted to interview Respondent's employees at their homes, but was only able to talk with three of them. Dickinson and Kelch invited some seven or eight employees to attend the June 28 meeting. In addition to Dickinson and Kelch, three of Respondent's employees attended the June 28 meeting. After the last-mentioned meeting, Dickinson and Kelch were given authorization cards and told to obtain signatures from the employees. They distributed these cards in various portions of the plant, including the lunchroom. Some 22 cards bearing purported signatures of persons employed by Respondent were returned to McMahon by Dickinson and Kelch.

There is no evidence that any supervisor or management official of Respondent observed any union activity on the part of any of its employees, or that such employees, or any one on their behalf, ever discussed the Union with any representative of Respondent. Loyal Clark, Respondent's executive vice president and general manager, testified that about 2 weeks before Dickinson and Kelch were terminated, he heard a "rumor" that someone was visiting his employees at their homes about organizing for a union. However, Clark denied all knowledge as to who might have been engaged in such visiting; whether it was one of his employees or an outsider; and also denied knowledge of any union activity by his employees prior to July 6, the day Dickinson and Kelch were terminated. There is no direct evidence contrary to the aforementioned testimony of Clark.⁴

II. CONCLUSIONS WITH RESPECT TO COMPANY KNOWLEDGE

It has been consistently held that an indispensable element necessary to support a conclusion that an employee was discharged in violation of Section 8(a)(3), is

² No issue of commerce or labor organization is involved. The complaint alleges and the answer admits facts which clearly establish that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that International Hod Carriers, Building & Common Laborers Union of America (herein called the Union), is a labor organization within the meaning of Section 2(5) of the Act. I so find.

³ All dates hereinafter mentioned are in 1962 unless otherwise stated.

⁴ In an effort to establish union animus on the part of Respondent, the General Counsel introduced evidence to the effect that in 1960 a local of the Teamsters filed a petition seeking certification as the representative of Respondent's employees; that an election was held which Teamsters lost; and that when the results of that election became known Clark made a statement to the effect that he would fire any employee who ever attempted to start a union again. According to Clark, all he said at the time to a group of employees who were standing about talking was: "The election is over, a year must pass before there can be any further action, and you should forget the matter and go back to work." I find it unnecessary to resolve this conflict. Even if I should find that Clark made the statement attributed to him as above set forth, I would find it too remote, in point of time, to establish that the discharges involved in this proceeding were motivated by union animus.

a finding that the employer had knowledge of the dischargee's union membership or activities. *Minnesota Mining & Manufacturing Company*, 81 NLRB 557; *Acme Boot Manufacturing Company, Inc.*, 105 NLRB 164; *American Dredging Company*, 123 NLRB 139; *United States Air-Conditioning Corporation*, 128 NLRB 117; *U.S. Divers Company*, 133 NLRB 968; *Admiral Linen Service*, 138 NLRB 361. I find the evidence detailed above inadequate to establish that Respondent was aware of or had reason to believe that Dickinson or Kelch were engaging in any activities on behalf of the Union. There is no showing that Clark ever pursued the "rumor" he heard that someone was visiting the employees at their homes regarding the Union organizing, or in any way attempted to ascertain whether such "rumor" had any foundation in fact. There is no showing that any official of Respondent ever heard of the several meetings which the employees had with Union Organizer McMahon. While Dickinson and Kelch passed out and collected union cards during working hours, without any apparent effort to conceal their activities, both admitted that they had no reason to believe that their conduct was observed by any supervisor or management official. No employees, nor anyone on their behalf, ever discussed the Union with Respondent. I do not believe the size of the community in which these events occurred (Wausau, Wisconsin, population about 30,000), nor the apparent number of employees in the plant, standing alone, form a sufficient basis, under the circumstances of this case, to infer that Respondent must have been aware of the union activities in which Dickinson and Kelch engaged.

Accordingly, I find and conclude that the General Counsel has failed to establish, by a preponderance of the evidence, that Respondent terminated Dickinson or Kelch to discourage membership in a labor organization, and I shall recommend that the complaint be dismissed in its entirety.⁵

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. It has not been established by a preponderance of the evidence that Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act as alleged in the complaint.

⁵ Respondent contends that it terminated Dickinson because he spent too much time away from his work wandering about the shop interfering with the work of others, and terminated Kelch for tardiness and absenteeism. There is some evidence which supports these contentions. This is particularly true in the case of Kelch. His timecards, which are in evidence, show that in the 14 weeks he worked for Respondent during 1962, he was late 14 minutes or more on eight occasions, and on three of these occasions he was more than 2 hours late. He was absent on 3 days, excluding holidays and the week he took off for his honeymoon. He offered no excuse for these absences. There are a number of factors, however, that arouse some suspicion that the reasons assigned by Respondent for the termination of these men was not the true reason therefor. Thus Foreman Krienke, under whose supervision these men worked, admitted that he had the same problems with them in prior years, yet they were recalled in the spring of 1962. Although General Manager Clark and Foreman Krienke jointly reached the decision to terminate these men, some 10 days prior to actual layoff, and Krienke obviously knew the reasons for that decision, he did not thereafter warn the men of the impending action, and when he actually laid them off on July 6, told them he knew no reason for the layoff and that it was probably temporary. It was not until the men talked to Clark on July 9, that they were told that the layoff was permanent, and when they asked Clark the reason for that action, Clark admittedly said that he did not want men about who frequented the taverns during the lunch hour. This clearly was not the basis for the decision reached by Clark and Krienke some 10 days before July 6, because the tavern incident, assuming that it happened as Clark testified, did not occur until July 5 or 6. As I have noted, while there is some suspicion that Dickinson and Kelch were the victims of discriminatory action by Respondent, suspicion is not proof, and a finding of violation cannot be predicated on suspicion alone. *Punch and Judy Togs, Inc., of California*, 85 NLRB 499. In view of my conclusion, set forth above, that the General Counsel has failed to establish, by a preponderance of the evidence, that Respondent was aware of the concerted activities engaged in by the employees involved, I make no finding as to whether or not Dickinson and Kelch were in fact terminated for cause.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, I recommend that the complaint herein be dismissed in its entirety.

Philadelphia Typographical Union, Local No. 2 and Philadelphia Inquirer, Division of Triangle Publications, Inc.

Philadelphia Typographical Union, Local No. 2 and Newspaper Guild of Greater Philadelphia.¹ *Cases Nos. 4-CD-77 and 4-CD-78. April 16, 1963*

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the Act following charges filed by Philadelphia Inquirer, Division of Triangle Publications, Inc., herein called the Employer, and Newspaper Guild of Greater Philadelphia, herein called the Guild, against Philadelphia Typographical Union, Local No. 2, herein called the Typographers, alleging that the Typographers induced or encouraged employees of the Employer to refuse to handle or work on certain goods, articles, or materials and to refuse to perform certain services with an object of forcing or requiring the Employer to assign particular work to employees who are members of the Typographers, rather than to employees who are members of the Guild. A duly scheduled hearing was held before Katherine W. Neel, hearing officer, on various dates between November 2, 1961, and May 4, 1962. The Employer, the Typographers, the Guild, Photo-Engravers Union No. 7, International Photo Engravers Union of North America, AFL-CIO, herein called the Photo Engravers, and International Typographical Union, AFL-CIO, herein called the ITU, all appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing upon the issues.² The rul-

¹ The charge in Case No. 4-CD-77, filed by the Employer against the Typographers, related to the operation of the darkroom in connection with the photocomposition process. The charge in Case No. 4-CD-78, filed by the Guild against the Typographers, related to the same darkroom work as well as to certain "paste-up" work. On November 20, 1961, the Regional Director dismissed those portions of the charge in Case No. 4-CD-78 relating to "paste-up" work, leaving in effect only those portions dealing with darkroom work. Since the remaining portions of the two charges thus involved identical work, the Regional Director consolidated the two cases.

² At the hearing, various parties excepted to the hearing officer's granting of motions to intervene by the Photo Engravers and the ITU. Since the Photo Engravers was a party to a then-current contract with the Employer under which it claimed some of the work in dispute and since the Respondent in this proceeding is a local of the ITU, we find that the motions to intervene were properly granted. Subsequent to the hearing, the Employer and the Typographers requested oral argument before the Board. As the record and briefs adequately present the issues and positions of the parties, the requests for oral argument are denied.