

**Local Union No. 621, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO and Atlantic Research Corporation d/b/a R & G Sloane Manufacturing Division of Atlantic Research Corporation. Case 31-CB-108**

September 28, 1967

**DECISION AND ORDER**

BY CHAIRMAN McCULLOCH AND MEMBERS  
FANNING AND JENKINS

On February 9, 1967, Trial Examiner E. Don Wilson issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

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 Trial Examiner's Decision, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>1</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the Respondent, Local Union No. 621, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Revise paragraph 2(b) by inserting the words "and meeting places" after the word "offices."

<sup>1</sup> This case is distinguishable from *NLRB v International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO (John I. Paulding, Inc)*, 320 F 2d 12 (C A 1), where the court found that union members cannot effectively resign from a union if they do not follow the procedural steps for resigning which are set forth in the union's constitution. Unlike the situation in that case, the constitution of the instant Respondent sets forth no procedure by which employees may voluntarily resign while continuing their employment in

these circumstances, as is true of membership in voluntary associations generally, the employees involved herein were at liberty to resign at will. See *Communications Workers of America, CIO v (New Jersey Bell Telephone Co)*, 215 F 2d 835, 838 (C A 2), enfg 106 NLRB 1322. Their resignations, accordingly, were effective, and as they were not members of Respondent Union on the governing date of the maintenance of membership clause fixed in the new contract, we find, as did the Trial Examiner, that Respondent's demands of the Company that they be discharged for the failure to pay dues constituted a violation of Section 8(b)(2) and (1)(A) of the Act, and that Respondent's letter to the 4 individuals informing them that their discharge would be demanded was violative of Section 8(b)(1)(A) of the Act.

**TRIAL EXAMINER'S DECISION**

**STATEMENT OF THE CASE**

E. DON WILSON, Trial Examiner: Upon a charge duly filed on April 16, 1966, by Atlantic Research Corporation d/b/a R & G Sloane Manufacturing Division of Atlantic Research Corporation, herein Sloane, the General Counsel of the National Labor Relations Board, herein the Board, issued a Complaint and Notice of Hearing, dated June 24, 1966, alleging that Local Union No. 621, United Rubber, Cork, Linoleum, and Plastic Workers of America, AFL-CIO, herein Respondent, violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act, herein the Act. In due course the Union denied the commission of any unfair labor practices.

Pursuant to due notice, a hearing in this matter was held before me in Los Angeles, California, on October 25, 1966. The parties fully participated. Briefs submitted by General Counsel and Respondent have been considered.

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

**FINDINGS OF FACT**

**I. THE BUSINESS OF THE EMPLOYER**

Sloane has its principal office and place of business in Sun Valley, California. At all material times, it has been engaged in the business of manufacture, distribution, and sale of plastic extruded products. It annually, in its business operations, sells and ships from its California plant, directly to points outside California, products valued in excess of \$50,000.

At all times material, Sloane has been an employer engaged in commerce and in a business affecting commerce within the meaning of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

Respondent, at all material times, has been a labor organization within the meaning of the Act.

**III. THE UNFAIR LABOR PRACTICES**

**A. The Issues**

1. Did the Union violate Section 8(b)(2) of the Act by demanding that Sloane discharge its employees Don W. Ackerley, Robert J. Barclay, James A. Spinks, and Eleno Topete because they were not members in good standing of the Union?

2. By the above conduct and by informing the above employees of the requests for their discharges, did the Union violate Section 8(b)(1)(A) of the Act?

3. Is an arbitrator's decision in any way determinative of the basic issues in this case?

### B. *The Facts*

Sloane and Respondent had a contract containing a maintenance of membership clause which was effective from March 4, 1964, through March 4, 1965. From March 5, 1965, through March 14, 1965, Sloane and the Union had no contract. Beginning March 15, 1965, through March 4, 1968, Sloane and the Union entered into a new contract containing a maintenance of membership clause. During the hiatus between the two contracts when there was no maintenance of membership requirement, Ackerley, Barclay, Spinks, and Topete, and other employees,<sup>1</sup> advised Sloane and the Union that they were resigning from the Union. The four employees herein involved did not simultaneously revoke their dues checkoffs, previously executed by them. Sloane stopped checking off their dues for Respondent because they were no longer members. Respondent grieved over Sloane's failure to check off the dues of the four employees. The grievance went to arbitration. On September 13, 1965, the arbitrator found that dues must continue to be deducted from the wages of the employees who resigned from Respondent during the hiatus, excepting for one employee who also revoked his checkoff authorization. In his decision, the arbitrator stated, among other things:

In conclusion, it should be added that this award does not effect the membership of the 29 employees in the Union. It relates only to the issue of whether their dues checkoff authorizations were revoked as provided for in the agreement. To hold that they did not comply with the agreement in this regard does not determine their past or present membership status. That is a matter for resolution between them and their Union.

Subsequently, and until November 1965, Sloane checked off all dues from these four employees and perhaps others.<sup>2</sup>

November 1965 was the anniversary date of the checkoff authorizations of the four employees. During November they sent letters to Sloane and Respondent revoking their authorizations. Sloane ceased the checkoffs for these employees. Dues not having been received by Respondent from these employees for more than three months, Respondent's attorney, by letter, asked Sloane to discharge the four employees because they had lost membership in Respondent due to their failure to pay dues. On the same date, Respondent's president wrote to each of the four, stating they had been dropped from membership for nonpayment of dues and advising each that Respondent would demand their discharge by Sloane.

### Concluding Findings

There is no doubt that, as was their right, Ackerley, Barclay, Spinks, and Topete, resigned from Respondent during that time in March when there was no contract requiring them to maintain membership. These were effective resignations and there was no law requiring them to resume membership under a new contract.

Respondent's constitution is invoked by Respondent as preventing any voluntary withdrawal from member-

ship during a time when there is no contract requiring maintenance of membership. Respondent's International representative, Ramroth, testified that there is no provision in the constitution for withdrawal from membership other than to leave the employ of an employer with whom Respondent has a contract. I find the constitution to be silent as to the right of a member to withdraw from membership when Respondent does not have a contract with the member's employer. I further conclude that a member may resign at will from any labor organization where his membership, as here, was for an indefinite period. It is clear that having effectively resigned, the four employees were not members of Respondent when the current collective-bargaining agreement was executed and the new maintenance of membership clause was ineffectual as to them. The arbitrator's decision does not, by its terms, touch on this matter. Should it be found that it does deal adversely in this matter, I would find it to be of no binding effect as contrary to the policies of the Act. Upon timely resigning from membership, an employee may cease paying union dues.

The four employees effectively resigned from Respondent during the hiatus period. Respondent's demands of Sloane that they be discharged for failure to pay dues at a time they were no longer members and under no obligation to pay dues as nonmembers, violated Section 8(b)(2) and (1)(A) of the Act. So, also, did Respondent's letter to the four informing them that their discharge would be demanded, violate Section 8(b)(1)(A) of the Act.

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

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship 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 Respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

### CONCLUSIONS OF LAW

1. Sloane is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization within the meaning of the Act.

3. By attempting to cause Sloane to discriminate against Ackerley, Barclay, Spinks, and Topete in violation of Section 8(a)(3) of the Act, and by advising these employees of such attempt to cause their discharges, Respondent has violated Section 8(b)(1)(A) and (2) of the Act.

These violations go to the heart of the Act, and a broad order is required.

<sup>1</sup> Not here involved.

<sup>2</sup> This was pursuant to the arbitrator's decision.

## RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and the entire record in the case, it is recommended that Respondent, its agents, officers, and representatives, shall:

## 1. Cease and desist from

(a) Attempting to cause Sloane to discriminate against the four employees named herein, or any other employees, in the exercise of rights guaranteed in Section 7 of the Act except in a manner permitted by Section 8(a)(3) of the Act, and from advising each of the four employees of the attempts to cause their discharge.

(b) In any other manner restraining or coercing employees in the exercise of rights guaranteed in Section 7 of the Act except in a manner permitted by Section 8(a)(3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Notify Ackerley, Barclay, Spinks, and Topete, each, and Sloane, in writing, that it has no objection to the employment of either or any of the four employees in any capacity or manner by Sloane.

(b) Post at its offices in conspicuous places, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Promptly mail to said Regional Director signed copies of the Appendix for posting, Sloane being willing, at Sloane's place of business.

(d) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.<sup>4</sup>

<sup>3</sup> In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

<sup>4</sup> In the event that this Recommended Order is 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 Respondent has taken to comply herewith."

## APPENDIX

## NOTICE TO ALL MEMBERS

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that

WE WILL NOT attempt to cause R & G Sloane Manufacturing, Division of Atlantic Research Corporation to discriminate against Robert J. Barclay, James A. Spinks, Don W. Ackerley or Eleno Topete or any other employee, because they are not members of our organization at a time when they are not required to be such members, or to discriminate against them or any other employee in violation of Section 8(a)(3) of the Act.

WE WILL NOT advise any of the above employees or any other employee that we have requested their discharge because they were not members in good standing of our organization at a time when they are not required to be members.

WE WILL NOT in any other manner restrain or coerce employees in the exercise of rights guaranteed them in Section 7 of the Act, except in conformity with Section 8(a)(3) of the Act.

WE WILL notify each of the four above employees and Sloane, in writing, that we have no objection to the four employees' employment in any capacity or manner consistent with any lawful labor agreement between us and Sloane.

LOCAL UNION No. 621,  
UNITED RUBBER, CORK,  
LINOLEUM, AND PLASTIC  
WORKERS OF AMERICA,  
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.

If members have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 10th Floor, Bartlett Building, 215 West Seventh Street, Los Angeles, California 90014, Telephone 213-688-5850.