

Westmont Engineering Co. and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Lodge No. 92, AFL-CIO

Westmont Engineering Co. and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Lodge No. 92, AFL-CIO, Petitioner. Cases 21-CA-7541 and 21-RC-10353

March 1, 1968

DECISION, ORDER, AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

On October 23, 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, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner further recommended that the election held in Case 21-RC-10353 be set aside and that another election be conducted. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision 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 these cases, and hereby adopts the findings, conclusions,¹ and recommendations² of the Trial Examiner only to the extent indicated below.

1. We agree with the Trial Examiner that the Respondent violated Section 8(a)(1) by Supervisor Breen's conduct. We also agree that this conduct cannot serve to set aside the election, because it occurred before the petition was filed.

2. The Trial Examiner also found that a speech given by Respondent's president, Kenneth B.

¹ The Trial Examiner's findings and conclusions are based, in part, upon credibility determinations, to which the Respondent has excepted. After a careful review of the record, we conclude that the Trial Examiner's credibility findings are not contrary to the clear preponderance of all relevant evidence. Accordingly, we find no basis for disturbing those findings. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3).

Morey, to the employees violated Section 8(a)(1), and that it destroyed the proper laboratory conditions for a free election. Therefore, he recommended that the election be set aside. We do not agree.

On the basis of Morey's uncontradicted testimony as to what he said, the Trial Examiner made the following findings:

During working time, Morey spoke to 15 employees for about 30 minutes. He told them they had the right to vote for the Union if they wanted it. He also indicated an intention to cooperate with the Union, should it be selected. He also told the employees that they were free to discuss the Union in the shop and assured them there would be no reprisals. The Trial Examiner found, and we agree, that the above statements did not violate the Act.

Morey further told the employees that once they joined the Union they lost some of their freedom of action, and had to do what the Union told them to do. If a union called a strike, they would have to go out on strike. He told the employees that they had a liberal job classification setup, and probably the Union would require rigid job classifications, where they would not be free to do a number of different jobs in the shop. He also told the employees that if the Union got in they would have to handle any grievances through the Union.

The Trial Examiner found the above statements to be illegal because they were false and coercive. Although these statements were not entirely accurate, they are not coercive, and neither violate Section 8(a)(1) nor otherwise warrant setting aside the election.

Accordingly, we shall dismiss the complaint insofar as it alleges violations not found herein, and overrule Petitioner's objections to the election. As the tally of the ballots shows that Petitioner has not received a majority of the valid votes cast, we shall certify the results of the election.

AMENDED CONCLUSIONS OF LAW

We adopt the Conclusions of Law from the Trial Examiner's Decision, with the following modifications:

1. In Conclusion 2, omit the words beginning with "and by telling" and ending with "grievances through the Union."

² The Trial Examiner inadvertently failed to rule in his Decision on Respondent's motion to dismiss section 6(a) and 6(c) of the complaint. We grant the motion as to 6(c) because no evidence was presented to support that allegation of the complaint. However, we deny the motion as to 6(a) because the General Counsel has established a *prima facie* case as to that allegation.

THE REMEDY

Having found, in agreement with the Trial Examiner, that Respondent has engaged in certain unfair labor practices, we will adopt the Trial Examiner's recommendation that it cease and desist from such practices and post appropriate notices. Since we have found, contrary to the Trial Examiner, that Morey's speech did not violate the Act, we will modify the Recommended Order by deleting the requirement that Respondent cease and desist from such conduct.

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 as modified below and hereby orders that the Respondent, Westmont Engineering Co., Santa Fe Springs, California, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified.

Substitute the following for paragraph 1 of the Trial Examiner's Recommended Order:

"1. Cease and desist from:

(a) Interrogating employees about their union activities and asking employees to discover and report the union activities of other employees to Respondent.

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

2. Substitute the following for the first paragraph of the Appendix:

WE WILL NOT interrogate our employees about their union activities; nor ask our employees to discover and report to us the union activities of fellow employees.

3. Substitute the following for the second paragraph of the Appendix:

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed by Section 7 of the Act.

IT IS FURTHER ORDERED that the complaint herein be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

CERTIFICATION OF RESULTS OF ELECTION

IT IS HEREBY CERTIFIED that a majority of the valid votes in Case 21-RC-10353 has not been cast for International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers,

Local Lodge No. 92, AFL-CIO, and that said labor organization is not the exclusive bargaining representative of the employees in the unit found appropriate within the meaning of Section 9(a) of the Act, as amended.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

E. DON WILSON, Trial Examiner: Upon a charge duly filed on April 3, 1967, by International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Lodge No. 92, AFL-CIO, herein the Union, the General Counsel of the National Labor Relations Board, herein the Board, issued a complaint and notice of hearing dated May 10, 1967, alleging that Westmont Engineering Co., herein Respondent, violated Section 8(a)(1) of the National Labor Relations Act, herein the Act. In due course, Respondent denied the commission of unfair labor practices. Certain objections to conduct affecting the result of the election held in Respondent's plant on March 29, 1967, were heard along with the evidence concerning unfair labor practices. A disposition of the objections is made hereinafter.

Pursuant to due notice, a hearing in this consolidated matter was held before me in Los Angeles, California, on July 18, 1967. The parties fully participated. Briefs submitted by the parties 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 RESPONDENT

Respondent is a corporation engaged in the contracting of the design, manufacture, and installation of material handling systems in Santa Fe Springs, California. During the 12-month period ending in January 1967, Respondent, during the course of its operations, sold and delivered products valued in excess of \$50,000 directly to customers located outside the State of California. At all times material, Respondent has been an employer engaged in commerce and in a business affecting commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION

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

III. THE UNFAIR LABOR PRACTICES

The Union was organizing Respondent's employees for a period of time before February 9,

1967.¹ Respondent's shop foreman, Irving Breen, a supervisor within the meaning of the Act, spoke to about 6 of Respondent's 15 employees about the Union. These conversations took place beginning in early February. Breen admitted he asked these employees if they had heard the Union was trying to get in. He also asked these six employees "what they thought of it." While Respondent admits that Breen was a supervisor within the meaning of the Act it disputes that he was an agent of Respondent when he interrogated employees. The entire record makes clear that Breen was Respondent's principal representative in the shop and the fact that he may not have had express authorization to interrogate employees as to their union activities does not detract from the fact that when he engaged in such activities on company time he was Respondent's agent.²

Two of the employees interrogated by Breen testified in some detail. They were Walter D. Winterhalter and Charles Lyon. They were still employees when they testified and thus should not have been prone to fabricate. I was favorably impressed by their demeanors. I found such denials as Breen made of their testimony unconvincing. I credit the testimony of Winterhalter and Lyon where it conflicts with that of Breen.

About February 3, Breen asked Winterhalter if anyone had approached him with a card to sign to get a union in the shop. Breen explained why he thought the Union would do the employees no good. He then, just before he concluded the conversation, asked Winterhalter if he had any idea who had brought the union cards into the shop. Winterhalter stated he did not know. This was not true.

Lyon had two conversations with Breen about the Union in the plant. This was in early February. Breen said he wanted "to know if there had been something about a Union and if I knew anything about it or heard anything about it." Lyon said "Yes." Shortly thereafter, Lyon was going out on another job with an employee named Dubell. Breen asked Lyon to feel out Dubell and see how he felt about the Union. Lyon went out with Dubell and talked to Dubell. When Lyon returned from the trip he told Breen he had not talked to Dubell.

Both Winterhalter and Lyon had worked with Breen for a period of years. At other shops where they had worked, Breen had been a union member and had been a union steward at at least one shop. They were on friendly terms with Breen. Breen did no interrogating after the Union's election petition was filed on February 10. Some three or four employees with whom Breen regularly took a break or lunched openly discussed the Union in the presence of Breen. Nonetheless union

organization was not open in the plant particularly since some didn't want "older men" to know of it.

I am convinced that Breen's interrogation constituted interference, restraint, and coercion as forbidden by Section 8(a)(1) of the Act. This is particularly so because of its comparatively widespread nature, 6 out of 15, almost amounting to a poll, also to the variety of questions including "who" brought in the cards, and also to the fact that Breen requested an employee to sound out another as to how he felt about the Union and to report back. These were not mere innocent conversations between a friendly supervisor and his subordinates but rather constituted a determined effort to inject the employer into a sphere which is none of his concern. Respondent violated Section 8(a)(1) of the Act by Breen's activities as found above.

About 5 or 6 days after the Union filed its petition, or about February 15 or 16, Respondent's president, Kenneth B. Morey, spoke to all the employees with respect to the election which was held on March 29. Mr. Morey was the only witness as to what he said at this meeting with the employees. I credit his testimony. During working time, Morey spoke to the 15 employees for about 30 minutes. Among many other things Morey told the employees they had the right to vote for the Union if they wanted it. He said some things which indicated an intention to cooperate with the Union, should it be selected by the employees. He had told Breen to refrain from any antiunion activities,³ and the employees were free to discuss the Union in the shop. He assured the employees there would be no reprisals. He had recently returned from a management course at a local university where it had been stressed that employers should improve communications with their employees.

However, Morey made further statements which I find violative of Section 8(a)(1) of the Act. He told them that *once they joined the Union they lost some of their freedom of action and had to do what the Union told them to do.* (False and coercive.) If a union called a strike, they would have to go out on strike. (False and coercive.) He also told the employees that they had a liberal job classification system setup and probably the Union would require rigid job classifications where they would not be free to do a number of different jobs in the shop. (Coercive because Morey substituted forecast for mere speculation as to what the Union might merely ask in negotiations.) Morey added that with a union they probably would not be free to do a number of different jobs in the shop. (Coercive for above reason.) He told the employees that if the Union got in they would have to handle any grievances through the Union. (Coercive since he did not advise them of their rights to grieve directly to the Respondent, even with a union representa-

¹ Hereinafter all dates refer to 1967 unless otherwise specified

² *Webb Tractor and Equipment Company*, 167 NLRB 383.

³ Breen refrained from the time the petition was filed.

tive.) It is plain to me that employees subjected to Breen's 8(a)(1) activity, listened carefully to Morey's 8(a)(1) speech, and that it constituted interference, restraint, and coercion.

IV. THE OBJECTIONS TO THE ELECTION

Breen's interrogation, etc., took place before February 10, when the petition was filed. Such activity is not here considered with respect to the objections to the election. Of moment, however, is Morey's speech. I have found part of it violative of Section 8(a)(1) of the Act. The speech was made a few days after the petition was filed and while Breen's coercive actions were still uncorrected. Morey's statements rendered a free election improbable. Morey destroyed proper laboratory conditions for a free election. I shall recommend to the Board that the election herein be set aside and another election be conducted since the election did not reflect the free and uncoerced wishes of Respondent's employees.⁴

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its 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.

VI THE REMEDY

Having found that Respondent has engaged in certain 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.

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

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By interrogating employees as to whether anyone had approached them with a union card and who had brought the union cards into the shop and whether they knew anything about the Union or had heard anything about the Union and asking employees to feel out other employees and discover and report how they felt about the Union; and by telling employees that once they joined the Union they had to do what the Union told them to do and that they would have to go out on strike if the Union called a strike, and that they would not be free to do a number of jobs if the Union came in, and the employees would have to handle all

grievances through the Union, Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices are such within the meaning of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in the case, I recommend Respondent, Westmont Engineering Co., its officers, agents, successors, and assigns, shall:

1. Cease and desist from interrogating employees about their union activities and asking employees to discover and report the union activities of other employees to Respondent; and telling employees that once they joined the Union they had to do what the Union directed and that they would have to go on strike if the Union should call a strike and that they would not be free to do a number of jobs if the Union came in and that employees would have to handle all their grievances through the Union.

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

(a) Post at its plant in Santa Fe Springs, California, copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 21, 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.

(b) Notify the Regional Director for Region 21, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.⁶

IT IS FINALLY RECOMMENDED that the election conducted among Respondent's employees on March 29, 1967, be set aside and another election be conducted.

⁴ The objections to the election were timely filed and evidence later discovered affecting the validity of the election may properly be received. *Aeronca Manufacturing Corporation*, 121 NLRB 777, *Henry I. Stegel Co., Inc.*, 165 NLRB 493

⁵ 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"

⁶ 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 EMPLOYEES

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 our employees that:

WE WILL NOT interrogate our employees about their union activities; nor ask our employees to discover and report to us the union activities of fellow employees; nor tell employees that once they join the Union they must do whatever the Union directs; nor will we tell our employees that if they join the Union they must go on strike if the Union calls a strike; nor will we tell our employees that they will not be free to do a number of different jobs if the Union becomes their representative; nor will we tell our employees that if the Union becomes their representative they must handle all their grievances through the Union. WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in their Union or other protected concerted activities.

The Union referred to above is International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Lodge No. 92, AFL-CIO. All our employees are free to become, remain, or refrain from becoming members of this Union or any other labor organization, 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 in Section 8(a)(3) of the Act.

WESTMONT ENGINEERING CO.

(Employer)

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 employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office Eastern Columbia Building, 849 South Broadway, Los Angeles, California 90014, Telephone 688-5229.