

Livingston Audio Products Corp. and Mary Thompson, and Local 518, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.¹ Case 22-CA-3786 and 22-RC-4333

January 5, 1970

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, BROWN, AND JENKINS.

On August 21, 1969, Trial Examiner William J. Brown, issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged 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. He further found that certain conduct by the Respondent interfered with and affected the results of the election in Case 22-RC-4333, and recommended that the election be set aside and that a new one be directed. Thereafter, the Respondent filed exceptions and a brief, and Local 518, I.B.T.C.W.H.A., filed a brief in support of the Trial Examiner's Decision.

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 briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that the Respondent, Livingston Audio Products Corp., Fairfield, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

IT IS HEREBY FURTHER ORDERED that the election held on May 2, 1969, among the Respondent's

¹The Board has been advised that the Teamsters International Union revoked the charter of Local 518, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, effective September 2, 1969.

Accordingly, the Regional Director is authorized to amend the name of the Petitioning Union for purposes of the second election, if upon investigation, the proper name of the Union is different from that used herein

employees in the appropriate unit, be, and it hereby is, set aside.

[Direction of Second Election^{2,3} omitted from publication.]

²In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them *Excelsior Underwear Inc.*, 156 NLRB 1236; *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 22 within 7 days after the date of issuance of the Notice of Second Election by the Regional Director. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed

³Subject to the qualification noted in fn. 1

TRIAL EXAMINER'S DECISION

WILLIAM J. BROWN, Trial Examiner: This proceeding under Sections 10(b) and 9(c) of the National Labor Relations Act, hereinafter referred to as the "Act," came on to be heard at Newark, N.J., on July 9, 1969.¹ The underlying charge of unfair labor practices had been filed on or about April 29 by the above-indicated Charging Party, hereinafter sometimes referred to as "Mrs. Thompson," and the complaint herein was issued June 4 by the General Counsel of the National Labor Relations Board, acting through the Board's Regional Director for Region 22. It alleged, in addition to jurisdictional matter, that the above-indicated Respondent, hereinafter sometimes referred to as the "Company" engaged in unfair labor practices defined in Section 8(a)(3) and (1) of the Act. By order of June 4 the Regional Director consolidated for hearing with issues arising under the complaint those involved in objections to an election conducted May 2, on the petition of Local 518, I.B.T.C.W.H.A., hereinafter referred to as the "Union," the issue in both cases relating to the discharge of Mrs. Thompson on April 28. The Company's duly filed answer has denied the commission of unfair labor practices.

At the hearing the parties appeared and participated as noted above with full opportunity to present evidence and argument on the issues. Subsequent to the close of the hearing briefs were received from the General Counsel and the Company and have been fully considered. On the entire record herein and on the basis of my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The pleadings and evidence indicate and I find that the Company is a corporation organized and existing under the laws of the State of New Jersey with its principal plant and office at Fairfield, New Jersey where it is engaged in the manufacture and sale of stereo tapes and related products. During the calendar year preceding issuance of the complaint herein, concededly a representative period, the Company manufactured goods valued in excess of \$50,000 and shipped from the Fairfield plant directly to points outside the State of New Jersey. I find, as the Company concedes, that it is an employer

¹Dates hereinafter, unless otherwise specified relate to the year 1969.

engaged in commerce within the meaning of Sections 2(6) and (7) of the Act

II THE LABOR ORGANIZATION INVOLVED

The pleadings and evidence establish that the Union is a labor organization within the purview of Section 2(5) of the Act

III. THE UNFAIR LABOR PRACTICES AND OBJECTIONS TO THE ELECTION

A *Introduction to the Issues*

The Company's operations, essentially consisting of the manufacture, assembly, repair and packaging of audio tape cartridges, are carried on with a work force of some 76 employees and several supervisors, the latter group headed by President Darrell Scholton and General Manager Joseph Vito and including Foreman Bob Mulvihill and his assistant, Ethel Richardson. Nick Monteleone and Virginia Depete are also employed as supervisory night foreman and forelady respectively.

Some time in March the Union commenced a campaign to organize Company employees and on March 20, Union President Al Sainato and others were soliciting support for the Union in the Company parking lot prior to the commencement of work on the first shift. Mrs. Thompson signed a Union card on that occasion but the evidence does not establish that Mulvihill, who was in the immediate area, observed her signing. Thereafter, Mrs. Thompson attended two Union meetings at the Fairfield Recreation Hall. At the second of these meetings, held on the night of Friday, April 25, she was chosen to be the Union's observer at the election to be conducted on May 2. At about 9:30 p.m. on the night of April 28, Vito discharged her under circumstances more fully explicated hereinafter. The General Counsel contends that Mrs. Thompson was discharged because she joined or assisted the Union or engaged in other concerted activities, the Company contends that she was discharged for working unauthorized overtime, it denied knowledge of her Union activity.

B *The Discharge of Mrs. Thompson*

Mrs. Thompson was initially hired by the Company in October 1966 as a splicer and solderer at a rate of \$1.60 per hour. In November 1966 her rate was increased to \$1.65. She took a leave of absence in December 1966, returned to work in June 1967 at a rate of \$1.80 and continued at that rate until her discharge. At the time of her discharge she was a senior employee and I credit her testimony that management never complained to her of the quality and quantity of her work and that on the one occasion when her request for an increase was turned down it was on the basis of lack of funds rather than on any deficiency in her work.²

On the occasion of the second Union meeting held at the Fairfield Recreation Hall at 8 p.m. and attended by some 14 or 15 Company employees, Mrs. Thompson testified that she was the last to enter from the street. According to her account Scholton and Vito drove slowly past the entrance to the Hall looking in her direction as

she was entering the hall. Vito, although denying knowledge of Mrs. Thompson's union activity, did not contradict this testimony and Scholton did not testify. I credit Mrs. Thompson's account and find that on the night of April 25 the Company had knowledge³ of her attendance at the Union meeting although there is no basis for concluding that they knew of her selection as the Union's election observer at that meeting.

In April 1968 Mrs. Thompson was working regularly on the first shift, 7:30 a.m. to 4 p.m. and about April 7 was reassigned from splicing to repair work apparently due to a shortage of splicing work which had resulted in the layoff of five splicing employees. Mrs. Thompson testified that on the Thursday prior to her discharge Mulvihill asked her to work overtime on shrink-wrapping but she declined because of her transportation situation and offered instead to work overtime the following week. According to Mrs. Thompson, Mulvihill accepted this offer and told her that there was splicing work available for overtime the following week. Mulvihill denied this authorization of overtime and I credit his denial.

On Monday, April 28, Mrs. Thompson did repair work from 7:30 until 9 a.m. and then apparently did no work until her regular quitting time of 4 p.m. when she commenced splicing. She testified that soon after she commenced the splicing work on that day she had a conversation with her immediate supervisor, Miss Ethel Richardson, in which Miss Richardson asked her how long she intended to work and was told by Mrs. Thompson that she intended to work until about 10 o'clock. To this, according to Mrs. Thompson, Miss Richardson made no reply. Although Miss Richardson denied having any conversation with Mrs. Thompson on April 28, she conceded that at 4:35 p.m. on that day she observed Mrs. Thompson standing at the splicer's table. I credit Mrs. Thompson's account that Miss Richardson observed her on overtime hours at the splicer's table and impliedly authorized her continuing on overtime splicing work. I also credit Mrs. Thompson's testimony, not directly denied by Vito, that Vito observed her working on splicing shortly before 5 o'clock. Mrs. Thompson also testified that while she was engaged in splicing work she was asked by Monteleone how long she intended to work and when she told him she would work until 10 o'clock Monteleone did not testify and I credit Mrs. Thompson's account of this matter.

Vito testified that, while dining at a restaurant at about 8:30 on the night of April 28, Monteleone told him that Mrs. Thompson was working and asked him if he had authorized her overtime work. He proceeded to the plant and, according to his account, asked her if she had been authorized to work overtime and when she admitted that no one had, he discharged her for violation of the Company overtime policy. He denied any knowledge of her Union activities. According to Mrs. Thompson, however, Vito asked her what she was doing and, after she said she was splicing, told her to get her things and leave. When she asked why, Vito, according to Mrs. Thompson, replied that he did not know she was a sneak until then and that she could call her friend Al Sainato and tell him she had been fired. On cross-examination Vito conceded

²Although Mulvihill testified that Vito vetoed a request for an increase the record does not warrant a finding that the request was denied on the basis of any inadequacy in her work.

³The lighting conditions described by Mrs. Thompson, the slow speed of the automobile and the direction in which Scholton and Vito were looking requires the conclusions, absent contradictory evidence, that they recognized Mrs. Thompson. Mrs. Thompson's testimony, which I credit, also warrants the conclusion that, since she was the last to enter the meeting, she was the only employee in attendance who could have been observed by Vito and Scholton.

mentioning Sainato's name but claimed that he merely intended to give Mrs. Thompson Sainato's telephone number in view of her possible desire to present to Sainato her claim of unfairness in her treatment. I credit Mrs. Thompson's account of this conversation. I also find completely incredible Vito's explanation of the reason for his injection of Sainato's name into the conversation.

The situation, I am convinced, is one in which a relatively satisfactory employee was summarily discharged on the first work day after the Company acquired, by surveillance, knowledge of her Union interest under circumstances indicative of anti-Union animus in the discharge. I conclude that her discharge constituted an unfair labor practice within the purview of Section 8(a)(3) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Company set forth in section III, above, and there found to constitute unfair labor practices, 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 such commerce and the free flow thereof.

V. THE REMEDY

In view of the findings set forth above to the effect that the Company has engaged in certain unfair labor practices affecting commerce it will be recommended that it be required to cease and desist therefrom and take certain affirmative action as appears necessary and appropriate to effectuate the policies of the Act. In view of the finding that employee Mrs. Mary Thompson was discriminatorily discharged I shall recommend that the Company be required to offer her immediate and full reinstatement to her former or a substantially equivalent position and make her whole for any loss of earnings in accordance with the remedial relief policies enunciated in *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Company*, 138 NLRB 716. Since a discriminatory discharge strikes at the heart of rights guaranteed under the Act, *N.L.R.B. v. Entwistle Mfg. Co.*, 120 F.2d 532 (C.A. 4), the cease-and-desist provisions recommended herein are appropriately broad.

It will also be recommended that the election be set aside and proceedings in Case 22-RC-4333 severed and remanded to the Regional Director for conduct of a second election at such time as appears appropriate.

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

CONCLUSIONS OF LAW

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

2. The Union is a labor organization within the purview of Section 2(5) of the Act.

3. By discharging employee Mrs. Mary Thompson in reprisal for her activity on behalf of the Union, the Company has engaged in unfair labor practices defined in Section 8(a)(3) and (1) of the Act, and has engaged in conduct affecting the results of the election in Case 22-RC-4333.

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

RECOMMENDED ORDER

On the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this case it is recommended that the Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in, or activity on behalf of, the Union or any other labor organization of its employees by discharging or otherwise discriminating against them with respect to hire, tenure or any term or condition of employment except as may be required under the terms of an agreement lawfully entered into pursuant to the proviso to Section 8(a)(3) of the Act.

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

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

(a) Offer Mrs. Mary Thompson immediate and full reinstatement to her former or a substantially equivalent position without prejudice to her seniority or other rights and privileges, and make her whole for loss of earnings in accordance with the provisions contained in the section above entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze and give effect to the backpay requirements hereof.

(c) Post at its Fairfield plant, copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 22, shall, after being duly signed by an authorized representative of the Company, be posted immediately upon receipt thereof and be maintained thereafter for a period of 60 consecutive days, in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced or covered by other material.

(d) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Decision what steps have been taken to comply with the terms hereof.⁵

IT IS RECOMMENDED that the representation case be severed and the election conducted on May 2 in that case be set aside and a new election conducted at such time as appears appropriate to the Regional Director.

⁴If these Recommendations are 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. If the Board's Order is enforced by a decree of the United States Court of Appeals, the notice will be further amended by the substitution of the words "a Decree of the United States Court of Appeals Enforcing an Order" for the words "a Decision and Order."

⁵If these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 22, in writing, within 10 days from the date of this Order, what steps the Respondents have 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 discourage membership in Local 518, I.B.T.C.W.H.A. or any other labor organization by discharging or otherwise discriminating against employees respecting hire, tenure or terms or conditions of employment.

WE WILL offer Mrs. Mary Thompson immediate and full reinstatement to her former or an equivalent position and we will make her whole for earnings lost as a result of our discrimination against her by paying her backpay with interest.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right under the above-named Act.
All our employees are free to join and assist the above-named or any other labor organization.

LIVINGSTON AUDIO
PRODUCTS CORP.
(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, Federal Building — 16th Floor, 970 Broad Street, Newark, New Jersey 07102, Telephone 201-645-3088.