

Engelbert Samide d/b/a Ridgewood Art Woodcraft and Furniture Workers Union, Local 76-B, United Furniture Workers of America, AFL-CIO. Case 29-CA-1531

March 23, 1970

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

On October 28, 1969, Trial Examiner James R. Webster issued his Decision in the above-entitled proceeding, finding that 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 also found that Respondent had not engaged in certain other unfair labor practices. Thereafter, the Charging Party filed exceptions to part of the Decision, the General Counsel filed exceptions to the Decision and a supporting brief, and Respondent filed a brief in opposition to General Counsel's exceptions to 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, the briefs, and the entire record in this case, and hereby adopts the findings,¹ 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 Respondent, Engelbert Samide d/b/a Ridgewood Art Woodcraft, Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

¹The General Counsel excepts to the finding of the Trial Examiner in section III, J, of his Decision that Foreman Volk's statement to employee Tripoli occurred on November 9, 1969. We find merit in this exception, and find that this statement was made on November 20, 1969.

Further, since we have determined that Respondent did not engage in activities in violation of Section 8(a)(5) of the Act, and we have not issued a bargaining order, we find it unnecessary to pass upon the Trial Examiner's finding that Manfrede Bauer should be excluded from the bargaining unit because of his relationship as son-in-law to the late Engelbert Samide.

IT IS FURTHER ORDERED that those portions of the complaint as to which no violations have been found are hereby dismissed.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

JAMES R. WEBSTER, Trial Examiner. This case, with all parties represented, was heard in Brooklyn, New York on June 9, 10, 11, 1969, on a complaint of the General Counsel and answer of Ridgewood Art Woodcraft, herein called Respondent. The complaint was issued on February 28, 1969, on a charge filed November 25, 1968. The complaint alleges that Respondent refused to bargain in good faith with the Charging Party and engaged in other acts of interference, restraint and coercion of employees which constituted unfair labor practices within the meaning of Section 8(a)(1), (2), and (5) of the National Labor Relations Act, herein called the Act.

Briefs have been filed by the General Counsel and by Respondent and have been carefully considered. Upon the entire record and my observation of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Engelbert Samide was, until his death on March 19, 1969, a sole proprietor doing business as Ridgewood Art Woodcraft in the Borough of Queens, City and State of New York, where he was engaged in the manufacture, sale and distribution of office and industrial furniture and related products. Since his death, his business has been operated by his widow, Amalia Samide, and his son, Adolph Samide. During the past year, which period is representative of Respondent's annual operations generally, Respondent sold and distributed finished products valued in excess of \$50,000 to customers located outside the State of New York.

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

II. THE LABOR ORGANIZATIONS INVOLVED

Furniture Workers Union, Local 76-B, United Furniture Workers of America, AFL-CIO, hereinafter called Furniture Workers, is a labor organization within the meaning of Section 2(5) of the Act.

Local 2632, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, hereinafter referred to as Carpenters Union Local 2632, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Issues

1. Whether Respondent engaged in unfair labor practices of such a nature that a representation election could not reflect the true desires of the employees on the matter of a bargaining representative

2. Whether Respondent rendered illegal assistance to the Carpenters Union, Local 2632, by permitting a representative to speak to an assembly of employees on

company time.

3. Whether an employee who is a son-in-law of owner Engelbert Samide should be excluded from the bargaining unit

4. Whether the Furniture Workers secured authorization cards from a majority of Respondent's employees, and whether Respondent could insist on a Board election as proof of majority under the circumstances of this case

B *Union Organizational Activities*

In October 1968, Vito Massaro, an employee of Respondent and a former member of the Furniture Workers, telephoned Joseph Tranchida, a business representative of this Union and asked him to come to Respondent's shop and organize its employees. On November 6, 1968, Tranchida met with four employees in front of the plant. On November 8, a union meeting was held at a tavern and was attended by 13 or 14 of Respondent's 16 employees and by Tranchida and Union Business Agent George Bocchiere. Questions were asked by the employees and answers were given by the union representatives. Union application cards were distributed. Approximately ten employees signed cards at this meeting. The other employees stated that they wanted to think the matter over and they retained their card. Vito Massaro stated that he wanted to hold the signed cards until the next meeting, and they were turned over to him by Tranchida. The employees wanted to retain possession of the cards until they had had an opportunity to learn more about the Union.

On November 14, another union meeting was held in the same tavern, and fourteen employees attended with Tranchida and Bocchiere. Tranchida read to them a copy of the Union's basic contract. Then, demands which were to be presented to Respondent were formulated. Vito Massaro turned over to Tranchida the authorization cards in his possession. Sal Tripoli was elected shop steward, and Stanley Szulborski was elected committee man. Tranchida ascertained from the employees that Tuesday of the following week, November 19, 1968, would be a good time to see their employer. Owner Engelbert Samide due to illness was not coming into the office regularly.

C. *The Bargaining Unit and the Authorization Cards*

All employees of Respondent employed at its Queens plant, exclusive of all office clericals, salesmen, guards and watchmen, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

On November 14, 1968, Respondent had in its shop sixteen production and maintenance employees and a foreman, William Volk. One of the employees, Manfrede Bauer, who is employed as shipping clerk, is a son-in-law of the deceased owner, Engelbert Samide. Bauer is the only employee in the shipping department. He cleans and wraps desks for shipment. If he needs assistance in moving a desk that he cannot handle himself, he calls on one of the other employees for help. There is a telephone on his desk and if no one is in the office, he receives incoming calls. He exercises no authority over other employees and I find that he is not a supervisor within the meaning of the Act. But, because of his relationship to Engelbert Samide as son-in-law, I find in accordance with Board policy on relationships of this degree that his

interests are more closely identified with those of management than those of fellow employees and that he should therefore be excluded from the bargaining unit.¹

Foreman William Volk is in charge of all employees in Respondent's shop; he directs them in their daily work; he has interviewed and hired employees, transferred employees and has granted time off to employees. I find that he is a supervisor within the meaning of the Act.

Exclusive of Foreman Volk and Bauer, Respondent had fifteen employees in the bargaining unit when the Union's request for recognition was made.

Between November 8 and 14, 1968, fourteen of Respondent's production and maintenance employees signed union authorization cards. All but three of the cards were identified by the employees who signed them. Salvatore Tripoli observed his brother, Gastare Tripoli, sign his authorization card on November 8, 1968, at a union meeting; he gave cards to employees Korneliu Barbes and Ernst Linauer; Linauer returned his signed card to Tripoli and Barbes returned his signed card to employee Vito Massaro. One card, that of Hermann Jeschawitz, is undated, but Jeschawitz testified that it was signed at the first union meeting which was held on November 8, 1968. Jeschawitz quit his employment with Respondent on November 22, 1968. Thus, when the Furniture Workers made its request for recognition on November 19, 1968, it had valid authorization cards from a majority of Respondent's employees in an appropriate unit.

D. *First Meeting with Respondent November 19, 1968*

At or about 10 a.m. on November 19, Union Representatives Tranchida and Bocchiere entered the plant and called Tripoli and Szulborski, and the four went to Samide's office. Tranchida introduced himself as a representative of the Furniture Workers and stated that he represented a majority of the employees; he had the employees' authorization cards in his hand. Samide replied that he was a sick man, that he had just come out of a hospital and could not talk to him. Tranchida pushed Samide against a wall and told him to "sign here." Szulborski told Tranchida not to do that, that the boss was a good boss and was a sick man. Samide said he was in no position to sign anything. Tranchida stated that Samide would have to have someone to represent him and that if he did not sit down and bargain with the Union and recognize it as the bargaining agent for the employees, he was ready to strike the shop. Samide got very excited and said that he was sick and that he could not talk to them, that the employees did not need a union; that they had good pay; that they want him to throw away the keys or lock the door. Tranchida insisted that he get someone to represent him. He inquired if Samide had a lawyer and when informed that he did, Tranchida asked that he be called on the telephone. Joseph Mitschel was called and the telephone handed to Tranchida. Tranchida informed Mitschel that he represented a majority of the employees, and that Samide stated that he was not able to talk. He asked Mitschel to come to the plant immediately and talk with him. Mitschel replied that he was very busy and could not meet with him that day but that he could meet on Friday. Tranchida said that he was stalling. Finally they agreed to meet at 10:30 a.m. on Friday, November 22.

¹Foam Rubber City No. 2 of Florida, 167 NLRB No. 81

E. Solicitation by Carpenters Union

On Wednesday, November 20, 1968, Wilbert Ealey, financial secretary and business representative of Carpenters Union, Local No. 2632, came to Respondent's shop at or about 4:15 p.m. Adolph Samide and Amalia Samide were in the office. Ealey asked for permission to talk to the employees. Adolph Samide called his father on the telephone and was advised that Ealey may do so but should do it after working hours.

At or about 4:25 p.m., Adolph Samide and Bauer asked the employees to come to the front of the shop; that someone wanted to talk to them. Ealey asked Samide and Bauer to leave and he then talked to the employees for about 30 minutes. He informed them of the wage scale for persons in his union and about other benefits of his union. He also informed them that he had been in their employer's office long ago, and on this basis he claimed priority on the matter of representation of the employees.

Quitting time at Respondent's shop is 4:30 p.m., but the employees habitually work one hour of overtime each workday and leave work at 5:30 p.m. They were paid for one hour of overtime on the date of Ealey's talk.

F. The Furniture Workers' Telegram of November 21

On November 21, 1968, the Furniture Workers sent and Respondent received the following telegram:

This is to advise you that the undersigned Union represents the majority of the employees employed by you in an appropriate unit and stand ready, willing and able to demonstrate its majority to you. We desire that you recognize us as collective bargaining agent for the said employees and that negotiations for a collective bargaining agreement proceed without delay in connection with the above. Our business representatives will contact you Thursday, Nov 21.

G. Speech by Engelbert Samide on November 21

At some time on Thursday, November 21, 1968, Adolph Samide assembled the employees for a meeting. Engelbert Samide spoke to them and stated that he was not against unions, and if they wanted a union, they could have a union, but that they should pick an outside union, one that would help him get work outside the shop; that he had had to give away certain jobs that required installation work away from the shop.

Whether or not Samide mentioned the Carpenters Union by name is disputed, but his reference to an "outside union" was recognized as a clear reference to the Carpenters Union.

H. The Union's Second Meeting with Respondent on November 22

On November 22, 1968, Union Representatives Tranchida, Bocchiere, and John Martinelli met with Attorney Mitschel. Amalia Samide, Adolph Samide, and Manfred Bauer were also present. Also, employee Salvatore Tripoli was present. Tranchida informed Mitschel that he represented a majority of the employees. He had the authorization cards in his hand.² He stated that he wanted to negotiate a collective-bargaining agreement with Respondent. Mitschel replied that Samide was seriously ill and he asked that the matter be adjourned. He further stated that he would not recognize

and negotiate with the Furniture Workers because it had not been certified by the Board as the bargaining agent, and that he would file for an election to be conducted by the Board. Tranchida stated that he felt Mitschel had utilized the two days to stall and to deter the employees from being represented, and that they would have to pull the employees out of the shop. The union representatives then went into the plant, and asked the employees to go out on strike, but only one employee left.

I. Speech by Attorney Mitschel to Employees on November 22

In the afternoon of November 22, 1968, Mitschel spoke to the employees. They were assembled by Bauer for this purpose. Mitschel told them that the employer had no prejudices with regard to unions; that it was solely the prerogative of the workers themselves to decide the union they wished to join or become members of, and once they had made that election, then at that time the employer would negotiate in good faith with their bargaining agent; that the selection of a union was a very serious matter and that they should look into the financial condition of each union, the benefits of each union, what work they would be permitted to do in their trade, the jurisdictions that the unions have, whether they would be able to find employment without changing unions if they moved to another city or another state, whether the union would still be around when they were ready to retire; that they should choose a union with the better benefits, pension plan, etc. He told them that Respondent would help them get a better union, but he did not mention the name of any union. He also told them that if there is a picket line at the plant on the following Monday, they should not be afraid and should go right ahead to work.

J. Foreman Volk's Statement Regarding Overtime

At about 8:10 a.m. on about November 9, 1968, Foreman Volk stated to Tripoli that if the union pay for overtime work is double-time pay, then if the employees get into the Union, Respondent would not work any more overtime. Volk told Tripoli to tell the people that there would be no more overtime. About one hour later, Volk asked Tripoli "how does the Union pay the overtime, time and a half or double time?" Tripoli replied that with their contract they would get time and a half for overtime work. Then Volk said they would continue to work overtime. No lapse in overtime work or pay occurred. I find no unfair labor practice occurred by Volk's remarks.

K. Representation Petition Filed by Another Local of the Carpenters Union

On December 6 or 7, 1968, employees Salvatore Tripoli and Emmerich Steiner called Joseph Marino, business representative for the Carpenters Union, Local 2584, regarding representation; they informed him that they had had conversation with another union but were not concerned with affiliation with that union. A meeting was arranged with the employees of Respondent for December 10, 1968, at which time ten employees signed

²There is a sharp but noncritical conflict in the testimony as to whether Tranchida offered the cards to Mitschel on this date or to Engelbert Samide on November 19. He had the cards in his possession on both occasions, and the Union's telegram of November 21 clearly offered proof of majority.

authorization cards, and on approximately December 11, a request for recognition was made on Respondent. A representation petition was filed on December 30, 1968, Case 29-RC-1162, which matter is pending.

L Conclusions

By Section 8(a)(2) of the Act, it is an unfair labor practice for an employer to, among other things, contribute support to a labor organization in its efforts to become the bargaining representative of his employees. Section 8(c) of the Act, a restatement of the principles of the First Amendment to the Constitution, permits an employer to express his views, arguments, opinions, and preferences on the matter of unions, provided such expressions contain no threat of reprisal or promise of benefit. Thus, Respondent may voice his preference for and support of a particular union, but generally he may not engage in actions that assist or support it. In evaluating and judging his actions, the circumstances surrounding them and their timing can be very significant. There are cases that iterate a requirement of strict neutrality on the part of an employer in a two-union situation, but in each of these cases, it is the employer's action or conduct that is the crux of his wrongdoing.³

In the instant case, a representative of the Carpenters Union, Local 2632, appeared at Respondent's shop the next day after the Furniture Workers had made their claim for recognition; Respondent assembled the employees for him, and he was permitted to address them for approximately 30 minutes, during which time they were receiving overtime pay. Although this is definitely an action of assistance, it is more aggravated in cases where the same right is denied to a representative of a rival union, and less aggravated where no other union is involved. In the instant case, there was no request by the Furniture Workers for the privilege of speaking to the employees on company time and property, and therefore no denial by Respondent; at the time of the Carpenters Union's request, the Furniture Workers already had completed its organizational activities. Under the circumstances of this case, I find that Respondent by this action illegally rendered assistance and support to the Carpenters Union, Local 2632. Since the remarks to the employees by Engelbert Samide and Attorney Mitschel made on November 21 and 22 contained no threat of reprisals or promise of benefit, but constituted their advice and opinions on the matter of choosing a bargaining representative, they were permitted by Section 8(c) of the Act. However, delivered on the two days immediately following Respondent's acts of assistance to the Carpenters Union, the talks added impetus to Respondent's actions and aggravated that conduct.

The General Counsel contends that under the circumstances of this case Respondent's refusal to recognize and bargain with the Furniture Workers based on authorization cards signed by the employees constitutes an unfair labor practice.

On November 19, when the Furniture Workers requested recognition, it had authorization cards signed by

³*Midwest Piping & Supply Co., Inc.*, 63 NLRB 1060; *In Sturgeon Electric Company, Inc.*, 166 NLRB No. 28, and *In Hopcon, Inc.*, 161 NLRB 31, the employer actively solicited on behalf of one union by distributing authorization cards. *In Sweatermasters Co., Inc.*, 176 NLRB No. 38, while one supervisor was making a Section 8(c) speech, another was standing near him holding union authorization cards which he distributed immediately after the speech.

14 of the 15 employees in an appropriate bargaining unit. Respondent insisted on a Board certification as evidence of the Union's selection as bargaining agent and did not choose to rely on authorization cards. This it generally has a right to do, unless it commits unfair labor practices that interfere with the election process and tend to preclude the holding of a fair election.⁴

Besides the assistance rendered to Carpenters Union, Local 2632, the General Counsel contends that Respondent committed unfair labor practices by a threatening statement made by Engelbert Samide in the presence of employees on November 19 and by a statement of Foreman Volk regarding overtime made on November 9, and he contends that these were of a nature to interfere with the election process.

I have already found that Volk's statements regarding overtime did not constitute an unfair labor practice. Regarding Samide's remarks on November 19 when he first encountered Union Representatives Tranchida and Bocchiere, he stated in the presence of two employees that the employees [by their apparent interest in the Union] wanted him to throw away the keys or to lock the door. Although on the same occasion he stated that the employees did not need a union, two days later he told all of the employees that if they wanted a union they could have a union. In the absence of related statements that might give special import to Samide's words, I cannot find that his remarks constitute a threat that he would close the plant if the employees joined the Furniture Workers.

Thus, the only conduct of Respondent that has transgressed the Act was that of permitting a representative of Carpenters Union, Local 2632, to address an assembly of employees on company time and property on November 20, the day after a request for recognition had been made by the Furniture Workers. I find that it was not an unfair labor practice of such a nature that would interfere with the election process or preclude the holding of a fair election.⁵

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 Respondent 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 the free flow thereof.

CONCLUSION OF LAW

1. Engelbert Samide, d/b/a, Ridgewood Art Woodcraft is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. United Furniture Workers Union, Local 76-B, United Furniture Workers of America, AFL-CIO, is a labor organization within the meaning of the Act. Local 2632, United Brotherhood of Carpenters and Joiners of America, AFL-CIO is a labor organization within the

⁴*NLRB v Gissel Packing Co.*, 395 US 575, *Poughkeepsie Newspapers, Inc.*, 177 NLRB No. 125. For cases involving widespread or serious unfair labor practices warranting a bargaining order, see *V & H Industries*, 177 NLRB No. 118, *General Stencils Inc.*, 178 NLRB No. 18, *Indian River Uniform Rentals, Inc.*, 177 NLRB No. 20.

⁵*Sweatermasters Co., Inc.*, 176 NLRB No. 38.

meaning of Section 2(5) of the Act.

3. By permitting a representative of Carpenters Union, Local 2632 to address employees on company time and property immediately following a request for recognition by another union, Respondent has illegally rendered support to said Union within the meaning of Section 8(a)(2) if the Act.

4. All employees of Respondent, employed at its Queens plant, exclusive of office clericals, salesmen, guards, watchmen, and all supervisors as defined in the Act, and son-in-law Manfrede Bauer, constitute a unit appropriate for the purposes of collective bargaining within the meaning of 9(b) of the Act.

5. The aforesaid unfair labor practice affects Congress within the meaning of Section 2(6) and (7) of the Act.

6 Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act, nor has it engaged in the unfair labor practices as alleged in paragraphs 12, 14 and 15 of the Complaint

THE REMEDY

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

On the basis of the foregoing findings of fact and conclusions of law, and the entire record herein, I recommend that, pursuant to Section 10(c) of the Act, the Board issue the following

ORDER

Engelbert Samide, d/b/a, Ridgewood Art Woodcraft, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Contributing support to Local 2632, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, or any other labor organization, in its effort to become bargaining representative of our employees.

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

2. Take the following affirmative action designed and necessary to effectuate the policies of the Act:

(a) Post at its plant, in English and the languages of its employees copies of the attached notice marked "Appendix."* Copies of said notice, on forms provided by

the Regional Director for Region 29, after being duly signed by an authorized representative, shall be posted by Respondent 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 the Respondent to insure that said notices are not altered, defaced, or covered by any other material

(b) Notify the Regional Director for Region 29, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith⁷

IT IS RECOMMENDED that paragraphs 12, 14, and 15 of the Complaint be dismissed.

⁷In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 29, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board an agency of the United States Government

WE WILL NOT contribute support to Local 2632, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, or to any other labor organization, in its effort to become bargaining representative of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights (1) to self-organization, (2) to form, join, or assist the Furniture Workers Union, Local 76-B, United Furniture Workers of America, AFL-CIO, or any other labor organization, (3) to bargain collectively through representatives of their own choosing, or (4) to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or (5) to refrain from any or all such activities.

All of our employees are free to become or to remain or refrain from becoming or remaining members of Furniture Workers Union, Local 76-B, or any other labor organization

ENGELBERT SAMIDE,
D/B/A RIDGEWOOD ART
WOODCRAFT
(Employer)

Dated _____ By _____ (Representative) _____ (Title)

This is an official notice and must not be defaced by anyone

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.

Any questions concerning this notice or compliance with its provisions, may be directed to the Board's Office, 16 Court Street, 4th Floor, Brooklyn, New York 11201, Telephone 596-3535

*In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes. In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board"