

Wisconsin Motor Corporation and William F. Brunton, Jr. Case 30-CA-652

June 17, 1968

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS BROWN AND JENKINS

On February 23, 1968, Trial Examiner Paul E. Weil issued his Decision in the above-entitled case, finding that the Respondent had not engaged in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the Charging Party filed exceptions to the Trial Examiner's Decision and a supporting brief, and the Respondent filed a brief in opposition to the exceptions.

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 the 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 adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

¹ We hereby correct the finding in the Trial Examiner's Decision to conform with the record evidence that Charging Party Brunton commenced work for the Respondent on February 20, 1967, and not, as the Trial Examiner inadvertently stated, on June 20, 1967.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

PAUL E. WEIL, Trial Examiner: On a charge filed on September 19, 1967, by William F. Brunton, Jr., a complaint was issued on November 29, 1967, pursuant to which the above-entitled proceeding was heard at Milwaukee, Wisconsin, on January 3, 1968. The sole issue presented is whether the

Charging Party was discharged in order to discourage union membership in violation of Section 8(a)(3) and (1) of the Act. By its answer Respondent admitted the jurisdictional facts and that Brunton had been discharged, but alleged that he was discharged for cause. All parties were present at the hearing and had an opportunity to call witnesses and interrogate them, to present documentary evidence, and to argue on the record. The parties waived oral argument; the General Counsel and Respondent filed helpful briefs which have been duly considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Wisconsin corporation, is engaged in Milwaukee and West Allis, Wisconsin, in the manufacture of air-cooled engines. During the last calendar year preceding the issuance of complaint, Respondent sold and shipped from its plants in the State of Wisconsin products valued in excess of \$50,000 to points outside the State of Wisconsin. Respondent is an employer within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, and its Locals, 75 and 283, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

Charging Party Brunton had formerly been employed at American Motors' plant in Milwaukee, Wisconsin, at which the employees in the bargaining unit are represented by UAW, Local 75. At the time of his discharge Brunton was a chief steward for that local on the night shift at American Motors. He was discharged on June 3, 1966, for reasons that apparently had to do with his stewardship.

On February 14, 1967, Brunton applied at Respondent's plant for employment. He was interviewed by Jack Decker, a personnel supervisor. Brunton filled out an application form which provided, among other things, for the applicant's employment record. The instructions on the form are as follows: "Account for all time for the past 10 years whether working or not. Give complete names and addresses. If self-employed, give firm name and one business reference." Brunton listed

his employment at Cook Coffee Company commencing June 21, 1966, and stated that his reason for leaving was "advancement." Immediately below that listing he listed Speedy Service (father's business), "Date Started 5/21/56, Date Left 6/18/66." The reason for leaving, "just enough work for father." Brunton testified that he did not list his period of employment at American Motors because an unfair labor practice charge and an arbitration were then pending regarding his discharge from that plant. He also testified that Decker asked him if he would be willing to take a physical examination, at which point he told Decker, "Well you realize that all my former employers are not listed on this application." Decker, according to Brunton, said, "That's all right."

Brunton was thereafter hired and commenced work on June 20, 1967. His work career seems to be unexceptionable in that it is clear that he was an excellent employee, and in the 3 months that he was employed was given three raises in pay.

Brunton testified that during his employment with Respondent he was recognized by a number of employees as a man who had been prominent in union circles at American Motors. He testified that he told those people that he didn't want any problems, that he just came to Respondent to work and make a living, and that he didn't want any publicity.

Personnel Manager Lukasik testified that on May 15 he was informed by Brunton's foreman, Howard Brown, that "the general scuttlebutt in the department, as he had been hearing it, was that Mr. Brunton had been involved in some incident and that he had heard the name American Motors mentioned." Lukasik told Brown that he would check into it, pulled Brunton's file, and determined that American Motors was not listed as a prior employer, whereupon he instructed a clerk to telephone American Motors to determine if Brunton had been employed there. He testified that he received back from the clerk a form which indicated that Brunton had been employed at American Motors and that he had been discharged, with a notation: "away from job without permission, rules violation. Is a capable man. No other information available, records are in his files. The case is up to arbitration."

Lukasik called Brunton, together with his shop steward and the chief steward, into his office and asked him if he had been employed at American Motors. Brunton admitted that he had, whereupon Lukasik asked why he had not stated this on his application. Brunton answered, "you would not give me a chance if I had" and explained that he had a problem at American Motors and if he had listed this employer he did not believe that Respondent would have given his application any consideration.

Brunton's version of the conversation is somewhat different. He states that he explained that he had a case pending with the Labor Board

and an arbitration and that there was no final determination. Brunton appealed to Lukasik not to discharge him, pointing out that he had an excellent record with the Company, but Lukasik was adamant that Brunton must be discharged because he had falsified his application. Brunton told Lukasik that he had told Decker when he was interviewed that all his former employers were not listed and that Decker said it was all right, but Lukasik did not reply. At this point the chief steward appealed to Lukasik to reinstate Brunton as a probationary employee but Lukasik said that he would not do so, although perhaps in 90 days he would give him consideration if he filed a new application. Brunton asked for a hearing under the grievance proceeding set forth in the contract, and his chief steward said he had another matter to attend to and that he would call Brunton.

On May 19 the "hearing" was held with Brunton represented by the Union's president, Zagorski, Chief Steward Helton, Vice President Kramer, and Recording Secretary Cholonder.

At this meeting, according to the testimony of Brunton, he reiterated that he had informed Decker when he was hired that he had not listed all his former employers and pleaded to be reinstated, pointing out that his work was satisfactory, he had been given raises, and he was no detriment to the Company. Lukasik, speaking for the Company, maintained his position that Brunton should remain discharged. Nothing further came of the meeting.

When Brunton was discharged he went back to his department to check out. At this point he was accosted by his supervisor, Harold Crosby, who asked him what had happened. Crosby testified that he had already learned from the steward that Brunton had been discharged. In response to Crosby's question, Brunton said that he had been discharged because he had falsified his application and said something to the effect that a couple days he had asked for afternoons off because he had worked at American Motors and he had something doing over there. Sometime later that day another employee, Alois J. Dombrowski, asked Supervisor Crosby what had happened to Brunton and, according to Dombrowski's testimony, Crosby answered that Brunton's application had nothing to do with his discharge. "It was just an excuse to get rid of him because they had found out he was a union agitator or a troublemaker for the Union. He had worked at American Motors before he came to Wisconsin Motors and he had caused a wildcat strike or two over there. We don't want him pulling that—here." Crosby denied making this statement to Dombrowski, although he admitted that he told some employees, possibly including Dombrowski, that Brunton had been discharged for falsifying his application. I was unimpressed with Crosby's denials, his demeanor on the witness stand was not reassuring to me. On the other hand, I credit Dombrowski who is no longer employed by Respondent and ap-

peared to testify candidly. However, Brunton did not take the witness stand to rebut the testimony given by Crosby about the postdischarge conversation. Accordingly, I presume that it was substantially truthful.

Discussion and Conclusion

The sole issue is whether Brunton was discharged because he had falsified his application or because Respondent had learned of his union leadership at American Motors and perhaps of his participation in a wildcat strike and decided to get rid of him lest he caused trouble at Respondent's plant. The major hurdle the General Counsel has to cross is the evidence testified to both by Personnel Manager Lukasik and by Chief Steward Helton that the Company's policy was to discharge any employee who falsified his application. On cross-examination, Brunton testified that during a recess in the "hearing" President Zagorski told him that he didn't have a case and that the Company had discharged people in the past for falsifying their employment applications. (At this point in his testimony Brunton stated, "This is what he stated, but I didn't falsify nothing, I omitted.")

The General Counsel contends that Brunton did not in fact falsify his application, relying on Brunton's testimony that after filling out his application he told the personnel supervisor that he had not listed all his jobs. The personnel supervisor denied any recollection of the conversation but stated that if he had been so informed he would have inquired as to other jobs that were not listed and made a note of them. The appearance of the application form, covering as it does Brunton's period of employment with American Motors with the entry that he had been employed by his father for a 10-year period, is completely consistent with Brunton's apparent purpose in leaving any mention of American Motors off of his application and inconsistent with any attempt allegedly made by him to inform the Company that he had done so. Even if he had made the statement that he says he made, a normal person would assume that he meant by that, that he had been employed by other firms prior to the 10-year period that he was employed by his father.¹

General Counsel sees additional corroboration to Brunton's story in the decision of the Appeal Board of the State Unemployment Commission which states in pertinent portion,

Although the employee did not list one of his previous employers on his work application to the employer, he so informed the employer's representative who hired him. It does not appear, therefore, that he violated any published rule of the employer or in fact misled the employer by his answers on his application form. Therefore, his actions did not constitute a wil-

ful or wanton disregard of the employer's interests or of his duties and obligations to the employer.

Respondent explains this finding, stating that the initial determination of the Commission's deputy denied benefits on the ground that the employee was discharged for misconduct and the employee appealed. Respondent contends that at no time prior to the appearance of Brunton at the unemployment compensation hearing did he ever make a statement that he had informed the personnel supervisor that he had worked for other employers, and that accordingly they did not appear to contest the appeal, believing that the documentary evidence of his application sufficed to establish their defense.

The General Counsel also contends that the statement by Supervisor Crosby to Dombrowski constitutes an admission by Respondent that Brunton was discharged for the unlawful reason alleged. I am not convinced that Supervisor Crosby had any knowledge that this was the reason for the discharge. On the contrary it appears that he did not even know that Brunton was to be discharged until after the event, when he was told first by the steward and then by Brunton. While he may very well have surmised that this was the reason, based on his own knowledge of Brunton's union status at American Motors, and thus gave his conclusion to Dombrowski as a fact, I see no reason to believe that he was privy to any information that gives reliance to his expression.

As I see it, the Company strongly disapproves of falsification of an employment application, not an unusual viewpoint, I'm sure. There is no evidence that any employee who ever falsified an application was not discharged and there is evidence that the Union's president, a long-time company employee, was of the opinion based on some knowledge that the Company invariably discharged persons who falsified their application. The quantum of evidence required to override what clearly appears to be cause for discharge does not appear to be satisfied in this case. I do not believe that Brunton in fact told the personnel supervisor that he had left off the information that belonged on his application, or that when he was discharged that he stated to Lukasik that he had done so. Whether or not the Company knew anymore than was reported to it on the memos quoted above by Lukasik's clerical employee does not appear. The General Counsel asks me to infer that the Company knew of Brunton's activities at American Motors, to infer therefrom that Respondent was concerned that he would be a thorn in Respondent's side, with union activity, and to leap from that inference to an inference that this gave rise to a decision on the part of Respondent to discharge Brunton. There is no evidence of union animus in the record. It is clear that the Union is

¹ Brunton is shown on his application as being 35 years old at the time of this incident.

and has been the representative of the employees for some 30 years and the record reveals that there is a union-security contract and a checkoff. Brunton was afforded union representation by shop stewards, area stewards, the chief steward, and union officers at every step of the proceeding.

I cannot embark upon this train of inferences. I find that the General Counsel has not sustained the burden imposed by the statute of presenting substantial evidence on the record sufficient to warrant

overriding the clear cause for discharge, admittedly present and relied upon by Respondent. Accordingly, I recommend that the complaint be dismissed in its entirety.

RECOMMENDED ORDER

It is hereby recommended that the complaint against Wisconsin Motor Corporation be, and it hereby is, dismissed.