Luxuray of Indiana, a Division of Beaunit Corporation *and* International Ladies' Garment Workers' Union, AFL-CIO. Case 25-CA-3244

May 12, 1969

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS JENKINS AND ZAGORIA

On February 19, 1969, Trial Examiner Marion C. Ladwig 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 also found that the Respondent had not engaged in certain other alleged unfair labor practices. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief. The General Counsel filed limited exceptions, a brief in support thereof, and 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,[1] as modified below.[2]

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, as modified, and hereby orders that the Respondent Luxuray of Indiana, a Division of Beaunit Corporation, Franklin, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as so modified.

1. Substitute the following for subparagraph 1(d) of the Trial Examiner's Recommended Order:

"(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist International Ladies' Garment Workers' Union, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except insofar as these rights could be affected by any contract with a labor organization, if validly made in accordance with the National Labor Relations Act, whereby membership therein is a condition of employment after the 30th day following the date of such contract or the beginning of such employment, whichever is later."

2. Change the heading of the notice from "NOTICE TO ALL MEMBERS" to "NOTICE TO ALL EMPLOYEES."

3. Substitute the following for the fifth indented paragraph of the notice:

> WE WILL respect the rights of our employees to self-organization to form, join, or assist any labor organization, to bargain collectively in respect to terms or conditions of employment through said Union or any representatives of their own choosing or to refrain from such activity and WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of these rights, except insofar as these rights could be affected by any contract with a labor organization, if validly made in accordance with the National Labor Relations Act, whereby membership therein is a condition of employment after the 30th day following the date of such contract or the beginning of such employment, whichever is later.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Trial Examiner: This case was tried at Indianapolis, Indiana, on January 9, 1969, pursuant to a charge filed on September 26, 1968,[1] by International Ladies' Garment Workers' Union, AFL-CIO, herein called the Union, and pursuant to a complaint issued on October 30. The primary issues are whether the Respondent, Luxuray of Indiana, a Division of Beaunit Corporation, herein called the Company — which called no defense witnesses at the trial — (a) threatened to close the plant and move the machinery in reprisal for union activity, (b) engaged in coercive interrogation, and (c) instituted a discriminatorily-motivated system of giving warning notices to employees, in violation of Section 8(a)(1) of the National Labor Relations Act, as amended.

[1] The Respondent excepts to the Trial Examiner's credibility findings. It is the Board's established policy not to overrule a Trial Examiner's credibility findings unless, as is not the case here, a clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3). We conclude that the Trial Examiner's credibility findings are not contrary to the clear preponderance of all the relevant evidence and, accordingly, we find no basis for disturbing those findings.

[2] The General Counsel has excepted to the Trial Examiner's failure to find additional violations of Section 8(a)(1) of the Act. We find, however, that the Trial Examiner did consider such other allegations in determining the totality of the Respondent's unlawful conduct, and inasmuch as further findings would be merely cumulative, and would add nothing to the remedy, we find it unnecessary to pass on such additional allegations.

[1] All dates, unless otherwise indicated, refer to the year 1968.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and the Company, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY AND THE UNION INVOLVED

The Company, a New York corporation with its principal office in New York City, operates a plant in Franklin, Indiana, where it is engaged in the manufacture, sale, and distribution of women's apparel and related products, and from where it ships annually products valued in excess of $50,000 directly to points outside the State. The Company admits, and I find, that it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Threats to Close or Move the Plant*

The Union began its organizational drive at the Company's Franklin plant in May, met with interested employees on July 8 and selected an in-plant committee, and filed a petition for an election on August 27. The election, held on November 7, resulted in a vote of 48 to 37 in favor of union representation. The Company's objections to election conduct were pending at the time of trial herein.

About August 1, Floorlady Ida Carney (an admitted supervisor) went to the sewing machine where Alene Bailey was working and talked to her about the Union. According to Bailey's undisputed testimony, which I credit, Carney told her that "If the Union gets into the factory, the factory would close." (Thelma Smithey, an employee sitting directly behind Bailey, credibly testified that she overheard "Ida Carney tell Alene that if the Union got in that the plant would close.") Sometime later, when Bailey was wearing a union pin, Carney talked to her about wearing it, and stated that the Company "will not see the Union get into this plant."

About September 11, another admitted supervisor, Floorlady Hattie McMillan, went to employee Rae Jean Parson's machine. She first talked about Parson's husband being in the hospital, and (in Parson's words) "she said that she knew I had to work, and then she started in about the Union. . . . She said, 'If I were you, I'd think awful hard about this thing you girls . . . have started.' " Later in the conversation, McMillan "said, 'I also know that $50 a week isn't very much, but it's better than nothing. But I've worked here a long time, and I'd like to continue working here until I retire, but if the girls keep on the way they have, then I won't be able to do that.' . . . She said she knew that her and other girls . . . live alone and they depend on the factory for their support, and that if things kept on the way they . . . are, that they would end up moving the factory."

Also in September, when Floorlady McMillan saw employee Margaret Callon wearing a union pin, she "asked me what it was that I was wearing." Upon being told that it was a union pin, McMillan said, "Oh, that'll be your job. . . . They'll close the place down." Later in the month, when some of the sewing machines were being crated and shipped from the plant (as discussed below), Floorlady McMillan talked to two other employees about the future of the plant. She told employee Wilma Caudill, "It looks like I'm not only going to lose my girls, but I'm going to lose my machines as well." When asked what she meant, she said, "Well, they're shipping them out." Caudill said, "Maybe we'll get new machines." McMillan responded, "Oh, no," and that she was getting "too old to look for another job" and she hoped they took her with the machines. Similarly, McMillan told employee Anna Lou Williams she hoped that when the Company moved the machines out, "that they ship me out with them" because "I won't have a job unless I do go with them."

Rusco Waltz, an employee who testified about crating sewing machines for shipment, credibly testified that in two or three discussions he had with Plant Manager Donald Dugan about the Union, Dugan stated "that if the Union did come into the plant, why, the plant would be moved."

These threats, to close down or move the plant in retaliation for the employees' union activities, were made by the plant manager and other supervisors, whom the employees would regard as spokesmen for the Company. I find that the threats were clearly coercive, and that in making them, the Company violated Section 8(a)(1) of the Act.

B. *Threat to Move the Machinery*

Sometime in September, a company engineer and three other persons went to the second-floor production area of the plant. In full view of the employees, they took measurements of the building, examined the fans and the air conditioner, looked through some blueprints, went to all the machines and took down the serial numbers, and took pictures of employees at work and pictures of the machines. Plant Manager Dugan and one or more others went outside and took pictures of the building.

Several days later, when Floorlady McMillan was commenting about losing the machines and having no job unless she went with the machines, the Company assigned mechanics and helpers to place cardboard boxes on nine of the sewing machines. Four of the machines were then removed to the basement, where Plant Manager Dugan instructed employee Waltz to build plywood boxes for shipping the machines. The remaining five machines (in cardboard boxes) were left upstairs, in the view of the employees, for about a month. Then four of the five machines were removed to the basement and shipped in plywood boxes.

The Company gave no explanation for taking down the serial numbers of all the production machines, or for having nine of the machines placed in cardboard boxes (unsuitable for shipping), and leaving five of the boxed machines "on display" before the employees for several weeks. The Company does not deny that Floorlady McMillan made the contemporaneous statements that the boxed machines would not be replaced, and that she would have to go with the machines if she was to have a job. Neither does the Company deny that the statements were made by the plant manager and two floorladies that the plant would be closed or moved, nor that the action was taken by the four persons in the production area, suggesting that the Company was planning to dispose of the machinery or the plant. In the absence of defensive evidence, I draw the inference that the Company was seeking to intimidate the employees, even if it had a legitimate reason for shipping eight of the machines during the election campaign. Accordingly, I find that the

Company coerced the employees by threatening to move (or sell) the production machinery in retaliation for the union activity, in violation of Section 8(a)(1) of the Act.

C. *Coercive Interrogation*

On September 4, the Union held its first general meeting of company employees. The next day, Plant Manager Dugan called employee Rosco Waltz into the office, stated that "he had been informed that I did attend the meeting," and "asked me why that I had attended the meeting." In the private conversation, Dugan talked against the Union, and informed Waltz "that if the Union got in, the plant would be moved." This interrogation, accompanied by the threat to move the plant, was clearly coercive.

Earlier, about July 10 (2 days after the Union met with some interested employees and selected an in-plant committee), Plant Manager Dugan interviewed and hired employee Margaret Callon. In the private conversation with her in his office, Dugan (in Callon's words) "told me if I was going to vote, or if I was for the Union, would I come and tell him." She made a promise that she would. In its brief, the Company contends that this "is no more than a request that Dugan be permitted to give a rebuttal to the Union's argument, and is not coercive." However, under all the circumstances, I find that the inducement of Callon's promise to reveal to the Company any future support of the Union interfered with her Section 7 rights. In making this finding, I take into consideration Dugan's September 6 posted notice to all employees, expressing the Company's "100%" opposition to the Union and stating, "Believe me when I tell you that it is to *your* best interest not to support the Union or get involved. YOUR FUTURE IS AT STAKE." (I find it unnecessary to pass on the allegations that this notice, and Vice President R. C. Reinhardt's October 1 antiunion speech, were independently coercive.) I also take into consideration the aforementioned threats of retaliation for the union activity, including Floorlady McMillan's threat in September to Callon herself about a union pin, "Oh, that'll be your job." In the face of such strong company opposition to union organization, Callon's exercise of her statutory right to decide whether or not to support the Union would necessarily tend to be restrained by the pre-employment inducement of her promise to reveal her decision to management. Accordingly, I find that this interrogation concerning her future decision, as well as the later interrogation of Waltz on September 5, was coercive and violated Section 8(a)(1) of the Act. I find it unnecessary to rule on other alleged interrogation and threats.

D. *Warning Notices*

On October 15 (3 weeks before the election), six employees were absent from work without giving notice to the Company of their intended absence. One of them was Martha Doty, who had been selected on July 8 as acting chairman of the in-plant organizing committee. (Since September, Doty had worn over her dress at work a bright red union smock, prominently displaying printed copies of the union label.) The following day, October 16, the Company gave each of the six employees a "warning" notice, stating "Absent — didn't report 10/15." The Company did not ask any of them why they had been absent, and there is no evidence that the Company was aware that they had been absent in order to give affidavits to a Board agent.

Previously, written warnings had not been given. However following this incident, the Company made a practice of issuing warning slips, primarily for being late or absent without calling in.

On October 25 (9 days after the first warnings were issued), employee Margaret Bland objected to signing a warning for "talking," telling Sewing Room Supervisor Rheta Cook, "I didn't talk any more than anyone else." Cook "said that it was all right for me to sign. She said, 'You don't think me or [Plant Manager] Don [Dugan] would hurt you. It's all to get Martha Doty to sign one.' . . . She said it would be torn up in my face after it was all over." Later, when Bland was returning to her machine, Floorlady Ida Carney told her, "You don't think Don and Rheta would do anything to hurt you; we're only using you as our little guinea pig. . . . Don't worry. . . . You know that was . . . to make Martha Doty sign hers."

Doty refused to sign such a warning for "talking." She credibly testified that before this, she had always been permitted to talk — that in the 15 years she had worked there, "They didn't tell us not to talk or to stop talking," but only "not to talk too loud."

The General Counsel argues in his brief that "In a final effort to chill unionism at its plant, the Respondent instituted . . . a discriminatory system of warning notices because of the employees' union activities," and that it is clear from Bland's testimony "that Respondent was attempting to build a case for the discharge or other discriminatory treatment of the main union supporter and chairman of the Union's in-plant committee, Martha Doty." In its brief, the Company contends that the warnings were justified, and that there is "no evidence that they were not issued without regard as to whether the employee was union or nonunion." The brief ignores the allegation about fabricating a pretext.

The remarks to employee Bland by the two supervisors, Cook and Carney, clearly indicated that at the time (October 25, 9 days after the first warning notices were issued), the Company was inducing Bland to sign a "talking" warning to assist in building a case against Margaret Doty. I therefore find that these remarks, made shortly before the election and implying that the union supporter would be discharged or discriminated against because of her union activity, interfered with the employees' Section 7 rights, in violation of Section 8(a)(1) of the Act.

However, I find that the evidence does not establish that in instituting the warning system on October 16, the Company was discriminatorily motivated. The six employees had absented themselves from work, without giving the Company any notice. The mere fact that union leader Doty was one of the six absent employees does not prove that the Company was at that time motivated by a desire to build a case against her, rather than to fulfill a business requirement of discouraging such mass, unannounced absences.

Conclusions of Law

1. By threatening to close or move the plant, and to move or sell the machinery, in retaliation for the employees' union activity; by engaging in coercive interrogation; and by indicating that it was fabricating a pretext for discharging or discriminating against a union supporter, the Company engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. The General Counsel failed to prove that the Company violated the Act by instituting a system of warning notices before the election.

THE REMEDY

Having found that the Respondent has committed certain unfair labor practices, I shall recommend that it be ordered to cease and desist from such conduct and from any like or related invasion of its employees' Section 7 rights, and to take affirmative action, which I find necessary to remedy and to remove the effect of the unfair labor practices and to effectuate the policies of the Act.

RECOMMENDED ORDER

Respondent, Luxuray of Indiana, a Division of Beaunit Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening to close down or move the plant, or to move the machinery, if the employees support a union.

(b) Coercively interrogating any of its employees.

(c) Telling any employee that it is fabricating a pretext for retaliating against an employee for engaging in union activity.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

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

(a) Post at its Franklin, Indiana, plant copies of the attached notice marked "Appendix."[2] Copies of such notice, on forms provided by the Regional Director for Region 25, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained 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 ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 25, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent has taken to comply herewith.[3]

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

[2]In the event that this Recommended Order is adopted by the Board, the words "This Notice is Posted by Order" shall be substituted for the words "Pursuant to 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, there shall be added to the words "This Notice is Posted by Order of the National Labor Relations Board" the words "as Enforced by the United States Court of Appeals."

[3]In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 25, in writing, within 10 days from the date of this Order, what steps the 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:

WE WILL NOT threaten to close down or move the plant because you support the International Ladies' Garment Workers' Union, AFL-CIO.

WE WILL NOT threaten to move the machinery because of your union support.

WE WILL NOT unlawfully question you about union activities.

WE WILL NOT say we are building a case against an employee for supporting the Union.

WE WILL NOT unlawfully interfere with your union activities.

LUXURAY OF INDIANA,
A DIVISION OF BEAUNIT
CORPORATION
(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.

Any questions concerning this notice may be directed to the Board's Regional Office, 614 ISTA Center, 150 West Market St., Indianapolis, Indiana 46204, Telephone 317-633-8921.