

**Aircraft and Helicopter Leasing and Sales, Inc. and
Stephen H. Crowe. Case 31-CA-3587**

February 28, 1974

DECISION AND ORDER

BY MEMBERS FANNING, KENNEDY, AND
PENELLO

On June 19, 1973, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and also filed a motion requesting that the decision of the California Unemployment Insurance Appeals Board be received for consideration.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.²

In adopting the findings and conclusions of the Administrative Law Judge, we find the contention of Respondent that Crowe and Fournier quit lacking in merit and not supported by the record.

Respondent, admittedly, was never told by the employees that they were going to "quit" if they did not get their pay increases, but rather that they would "walk out" if their demands were not met. Further, when James informed Lam that he thought that Crowe, Fournier, and Crowe would walk out but not the other two employees, Lam instructed James to have final checks prepared for the three employees who James anticipated would walk out.

Although Respondent contends that it believed that the employees meant that they would quit if their demands were not met, such a belief had no basis either in what the employees had told James or in any actions of the employees. Further, such a belief on the part of the Respondent would not alter the protected nature of the employees' actions, when the employees in fact did not intend to quit, but only to put pressure on Respondent to meet their demands by walking out.

The preparation of the employees' final checks with the word "terminated" on them, plus the conversations between Lam and both Crowe and Fournier, following their termination, in which Lam stated that he did not like being given an ultimatum and that the employees had given him no choice, leads us to the belief that Respondent discharged the

three employees before they had a chance to carry out their threat to walk out.

Based on the foregoing and the other findings of the Administrative Law Judge, we find that the discharges of Crowe, Crowe, and Fournier were in violation of Section 8(a)(1) of the Act.

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 Administrative Law Judge and hereby orders that Respondent, Aircraft and Helicopter Leasing and Sales, Inc., Sun Valley, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ In the absence of opposition to this motion, we are accepting the document presented. However, our decision in this case has not been influenced by the information contained therein.

² Member Kennedy would not find that Respondent discharged Fournier. According to the Administrative Law Judge's finding when Fournier asked Service Manager James if the employees were going to receive a raise, James answered in the negative. Thereupon Fournier said "That's it. I am through. I'll get my tool box and leave."

If words mean anything, this was a declaration that the speaker was quitting. This meaning was emphasized by his statement that he was going to remove his tool box. Although Respondent may have intended to discharge Fournier, it never had the opportunity to act upon that intent. In the vernacular, Fournier beat the gun by quitting. Although not controlling, it is significant that the California Unemployment Insurance Appeals Board ruled that Fournier had quit his employment and denied him unemployment insurance benefits. Except as to Fournier, Member Kennedy would adopt the Administrative Law Judge's Decision.

Members Fanning and Penello, unlike Member Kennedy, do not believe that the language used by Fournier to James on February 9 merits a finding that Fournier voluntarily quit. While under different circumstances, such language may be evidence of a voluntary termination of an employee, such is not the case herein. Before entering James' office, Fournier was aware that Crowe, who had weakened in his resolve to stay with the other employees in their endeavor, had received his check when he went in to talk to James. Thus the language used by Fournier is such as might be used by anyone who expected similar treatment for engaging in concerted activity and affords no basis for our treating Fournier differently from those employees with whom he had been concertedly acting.

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This case was tried before me in Los Angeles, California, on June 4 and 5, 1973. The charge was filed February 14, 1973, by Stephen H. Crowe, an individual, and was amended March 28.¹ The complaint issued April 13, alleging that Aircraft and Helicopter Leasing and Sales, Inc. (herein called Respondent), had violated Section 8(a)(1) of the National Labor Relations Act, as amended.

Issues

The issues are whether Respondent discharged its employees, Stephen H. Crowe, Dan Crowe, and J. C.

¹ All dates are 1973.

Fournier, on or about February 9, 1973, because of their engagement in protected, concerted activities, thereby violating Section 8(a)(1) of the Act.

The parties were given full opportunity at the trial to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally. Both Respondent and the General Counsel waived briefs.

Upon the entire record in the case and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a California corporation engaged at Sun Valley, California, in the business of rebuilding, maintaining, selling, and leasing helicopters. During the year preceding issuance of the complaint, Respondent realized revenues exceeding \$50,000 from the shipment of goods from its Sun Valley location directly to customers outside California.

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

II. THE ALLEGED UNFAIR LABOR PRACTICES

While there are the inevitable minor discrepancies in testimony, the fundamental facts are not in dispute.

On Monday, February 5, pursuant to an earlier agreement among themselves, five of Respondent's mechanics—the three in question, plus Royal Wiley and George Zuniga—confronted Jessie James, Respondent's service manager, with demands for increased base pay, cost-of-living pay increases, and company-provided uniforms. Alleged dischargee Crowe was the employees' principal spokesman. Crowe told James that the employees would walk out if their demands were not met. James answered that he would discuss the demands with George Lam, Respondent's president, and report back. The employees were not represented by a union.

That evening, the five employees met at a restaurant near the plant, decided that Friday evening, February 9, would be the deadline for favorable company action on their demands, and repeated an earlier vow to walk out if their demands were not met or if any of them should suffer recrimination because of them. James meanwhile told President Lam of the demands and the walkout threat, specifying to Lam that he thought the three alleged dischargees would walk out, but that Wiley and Zuniga would not. Lam and James did not then decide on a course of action.

On Wednesday, February 7, Crowe and/or alleged dischargee Fournier asked James if anything had been decided. James replied in the negative, prompting Crowe or Fournier to advise him of the Friday deadline. James then met with Lam again. Lam this time authorized James to offer Crowe a raise—\$25 per month immediately, another \$25 in 30 days—but not the other employees.

On Friday, February 9, at or about lunchtime, James and Lam met once more. James restated his belief that Crowe, Crowse, and Fournier would walk out—he used the term “walk out,” not “quit”—if the demands were not met, but that Wiley and Zuniga would not. The two decided at that time, because Crowse had been less than a model employee anyway, to “let Dan go.”² Lam also instructed James to have the bookkeeper prepare final checks for all three alleged dischargees, but not Wiley and Zuniga. This promptly was done, although the regular payday was a week away. Finally, Lam and James decided that they would talk to the employees singly about their demands, but not as a group.

Toward the close of business, February 9, Crowe asked James if a decision had been reached. James replied that one had, to which Crowe said the employees wished to meet with Lam about it. James answered that neither Lam nor he would meet with the employees other than singly. Crowe took this information to the other employees, who, after some soul searching, decided to meet with James on his terms, i.e., singly. Crowse and Wiley indicated to the others at this time that they were weakening in their resolve to stay with the group.

Crowse was the first to meet with James. Upon entering James' office, he said that he had changed his mind and would like to stay if he had not already jeopardized his job by joining in the protest. James, referring to Crowse's shortcomings as an employee, said that Respondent could not keep him on the payroll. He then gave Crowse his final paycheck, the stub of which had the word “terminated” on it. Crowe asked James, before leaving, if the employees' recent activities to improve conditions were a factor in this decision. James replied that they were.

Fournier succeeded Crowe in James' office. He asked, upon entering, if the employees were going to receive raises. James said no, prompting Fournier to state: “That's it. I am through. I'll get my tool box and leave.” James then gave him his final check, which also had “terminated” written on the stub.

Crowe also met with James. James offered him a raise in accordance with the earlier authorization from Lam. Crowe, after excusing himself briefly to consult with the other employees, declined the offer, saying that he could not stay and accept a raise when the others would get none—“I have got to leave with them.” As Crowe turned to leave, James said, “Steve, you might as well take your check with you,” handing him his final check, with “terminated” on the stub. Crowe asked, in the moment before the import of this gesture had soaked in, “What's this for?”

Wiley and Zuniga met singly with James as well. Wiley told James that, because of family considerations, he was going to abandon the group and stay on the job. His employment since has continued unabated. James asked Zuniga if he was “staying with me or are you going to walk out?” adding, “Well, George, I didn't expect you to go out with these men,” and telling him that he had until the following Monday to make up his mind. Zuniga replied, “I must leave with the other fellows. . . . I leave the work just

² Respondent had been seeking a replacement for Crowse for several days, but as yet had found none.

to back up my companions." Zuniga did not appear for work thereafter, eventually receiving a final check with "terminated" on the stub.

The next day, February 10, Crowe and Fournier separately telephoned President Lam to wish him well on a coming trip to Europe. Both conversations turned to happenings of the previous day, Crowe and Fournier stating in effect that they had entered into a pact with the other employees and were honorbound to stay by their word. To Crowe, Lam said, "I don't like being delivered an ultimatum, because I am bullheaded"; and to Fournier, "You did deliver us an ultimatum and we had no choice." Lam volunteered to both that he would be willing to talk to each about returning to work.³ Such conversations never ensued.

James testified that none of the employees, at any time before the employees in question received their final checks, used the term "quit"—as opposed to "walk out"—when discussing the action they would take should their demands not be met. James further testified, however, as did Lam, that he considered the terms to be interchangeable, both meaning a severance of employment.

Analysis

The General Counsel contends that the employees' concerted demands for higher pay and work clothes, backed by a walkout threat, were protected activities; that Crowe, Crowse, and Fournier resultantly were fired on February 9; and that Respondent thereby violated Section 8(a)(1). Respondent does not seriously dispute the protectiveness of the employees' activities, instead arguing that the employees in question voluntarily quit their jobs upon Respondent's refusal to accede to their demands.

I find that the employees' pay and clothing demands, coupled with the walkout threat, indeed, were protected activities. E.g., *N.L.R.B. v. Washington Aluminum Co.*, 370 U.S. 9 (1962). I further find, in agreement with the General Counsel, that Crowe, Crowse, and Fournier resultantly were discharged.

That Crowse quit is not fairly arguable. Lam admitted that the decision was made earlier in the day to let him go; and Crowse was told by James that he could not be retained even though he just before stated his desire to stay on the job and abandon the employees' protected cause. Nor would it be arguable that Crowse was fired for inferior work performance rather than his involvement in that cause, given the context and timing of Respondent's action against him and James' contemporaneous admission to him that the employees' protest activities were a precipitating element.

The situations of Crowe and Fournier are less clearcut than that of Crowse only in that James, rather than firing them outright, did so when they stated an intent to leave upon James' telling them that Respondent would not meet the employees' concerted demands. Their reference to

³ Neither Crowe nor Fournier could recall any mention by Lam of a possibility of their returning to work. I credit Lam's testimony that mention was made, because of the sureness of his recall of these conversations, his manifest probity, and my failure to see anything particularly self-serving in his so testifying.

⁴ In the event no exceptions are filed as provided by Section 102.46 of

leaving may have imparted an illusion of sorts that they were quitting their jobs. But neither that nor their actions otherwise conflict with their having had nothing more in mind than conventional strike-type activity; and I find that they—in their unschooled way—contemplated just and only that. *Union Camp Corporation*, 194 NLRB 933; *Scientific Glass Apparatus Co.*, 150 NLRB 29, 36-38; *Nemec Combustion Engineers*, 100 NLRB 1118. James' expeditious tender of their final checks, with "terminated" on the stubs, unlawfully aborted implementation.

Having found that Respondent discharged Crowe, Crowse, and Fournier for engaging in protected, concerted activities, I further find that it in each instance violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. By discharging Crowe, Crowse, and Fournier as found herein, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

REMEDY

To effectuate the policies of the Act, it is recommended that Respondent be ordered to cease and desist from the unfair labor practices found, and from in any other manner interfering with, restraining, or coercing its employees.

Affirmatively, it is recommended that Respondent be ordered to offer Stephen H. Crowe, Dan Crowse, and J. C. Fournier immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges; and to make them whole for any loss of earnings and other benefits suffered because of Respondent's unlawful discharges of them. Their losses of earnings shall be computed as prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716, and *F. W. Woolworth Company*, 90 NLRB 289.

Upon the foregoing findings of fact, conclusions of law and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁴

Respondent, Aircraft and Helicopter Leasing and Sales, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging its employees for engaging in protected concerted activities.

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

the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and 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.

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

(a) Offer to Stephen H. Crowe, Dan Crowse, and J. C. Fournier immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or rights and privileges previously enjoyed and make them whole for any loss of pay suffered as a result of their discharge by Respondent in the manner set forth above under the section 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 the amount of backpay due under the terms of this recommended Order.

(c) Post in conspicuous places at the Company's place of business at Sun Valley, California, including all places where notices to employees are customarily posted, copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's 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 to insure that said notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director for Region 31, in writing, within 20 days from the date of receipt of this Order, what steps Respondent has taken to comply herewith.

⁵ 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 Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The trial held in Los Angeles, California, on June 4 and 5,

1973, in which we participated and had a chance to give evidence, resulted in a decision that we had committed certain unfair labor practices in violation of Section 8(a)(1) of the National Labor Relations Act, as amended, and this notice is posted pursuant to that decision.

The National Labor Relations Act, as amended, gives all employees the following rights:

- To organize themselves
- To form, join, or support unions
- To bargain as a group through a representative they choose
- To act together for collective bargaining or other mutual aid or protection
- To refrain from any or all such activities.

In recognition of these rights, we hereby notify our employees that:

WE WILL immediately offer to reinstate Stephen H. Crowe, Dan Crowse, and J. C. Fournier, to their former or substantially equivalent jobs without prejudice to their seniority and other privileges; and we will pay to them any money lost as a result of their discharges, with interest at 6 percent.

WE WILL NOT discharge or otherwise discriminate against employees who take part in protected concerted activities.

AIRCRAFT AND HELICOPTER
LEASING AND SALES, INC.
(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, Federal Building, Room 12100, 11000 Wilshire Boulevard Los Angeles, California 90024, Telephone 213-824-7357.