

Aeroquip Corporation and District No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO. Cases 18-CA-3893 and 18-RC-9588

May 23, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND PENELLO

On February 21, 1974, Administrative Law Judge Melvin J. Welles issued the attached Decision in this consolidated proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

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 Administrative Law Judge's Decision in light of the exceptions and brief and has decided to affirm his rulings, findings,¹ and conclusions in both cases, and to adopt his recommended Order in Case 18-CA-3893 and his Order remanding Case 18-RC-9588 to the Regional Director for further appropriate action.

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 in Case 18-CA-3893 and hereby orders that Respondent, Aeroquip Corporation, Lakeville, Minnesota, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

IT IS FURTHER ORDERED that Case 18-RC-9588 be remanded to the Regional Director for Region 18 to count the ballots cast by James Axt and James Macho and thereafter prepare and cause to be served on the parties a revised tally of ballots, including therein the count of said challenged ballots, and, based thereon, to issue the appropriate certification.

¹ The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enf. 188 F.2d 362 (C.A. 3). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

MELVIN J. WELLES, Administrative Law Judge: Case 18-CA-3893 is before me pursuant to charges filed June

11, 1973, and amended June 12, 1973, by District No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, and a complaint issued November 15, 1973, alleging violations of Section 8(a)(1) and (3) of the Act. In Case 18-RC-9588, an election was conducted on July 9, 1973, pursuant to a stipulation for certification upon consent election, which resulted in four votes for and two against the Union, with five challenged ballots. On December 7, 1973, the Regional Director for Region 18 determined that a hearing on the challenged ballots was necessary, and ordered that Case 18-RC-9588 be consolidated with Case 18-CA-3893. A hearing was held before me in Minneapolis, Minnesota, on December 19, 1973. Briefs were thereafter submitted by the General Counsel and the Respondent, and have been carefully considered.

Upon the entire record in the case, including my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT AND THE
LABOR ORGANIZATION INVOLVED

Respondent is a Michigan corporation, engaged in the manufacture, sale, and distribution of flexible hose connections and related products at its principal office and place of business in Lakeville, Minnesota. During the year ending December 31, 1972, Respondent shipped products valued in excess of \$50,000 directly from its plant to points outside the State of Minnesota. I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The Issues*

The complaint alleges that Respondent violated Section 8(a)(1) of the Act by interrogating employees on various occasions on May 1973, and violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employee James Macho on June 7, 1973. As Macho was discharged before the election of July 9, 1973, the resolution of the challenge to his ballot is dependent on whether his discharge was in violation of the Act. The resolution of Macho's discharge also is determinative of three of the other four challenges, for the parties stipulated that John Sharp, Bradley Smith, and Randy Underwood were hired to replace employees who struck in protest of Macho's discharge, and if the discharge was an unfair labor practice, then the strike was an unfair labor practice strike and the challenges should be sustained. The final challenge, to the ballot of James Axt, can be resolved at this point, for the parties stipulated that he was hired on June 6, 1973, to fill a bargaining unit position, and that he began work at 8 a.m. on June 7, 1973. As the election was held July 9, and the stipulated eligibility date was June 9, and in the absence of any evidence that Axt was hired to replace Macho, who was discharged later that same day, the

challenge to Axt's ballot should be, and hereby is, overruled.

B. *The Facts*

With the exception of alleged unlawful interrogation by Personnel Manager Maurice Miller, who did not testify, and one instance of alleged unlawful interrogation by Plant Manager Clyde Stratton, the issues in this case turn largely on the resolution of conflicting testimony, primarily as between various employees and Supervisor Gordon Broske, and also between various employees and Plant Manager Stratton.

It is undisputed that James Macho began working for Respondent in April 1972, as a warehouseman, that he was promoted to the position of hose assembler not too long thereafter, receiving a 50-cent per hour wage increase, and that he received another wage increase about March 1. Back in January, he received a "verbal warning" for misconduct. He had been complimented for his work on a number of occasions, and had come close to doubling his output during his time as a hose assembler. Macho attended two union meetings, on May 7 and 14, 1973, signing a union authorization card at the second. On May 22, the Union, by letter, requested recognition from the Respondent. Respondent's personnel manager, Maurice Miller, came to the plant¹ and spoke to all employees at a meeting. Miller said that he had heard that the majority of the employees wanted the Union to represent them, and wanted to know why. Miller also approached various employees individually and asked whether they had any complaints, and why they wanted a third party to represent them.²

About May 24 or 25, Macho was given a verbal warning (apparently reduced to writing a few days later) for "standing around idle too much of the time" for "excessive trips to the office."

Late in May, several days after the Union's request for recognition was received by the Company, Supervisor Broske assigned Macho to the work of washing hose assemblies, and had two warehousemen doing hose assembly work for a short period. General Counsel witnesses Warren Moore and Louis Smith testified that Broske said this was done because Macho was on the "shit list." Broske denied having said this. Employee John Gephart testified that, about the same time, Broske asked him "who the ringleader was." This occurred while Broske was visiting Gephart at the latter's house, where Broske also said, according to Gephart, that he was "kind of a middle man between Aeroquip and the people seeking recognition by the union and wanted to know why he wanted to be recognized." During the course of Broske's visit, employee Searles called on the phone. Gephart mentioned that Broske was there and would like to say hello to him. When Broske got on the phone, he asked Searles what his complaints were and why he was trying to get the Union in. Searles testified to this latter conversa-

tion, and also to a conversation with Broske a few days later, in the shop, where Broske asked if he had ever been a member of a union, why he wanted to get into a union, and whether Macho had been responsible for calling in the Union. Although Broske admitted having visited Gephart at his home, and having spoken with Searles on the phone while there, he denied having said anything along the lines testified to, and he denied making any reference to Macho there or at any other time, as to whether Macho was responsible for the Union.

About June 4 or 5, Macho went back to work on hose assembly.³ On the evening of June 6, according to Broske, an employee named Thompson, who was not called to testify by Respondent, reported to Broske that Macho had been initialling for inspections that were not done, and that he was failing to keep scrap records. Broske testified that he reported this to Plant Manager Stratton the next morning. Stratton then asked Kenny Meyer to "dig out paperwork relating to the last few weeks' work or longer, as necessary . . . to prove or disprove . . . the correctness of the statement made by Mr. Thompson to Mr. Broske," and Meyer found some orders on which Macho had initialled both for himself and for his coworker, Smith, on a form calling for initials of both the employee who built and the employee who inspected the particular order. Stratton then called Macho in and "confronted" him with these orders. According to Stratton and Broske, there were three orders, one dated April 6, one the previous day, June 6, and one undated, all of which were shown to Macho, and all of which he admitted initialling in both places.⁴

Macho testified that he did initial the April 6 and June 6 forms in both places. He added that it was a common practice for one of the two employees working on a job to put both sets of initials on the form, always with the other's approval, and usually in a situation where the other employee had dirty hands, or was doing something. Smith testified to the same effect, that he had told Macho, "go ahead, sign my initials" when his (Smith's) hands were "terrible dirty and greasy from oil that you use on the chucks of the crimp machine," particularly because they were "reprimanded once for getting the paperwork too dirty." Smith also said it happened the "other way around," with Smith initialling for Macho, with the latter's permission, in similar circumstances. Smith also testified that Foreman Broske had done the same thing on at least one occasion. Broske himself confirmed having put someone else's initials on an order form. He said, "I have initialled for someone else." He later agreed that he had not only put others' initials on the forms, but that others had initialled for him "in the early stages of the game." Both were done "only with . . . permission," said Broske. Although Broske testified that this was "not a common practice," he said that it happened "maybe once a week, maybe twice a month." Broske also confirmed that he had been present when Smith initialled for Macho, and vice versa, on occasions.

Macho denied either having been confronted by Stratton

or 3 days before his discharge

¹ The April 6 order form was initialled as built by "L.S." (Smith) and inspected by "J.M." (Macho), the June 6 one as built by "J.M." and inspected by "L.S." and the undated form had built by "J.M." and inspected by "M.R."

¹ Miller was personnel manager for the whole Company, not just the plant here involved, and was located at another plant

² As noted above, Miller did not testify. These findings are based on the credited testimony of Macho and Louis Smith

³ The testimony of different witnesses shows that he went back either 2

with the undated form, or having written either set of initials—"J.M." or "M.R."—on the form. According to Stratton, when Macho was shown the undated form, and admitted signing both initials, Stratton asked Macho how he justified putting the initials "M.R." for "inspected by" when that employee was not hired until some time in May. Macho replied "Oh, we've been doing that right along, ever since we started inspecting again." Stratton said "Who ever authorized you to discontinue inspection, or not comply with our inspection procedures?" Macho then replied "Oh, I guess I made a mistake. Sure, sure, we were inspecting all along." Stratton then, according to his testimony, told Macho that he had not been keeping "scrap records," and Macho just shrugged his shoulders. Macho, as already noted, denied any confrontation with, or connection with, the undated form. Stratton then, according to his testimony, told Macho that this was a serious matter, that he had to dismiss Macho for "not complying with our procedures of inspection," and told him to be off the premises "within five or ten minutes."

I am constrained to resolve the conflicts in testimony set forth above in favor of the General Counsel's witnesses. Not only was I favorably impressed by them, while regarding Broske's denials, in particular, as lacking in conviction, but various other factors to me lead inescapably to that conclusion. Thus, Broske's report to Stratton primarily dealt with the fact that Macho had initialled order forms in both places, doing so, that is, for someone else in one of the places. Yet, Broske himself admitted to having done exactly the same thing, as well as having someone else initial for him, and Broske admitted having been present on a number of occasions when Smith initialled for Macho, and Macho for Smith. With respect to the allegation that Macho had not performed the inspection function on occasion, there is no direct evidence at all. At most there is Broske's testimony that Thompson, an employee who worked on hose assembly only the last few days of Macho's employment, told him that Macho was not inspecting. Yet Broske, who was the foreman of both Macho and Smith from February through the time of Macho's discharge, and who had observed each initial for the other, apparently never saw the inspection function being neglected—at least he did not so testify. Furthermore, whatever derelictions, in terms of the initials on the form, Macho was technically guilty of, so was Smith, yet only Macho was singled out for this treatment. While it is possible that Broske, and in turn Stratton, received and accepted the accusation of an employee, Thompson, brand new to the hose assembly work, the very fact that Thompson, the only one who, by hearsay, saw Macho neglect to inspect an order, was not called to testify, is also significant in resolving credibility.

On the basis of the above credibility findings, I find that Broske interrogated employees Gephart and Searles about why they wanted the Union, what their complaints were,

⁵ Although it is true that Macho had about the same time been the subject of employee complaints for "standing around" I do not believe this could account for Broske's characterization

⁶ There is no evidence, as mentioned above, that Macho in fact failed to inspect any order he was supposed to, and I credit Macho that there was no "admission," or words tantamount thereto, of such failure during his final interview with Stratton. I also credit Macho that only two orders were

and who the ringleader was, and that Respondent thereby violated Section 8(a)(1) of the Act. The uncontradicted testimony to the effect that Miller, at a group meeting, and individually with the employees, queried them as to why they wanted a union to represent them (he said "third party" on occasion, but in context it is plain that "union" was meant) also entailed a violation of Section 8(a)(1) of the Act, and I so find. Finally, Stratton's own testimony that he approached Smith and asked him what complaints and gripes he had, even though he coupled the questioning by saying to Smith "I'm only asking because our counsel advised us to be open and ask about it," was in violation of Section 8(a)(1) of the Act.

Having found that Broske asked two employees, Gephart and Searles, whether Macho was the "ringleader" of the Union, and despite their denials—which were true of Macho being the "ringleader"—it is evident that Broske believed Macho to be the leader. Broske's assignment of hose washing work to Macho, and his telling two employees who questioned him about it that Macho was on the "shit list," also strongly suggest that Broske's antipathy toward Macho was based on his feeling that Macho was responsible for bringing the Union in.⁵

There is no evidence that Stratton personally knew, suspected, or believed that Macho was active in the Union, or "responsible" for bringing it into the plant. However, the discharge came as a result of Broske's complaints to Stratton, his relaying of the alleged accusations made to him by employee Thompson. It is thus immaterial that the record fails to show knowledge on Stratton's part, for Foreman Broske's knowledge is attributable to the Respondent. It is also not material that Stratton may well have acted, after Broske's complaint, because of the "forgery." For it is evident, based on Stratton and Broske's versions of what occurred, that Broske never told Stratton that the practice of initialling for each other was relatively frequent, that Broske had been on both the giving and receiving end of this practice, and had observed both Smith and Macho in the past doing just that quite openly, without ever having mentioned it to them or anyone else.⁶ The receipt of the Union's demand for recognition on May 22, coupled with Broske's belief that Macho was the employee "responsible" for the Union coming in, was plainly the beginning of Macho's difficulties, the end coming with his discharge on June 7. For all these reasons, I find that Respondent discharged Macho because it believed that he was the Union ringleader, and thereby violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

Respondent, by interrogating employees about their union activities and that of other employees, by soliciting employees grievances and complaints, and by discriminatorily discharging employee James Macho, engaged in

shown to him by Stratton at that interview, the April 6 and June 6 ones I agree with the General Counsel that the initials on the undated order do not appear to be in the same handwriting as the ones of the other two orders, which were concededly made by Macho. As I am not a handwriting expert, I make no explicit finding on the handwriting itself, but the differences tend to corroborate my credibility findings

unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

THE REMEDY

I shall recommend that Respondent cease and desist from its unfair labor practices, that it reinstate James Macho, with backpay as provided in *F. W. Woolworth Co.*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716, and post an appropriate notice. Having found that James Macho was discriminatorily discharged, I shall also recommend, pursuant to the stipulation of all parties, that the challenge to his ballot be overruled, the challenges to the ballots of Sharp, Underwood, and Bradley Smith be sustained, and, as determined above, the challenge to the ballot of James Axt be overruled, and that the Regional Director take appropriate action with respect to these ballots.

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:

ORDER⁷

Respondent, Aeroquip Corporation, Lakeville, Minnesota, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in District No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO, by discharging or in any other manner discriminating against employees in regard to their hire or tenure of employment or any term or condition of employment.

(b) Interrogating employees about their or other employees' union activities.

(c) Soliciting employees' complaints or grievances for the purpose of interfering with their freedom of choice in a representation election.

(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) Offer James Macho immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered, in the manner set forth in the section hereof entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examining or 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 Order.

(c) Post at its Lakeville, Minnesota, plant copies of the attached notice marked "Appendix."⁸ Copies of said notice, on forms provided by the Regional Director for Region 18, after being duly signed by Respondent's

representative, shall be posted by it 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 ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that Case 18-RC-9588 be remanded to the Regional Director to open and count the ballots of James Macho and James Axt, to issue a revised tally of ballots, and to take such further action as then becomes appropriate.

⁷ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 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.

⁸ 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 read "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

WE WILL offer James Macho immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, and pay him for losses he suffered as a result of his discharge.

WE WILL NOT discharge any employee for engaging in union activities.

WE WILL NOT interrogate employees about their union activities or solicit their complaints or grievances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights under Section 7 of the Act.

AEROQUIP CORPORATION
(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, 316 Federal Building, 110 South Fourth Street, Minneapolis, Minnesota 55401, Telephone 612-725-2611.