

American Motors Corporation and Jonathan Melrod.
Case 30-CA-2446

October 30, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND
PENELLO

On May 22, 1974, Administrative Law Judge Thomas S. Wilson issued the attached Decision in this 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 attached Decision in light of the exceptions and brief¹ and has decided to affirm the rulings, findings,² and conclusions³ of the Administrative Law Judge, and to adopt his recommended Order⁴ as modified herein.

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, American Motors Corporation, Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for the Administrative Law Judge's notice.

¹ Respondent's request for oral argument is hereby denied as the record, exceptions, and brief adequately present the issues and positions of the parties

² The Administrative Law Judge found that Foreman James Craig violated Sec 8(a)(1) by preventing employee Jonathan Melrod, who was on a break, from continuing to talk to employee Albert Guzman while the latter was working. We disagree. We first note that the complaint did not allege this incident as a violation of the Act, nor did the General Counsel at the conclusion of the hearing move to amend the complaint to conform to the evidence. Furthermore, this matter does not appear to have been fully litigated by the parties. Thus, the record is devoid of any evidence of the content of the interrupted conversation, whether it occurred before or after the Respondent became aware that Melrod and Guzman had been distributing leaflets to employees, or if Melrod's talking to Guzman interfered with his production as Craig contended. In our view, a finding that Craig's actions were violative of Sec 8(a)(1) is not warranted in these circumstances.

³ We find, in agreement with the Administrative Law Judge, that the record evidence amply supports a finding that Respondent unlawfully discharged Albert Guzman and Jonathan Melrod for engaging in protected concerted activity in violation of Sec 8(a)(1) and (3) of the Act. In so finding, we do not adopt the Administrative Law Judge's allusions to past political figures.

⁴ The Administrative Law Judge rested his recommendation of a broad order on the very broad finding that Respondent "has an opposition to the

APPENDIX

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

WE WILL NOT discharge or otherwise discriminate in regard to the hire and tenure of employment or any term or condition of employment of any of our employees because of their membership in and activities on behalf of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 75, or any other union of their choice, or because of their engaging in protected concerted activities.

WE WILL offer Jonathan Melrod and Albert Guzman each immediate 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 WE WILL pay each for any loss of pay he may have suffered by reason of our discrimination against him, together with interest thereon at 6 percent per annum.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 75, or any other labor organization of their choice, to bargain collectively through a bargaining agent chosen by our employees, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any such activities.

AMERICAN MOTORS COR-
PORATION

policies of the Act in general." Such a finding seems to us too sweeping and incongruous with the existence of a plainly stable bargaining relationship between Respondent and a major international union, and we disavow it. Nonetheless, Respondent has shown here a failure to respect the rights of employees who are critical of their union and who seek to exercise their Sec 7 rights by making their concerted voices heard as to matters on which they seek more vigorous union action.

While we adopt the recommended broad remedial order herein, therefore, we do so because of the seriousness of Respondent's violations of Sec 8(a)(1) and (3) of the Act. Retaliation for such concerted activities, including the use of the ultimate penalty of discharge, strikes at the very heart of the Act (*NLRB v. Entwistle Manufacturing Company*, 120 F.2d 532, 536 (CA 4, 1941)) and constitutes conduct from which we may reasonably infer the likelihood of recurrences of similar interference with Sec 7 rights, and thus justifies our Order herein.

DECISION

STATEMENT OF THE CASE

THOMAS S. WILSON, Administrative Law Judge: Upon a charge duly filed on September 6, 1973, by Jonathan Melrod, an individual, herein referred to by name or as the Charging Party, the General Counsel of the National Labor Relations Board, herein referred to as the General Counsel¹ and the Board respectively, the Regional Director for Region 30 (Milwaukee, Wisconsin), issued its complaint dated December 20, 1973, against American Motors Corporation, herein the Respondent.

The complaint alleged that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Labor Management Relations Act, 1947, as amended, herein referred to as the Act.

Respondent duly filed its answer admitting certain allegations of the complaint but denying the commission of any unfair labor practices.

Pursuant to notice a hearing thereon was held before me in Milwaukee, Wisconsin, on March 5 and 6, 1974. All parties appeared at the hearing, were represented by counsel, and were afforded full opportunity to be heard, to produce and cross-examine witnesses, and to introduce evidence material and pertinent to the issues. At the conclusion of the hearing oral argument was waived. Briefs were received from General Counsel and Respondent on April 8, 1974.

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

FINDINGS OF FACT

I BUSINESS OF RESPONDENT

American Motors Corporation is a Maryland corporation engaged in the manufacture of automobiles at several locations throughout the United States, including its facilities in Milwaukee, Wisconsin, the only location involved herein. During the past calendar year, a representative period, Respondent caused goods and materials valued in excess of \$50,000 to be shipped across the lines of the several States.

Accordingly I find that at all times material herein, Respondent has been, and is now, an "employer" as defined in Section 2(2) of the Act, engaged in "commerce" and in operations "affecting commerce" as defined in Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 75, is a labor organization admitting to membership employees of Respondent. In fact, said International

¹ This term specifically includes the attorney appearing on behalf of the General Counsel at the hearing

Union and its Local 75, at all times material herein, has been and now is a party to a collective-bargaining agreement with Respondent effective as of October 16, 1970, and extending by its terms to September 16, 1974

III. THE UNFAIR LABOR PRACTICES

A. *The Facts*

This whole case began on the morning of March 15, 1973,² with the distribution of a leaflet at the employees' gates to Respondent's Milwaukee body plant. The leaflet was headed, "Workers—Fight!" It announced that UAW President Leonard Woodcock was coming to speak to Local 75 on Saturday, March 17, and urged everyone to attend. It advised that the pamphleteers were "a group of union members who want to bring up a few issues we believe Woodcock should answer." Among the issues mentioned as possible subjects of negotiation in the negotiations coming up with the Big Three auto companies were "voluntary overtime," a substantial wage increase, the speedup, and paid vacations for new employees. Two cartoons were also reproduced in the leaflet.

A copy of this leaflet promptly found its way to the desk of Raymond A. Martin, Respondent's director of industrial relations at the plant. In regard to this Martin testified:

Q. What did you do when you saw the first handbill?

A. I read it, and it appeared to be a little different than what we normally get.

Q. How do you mean different?

A. Well, I think, just as you heard in prior testimony, when anything was handed out in the plant, I get a copy of it. The guards pick it up, labor relations, personnel, whoever might have it, and part of the job is finding out what's going on in the plant. This was a little bit unusual, and some of the terminology was not the same language, sort of different. It was terminology that isn't normally used in the plant; in my opinion it looked suspicious to me, and I asked at that time if we were to see any more in the future, let me know who was distributing it and to make sure that I got copies.

In accordance with these instructions Martin was soon advised that the leaflet was being distributed by Jonathan Melrod, Willie Williams, Dave Lamb, and Bill Roby, all employees of the plant, who also admittedly were the authors thereof

Also promptly upon receipt of this first leaflet Martin went to see Plant Manager Zorn with a copy of the leaflet. Martin testified:

A. I think I would have seen him [Zorn] early on [March] the 15th.

Q. Did you see him?

A. In fact, I dropped a copy of the literature which

² No witness was positive of the date but March 15 was accepted by all parties

I normally would do when any literature was handed out.

Q. And that was the start of the whole thing?

A. Yes, it was.

About March 19 Respondent increased its daily production of auto bodies about 4 percent from 576 auto bodies to 600 per day. At or about the same time Respondent increased its employment by about 4 percent or 100 employees.

This increase produced another leaflet, also containing cartoons, under the heading "Fight Speed up." The first cartoon in this leaflet shows a worker being taken into the "sick bay" with a sign reading "work faster" tacked to the door with one management official saying to another "This means we will have to look for another winner for the highest output per worker award." The second cartoon at the "Associated Employers Club" has one official saying to two others, "I'm bored—let's go out to the plant and watch the workers knock themselves out!" The final cartoon reproduced therein concerns an executive with the name "Zorn" printed on his desk.

The written message contained in this leaflet exclusively concerned objections to the speed-up in the plant. Also in the final paragraph the authors of the leaflet described themselves as follows:

This leaflet is being put out by a group of people who want to make our union, Local 75, stronger. The more we are willing to stand up and fight the stronger our union will be. We call ourselves the FIGHT BACK Caucus of Local 75. You met some of us at the gate. We are Black, Latin and White, men and women, young and old—joining together to build the workers fight back movement.

A day or so later the third leaflet was distributed openly as usual at the plant gates. This one was headed "Are you dead yet?" It contained the announcement that:

Last month five brothers had a heart attack. Three died. Why? Machines are only made to run at that speed. Hitler didn't ask that much.

Yesterday we filed grievances. Work ran down the line undone. People are walking all over one another. Don't let foreman bribe you with phony promises We must keep on fighting.

At this point Martin testified:

A. Well, when I got the second or third issue of these leaflets that were being handed out, I had a—I asked other people in other facilities, number one, the Employers Association, and some of the other people, if they had ever been involved in this kind of thing, and I got a couple of positive answers. I looked at the literature that had been handed out at that time at their plants. It was almost identical in format, the printing was similar, the content was very similar, the cartoons that had been mentioned were almost identi-

cal. So, we decided that we would do a little further checking into the matter, and *I asked whether or not we had run a check on some of the people handing out the literature*, and some of the checking had been done by our own people, merely calls to the various people who had employed them before, so I said, "Run a check on them" which they did. [Emphasis supplied.]

By this time the names of Winston Roman and Gail Gaillard had been added to the known distributors of the leaflets. Albert Guzman had assisted in the distribution of this third leaflet and was seen so doing by his foreman, James Craig, who warned Guzman that same day not to get involved with Melrod and who admittedly prevented Melrod from speaking to Guzman at his work station.³

One of Martin's informants from his inquiries at the employers' association was Trost, an executive at Briggs and Stratton.⁴ As to this Martin testified:

A. They [Briggs and Stratton] had had a problem with the Revolutionary Union, and they had a case before the NLRB, as I recall,⁵ so I called to see if I could come over and talk to them about it, and they described their problem, and they indicated that they thought—

MR. UGENT: I'll object to that as hearsay.

JUDGE WILSON: I'll accept it as a report, but not for the truth of what was reported.

MR. BRICHZE: I'm trying to establish his reasons—

JUDGE WILSON: I'll take it as a report.

A. They understood that one of the employees that had used to work for them that was involved in a political type movement may have been associated with the Revolutionary Union and had gone to work for us.

Q. Who is that?

A. That happened to be Guzman. They looked around and—I didn't know if he was working for us or not and I obtained a copy of the application and asked about him, what type of individual he was, and so forth; they said he was unsatisfactory; he was an attendance problem. "Did they fire him?" "No, he had quit voluntary," so I went back to the plant and I checked our files and had them checked and to see if he was employed by us.

Upon finding that Guzman was in fact employed by Respondent Martin added Guzman's name to the list of distributors of the leaflets which were to be checked by three private detective agencies used by Respondent for that purpose: Fidelfacts, Special Agents Research Corporation, and an unnamed private detective agency.

Trost of Briggs and Stratton showed Martin literature distributed at its plant about which Martin testified:

³ Craig testified that he stopped Melrod from speaking to Guzman because Guzman was at that time at work and Craig thought that it might interfere with that work. Usually conversations between a worker on a break and a worker at work were permitted, unless the foreman thought that the conversation might interfere with the work being done.

⁴ Trost was not called as a witness.

⁵ Other evidence in this record indicates that this case was settled.

A. He showed me the literature which said, "We're not going to work overtime," the same kind of thing we were getting, people were overworked, the typical, more textbook rather than in-plant language, if you understand what I'm saying.

By this time Martin had convinced himself that he was dealing with a "political thing" rather than a labor problem. Zorn was already in touch with his superiors at Kenosha about the leaflet situation. According to Martin, Zorn reached the "political thing" conclusion even before Martin had.

Also about this time various and sundry employees began filing grievances over the speedup. Auto bodies began to go down the assembly line with work undone proving, allegedly at least, according to subsequent leaflets, "a sure thing that the standards are too tight."

Admittedly grievances always followed a speedup in the assembly line at the plant so that the filing of these grievances was nothing new or unexpected. The only thing new in the situation was the fact that the leaflets urged that grievances against the speedup be filed as a means of "Fighting Back."

About the time of the distribution of the third leaflet by the Fight Back Caucus, employees in the plant began wearing T-shirts on which was printed by a silk screen process a large red stop sign with the words printed in white therein "Fight Speed Up." Zorn promptly gave orders to the superiors to stop that practice. In fact one supervisor, at least, admittedly threatened disciplinary action against an employee for wearing such a T-shirt. Soon thereafter, however, Zorn rescinded this order.⁶

In their conversations Zorn and Martin equated these "Fight Speed Up" T-shirts with the experience Respondent had had some years before when T-shirts bearing the words "Black Power" appeared in the plant. At that time Respondent found these "Black Power" T-shirts to be so "inflammatory" that with the assistance of the Union the employees were persuaded, without disciplinary action, to forego wearing them.

Melrod admittedly sold about 30 of these "Fight Speed Up" T-shirts to employees. He sold one to a woman in the plant while on breaktime. His foreman and representatives from the labor relations department promptly confiscated a bag of similar shirts which he had in the plant and gave him a verbal warning for violating Respondent's "no solicitation" rule.

The next morning Melrod attempted to enter the plant with another bag of similar T-shirts. This bag of shirts was confiscated by the guard at the gate with the promise to return the same to him as he left the plant that evening. However, that evening the bag was in the labor relations department and, when Melrod attempted to retrieve it from that department, he was told that they were holding the bag of T-shirts as "evidence" while debating whether to charge Melrod with a violation of the "No solicitation" rule or the more serious charge of "concerted action." With the aid of his union steward Melrod was ultimately suc-

cessful in retrieving the bag of shirts from the labor relations department that evening.

Two different foremen, Will Love and James Craig, ordered Melrod out of their respective departments when Melrod, while on his break, was attempting to talk with friends, including Guzman, who were not on break and were working. At that time such conversations were permissible and usual in the plant except on those occasions when such conversations interfered with work production.⁷

As noted above Martin ordered checks made on all known distributors of the Fight Back Caucus leaflets. These checks were made by three independent private detective agencies. Martin had these agencies check on all the known distributors of the Fight Back Caucus leaflets.

When Fidelfacts through its manager Corrigan reported back on Melrod, very belatedly in the estimation of Martin,⁸ Martin suggested that Fidelfacts investigate as to whether or not Melrod had attended the University of Wisconsin and whether the "Fight Speed Up" shirts had been silk screened by "RPM Printing" of Madison, Wisconsin, which appeared on Melrod's employment application as his last employer. By this time Martin had interpreted this employer's name to be "Revolutionary Printing Movement."⁹ Subsequently Fidelfacts reported back that RPM Printing did do silk screen work but could not verify the fact that the "Fight Speed Up" T-shirts had been silk screened there.¹⁰ Martin's suggestion to Fidelfacts that they check Melrod's attendance at the University of Wisconsin was more fruitful.¹¹ They discovered that Melrod had in fact matriculated and graduated from the University of Wisconsin at Madison in January 1972 with a Degree of Bachelor of Arts.

A check of Guzman's employment application to Respondent disclosed that his employment at Briggs and Stratton was not listed therein.

Having thus established that Melrod had graduated from the University of Wisconsin which did not appear on his application for employment form and that Guzman had worked for Briggs and Stratton which also did not appear on his application for employment form, Zorn, Martin, and their superior Maddox in Kenosha, Wisconsin, decided to terminate Melrod and Guzman for falsifying their applications, a dischargeable offense under Respondent's rules as noted on the application form itself.

Accordingly about 2:15 p.m. on April 2 Dave Turrie of

⁷ Craig testified that he considered that Melrod's conversation with Guzman was, in fact, interfering with Guzman's production. Foreman Love was not called as a witness.

⁸ Fidelfacts was dropped by Respondent because of its alleged slowness in reporting back.

⁹ Melrod testified that "RPM" were merely initials. Respondent introduced no proof to the contrary.

As noted heretofore, these reports were received as "reports" and not for the truth of any of the allegations therein. In fact Respondent made no attempt to prove the truth of any of the allegations contained in any of the reports from any of these private detective agencies or other informants.

¹⁰ In fact, Melrod's testimony that he and his fellow caucus members had silk screened the T-shirts themselves was never challenged.

¹¹ Melrod's application for employment with Respondent shows that he was in residence in Madison, Wisconsin, from January 1, 1968, to January 1, 1972, which may have assisted Martin's intuition in making this suggestion to the detective agency.

⁶ Zorn did not testify. He had left Respondent's employ in November 1973.

the labor relations department and Foreman Bartoshevich came up to Melrod while he was working on the assembly line, ordered him off the line, told him that he was being suspended pending a discharge hearing the next day¹² and that he should pick up all his personal belongings in the plant. At this point the Union line steward inquired as to what was going on and was told "nothing." They then escorted Melrod with his belongings out of the plant.

The disciplinary hearing was held the next day, April 3, when Melrod was formally told that he was being discharged for falsifying his application for employment in omitting his attendance at the University of Wisconsin. Bauman inquired if that were the "only reason" and was assured that Melrod had attended the University.

After the conclusion of the hearing Turrie asked if Melrod had been the editor of the newspaper "We, the People" and whether he was a member of the "Revolutionary Union." Melrod refused to answer on the grounds that it was none of Respondent's business.¹³

On the morning of April 4 Vice President Bauman of the UAW came to Guzman while he was working on the assembly line and informed him that he was going to be discharged for falsifying his application form. This Guzman denied.

According to Respondent's records a hearing was held at 9:30 a.m. before David Turrie and William Young, both representatives of the labor relations department, at which they informed Guzman that he was being discharged for falsifying his employment application form in having omitted his employment with Briggs and Stratton. Guzman denied the charge and contended that Jim Madden, the interviewer, was told all about that employment during his preemployment interview and had told Guzman that it need not be included in the form along with other such interim employment.¹⁴ The labor relations representatives

stated that they were just following orders and that their order was to advise Guzman that he was discharged.

With this cut and dry disciplinary hearing Guzman's employment with Respondent ceased as had Melrod's the day before.

B. Conclusions

The only real question in this case is whether Melrod and Guzman were terminated by the Respondent because they falsified their employment application forms by omitting references to attendance to the University of Wisconsin and to the prior employment at Briggs and Stratton respectively,¹⁵ or whether these acknowledged omissions from the forms were merely the pretext by which Respondent chose to eliminate these two employees for their acknowledged part in the composition and distribution of five leaflets relating to wages, hours, and working conditions in the plant.

In the light of Martin's candid admissions made during the hearing that the investigations of the application forms all stemmed directly from Respondent's concern over the alleged "political type" nature of the leaflets distributed, the answer to the above question appears almost too simple.

There is no question but that Melrod omitted reference to his attendance and graduation from the University of Wisconsin and that Guzman failed to include Briggs and Stratton as a prior employment on their employment application forms.

In Melrod's case the omission was deliberate. He had had the experience of having been found "overqualified" by reason of his educational qualifications for the jobs available for which he had previously applied. He did not intend to lose Respondent's assembly-line job by being found "overqualified" by education if he could help it in this instance. Also judging from Respondent's propensity to accept the accuracy of any derogatory report made by anyone, known or unknown, together with its McCarthy-like belief that any university student of the time was automatically not only a member of S.D.S. but also a radicalizing one while in college, one is forced to the conclusion that there well may have been some valid grounds for the alleged position taken by S.D.S., as described by Martin, that college-educated applicants for employment should deliberately withhold information regarding the educational achievements of the applicant when applying for non-executive jobs. And further, Melrod had already discovered that jobs were not too plentiful at the time. Excuses thus could be made for his omission.

hear both sides of the story and find out whether there was some excuse as to why he didn't or did or what have you" Turrie and Young in charge of the "hearing" were spared the necessity of resolving this credibility problem between Guzman and Madden because, to their knowledge, Martin had previously inquired of Madden if he had told Guzman at the interview that it was unnecessary to fill out the "blanks" in his employment history. At the instant hearing Madden rather vividly recalled his interview with Guzman—but not his previous interview with Melrod. He had conducted several hundred similar prehire interviews. His memory was quite selective.

Respondent's brief states "The position of American Motors is that Melrod and Guzman were discharged solely because they falsified their job applications" (Emphasis supplied)

¹² Respondent wanted the discharge hearing on April 2 but had to postpone it to the next day because Union Vice President Bauman was unable to attend on April 2

¹³ The above questions resulted from an oral report from Fidelfacts which Martin described as follows

A Also that his alleged employment with Joe Morse. I believe it was, or John Morse of the Mayflower Moving Agency had been investigated and there was no record at Mayflower of him having been employed by them. He [Corrigan of Fidelfacts] gave us some information about Morse and the fact that he was probably involved in a revolutionary type movement and I related that back to some information I had received some time ago on S D S . and it seemed to fall very much in line

* * * * *

JUDGE WILSON We're getting quite far along in this hearsay. This is double or triple hearsay, but, I'm taking it as the report to be received, not for the truth of that report. That's something else again

* * * * *

A They [Fidelfacts] talked about the fact that he was probably the editor of a radical publication called, "We, the people "

¹⁴ It is noteworthy that Madden was not present at the discharge hearing and, therefore, did not dispute Guzman's contention despite the fact that, according to Martin, these disciplinary hearings were for the purpose "to

In Guzman's case the omission of Briggs and Stratton as a previous employer may or may not have been Guzman's fault. It may well have been Respondent's fault. Guzman testified that his Briggs and Stratton employment had been disclosed by him to James Madden who interviewed Guzman regarding his application and that Madden suggested that it was unnecessary to add that to his application form. Guzman made this claim before and during his so-called disciplinary hearing which, according to Martin, was held for the purpose of "getting both sides on the table" and "finding excuses." However Respondent chose not to produce Madden at the disciplinary hearing even though the conflict was known before hand. It deliberately chose to accept Madden's word given privately. This is hardly due process. In Guzman's case it seems that Respondent had located a dischargeable offense and obviously did not intend to lose it through due process or otherwise.¹⁶

However the fact remains that Melrod and Guzman had each omitted something from his application form. Under Respondent's rules this constituted a dischargeable offense. One omission was deliberate. The other was probably Respondent's fault. But both men were discharged.

Under these facts Respondent argues in its brief as follows:

The testimony was uncontradicted that neither employee would have been hired had they truthfully completed their job applications (Tr. 162, 278, 311).

Other employees have been discharged for "falsification of their applications" both prior and subsequent to the discharge of Melrod and Guzman (Tr. 190).

In fact, neither Melrod nor Guzman would have been discharged if they had not falsified their applications (Tr. 190).

The position of American Motors is that Melrod and Guzman were discharged solely because they falsified their job applications. Guzman's statements that he did not were immaterial—the Company's belief is that he did falsify his application and that position has never changed.

Unfortunately none of the above arguments are strictly accurate.

Thus Respondent argues that neither Melrod nor Guzman would have been hired if he had truthfully completed his application. Actually Madden knew of Guzman's prior employment at Briggs and Stratton and yet hired him.

When asked specifically about Melrod's attendance at the University of Wisconsin, Martin testified as follows:

Q. (By Mr. Brichze) With respect to the hiring of hourly paid personnel, does the Company have any

policy with regard to college graduates?

A. None as such. We like to see them come in for possible supervisory position.

JUDGE WILSON: What about the assembly line?

THE WITNESS: The supervisors on the assembly lines, oh, yes.

MR. BRICHZE: I have no further questions.

Q. (By Judge Wilson) In other words, as I get your testimony, American Motors does not rule out a college graduate as a possible assembly line employee?

A. Oh, no.

Q. You are willing to take a college graduate on the assembly?

A. Yes, we have 40 that I know of in the plant.

Q. Even though they may have gone to college during the S.D.S. period.

A. Even they went to college at any time.

Q. If they were in a university during the S.D.S. period, would it be your practice to investigate at the university to discover whether or not they were part of the S.D.S.?

A. Not unless there was reason to do so.

Q. Well, now, does that mean—

A. That means *if they were handing out literature that looks like it was going to shut down the plant* I would say we would. [Emphasis supplied.]

Q. Even though they had been accepted for employment, you would then check back on their college career, is that right?

A. Well, if we had checked their college career, we might not. We already checked it

This testimony does not seem to corroborate the argument made.

As for the argument that other employees had been discharged for similar application falsifications "both prior and subsequent" to Melrod and Guzman, the testimony is in dispute. According to the testimony of Respondent's witness four employees have been discharged for falsifying their employment applications. The testimony is inconclusive as to whether one dischargee, for omitting a criminal offense, was discharged before or after Melrod and Guzman. The other was subsequent.

The third argument above quoted is pure speculation. Interestingly enough it is based upon the testimony of James Madden who admittedly played no part in the decision to discharge either Melrod or Guzman. However it is true that the only reason Respondent gave to Melrod and Guzman for their discharge was the falsification of their applications.

But the fact remains that Martin ordered the private detective agencies to investigate Melrod and all other distributors of the leaflets only because of the receipt of one of the early such leaflets so distributed and further ordered the investigation of Guzman because he "felt he [Guzman] might have been" affiliated with the activities of Melrod in distributing the leaflet. Hence, the facts show conclusively that the discharges of Melrod and Guzman stemmed directly from the distribution of the five leaflets. It was the falsifications of the employment applications which Respondent used as the reason for the discharge.

¹⁶ In view of his nonappearance at the disciplinary hearing, Madden's vivid recollection of his interview with Guzman at the instant hearing out of the "several hundred" such interviews he had conducted appears somewhat suspect. If necessary to a decision in this case, I would credit Guzman

Respondent's brief continues Respondent's argument as follows:

With regard to a leaflets or handbills, it is clear that and uncontroverted that no one was disciplined because of passing out leaflets and no attempt was made by American Motors or any of its agents to stop anyone from passing out leaflets or handbills.

The leaflets themselves were scurrilous, attempted to defame the Company and interrupt production. They represented a deliberate attempt to cause the disruption of production, to have a disruptive effect on employees, to cause dissention and to be destructive of discipline.

As noted five leaflets in all were openly distributed at the plant gates. Even after its above description of the leaflets, Respondent's brief admits that "most of the leaflets, in fact all of the leaflets, introduced by the General Counsel (G.C. 2-6) deal with production increases or 'speed up.'" In fact even a cursory examination of these leaflets discloses that they also dealt with the necessity for higher wages, "voluntary overtime" on Saturdays, vacations with pay, and other conditions of employment as well as speedup which, of course, was the main topic of the leaflets probably because of the "increase in production," as Respondent preferred to call it, and/or the speedup, as the leaflets refer to the same thing, which had just been instituted at the plant by Respondent. In short these leaflets dealt exclusively with such bargainable subjects as wages, hours, and working conditions and hence amounted to a protected concerted and/or union activity.

Admittedly the collective-bargaining agreement in existence between Respondent and Local 75 contained a method protesting such production changes. All production changes by experience produced grievances. In fact the leaflets here advocated the filing of grievances against the production increase and/or speedup. But Respondent's brief points out that Melrod filed no grievances himself along this line whereas Guzman filed only one. The brief fails, however, to mention the fact that Melrod complained to his steward two or three times about the speedup and, in conjunction with that steward and his foreman, was able to ameliorate the situation complained about without the necessity of filing a formal grievance. Thus Melrod was in fact using the first step of the grievance procedure Respondent referred to.

A close scrutiny of all five leaflets discloses nothing therein which did not relate to wages, hours and various working conditions including the speed up.¹⁷ The reproduced cartoons which troubled Martin no doubt bothered the executives but for persons with a sense of humor even the cartoons were amusing. A sense of humor is a necessity even in business. The text of the leaflets appears factual but not inflammatory. While these texts were perhaps not in "in-plant" language, as Martin immediately noted, they were still intelligible

I find nothing in any of these leaflets to justify the Respondent's above description of them.

Martin, of course, saw it differently.

Upon receipt of the very first leaflet distributed Martin consulted with Zorn. As to this Martin testified he did so:

A. Because I thought that we had a situation which was much more serious than somebody falsifying his application. We had a condition in the plant that could have deteriorated and gotten worse.

Q. Are you saying you didn't discharge him for falsifying his application?

A. No, I am saying there are things more serious than someone being discharged for falsifying his application. In my opinion, shutting the whole plant down is much more serious than discussing discharge. [Emphasis supplied.]

Q. Did Melrod shut the plant down?

A. It looked that way.

JUDGE WILSON: You drew the conclusion that the plant—that he wanted to shut the plant down?

THE WITNESS: Among other things. I would say there was a possibility. I'm talking about this—relating to literature from other facilities that had problems. And people who were members or in some way associated with the Revolutionary Union, the same age bracket, the same kind of background, following the procedure that S.D.S. set up, don't give the fact that you graduated or went to college, make sure that you establish that you had an employer, which apparently was done, or had been done. It all fell into the pattern.

From his testimony it is clear that Martin deduced that these leaflets constituted a "political type activity" rather than a labor type activity because the terminology used in the leaflets was "a little bit unusual," "not normally used in the plant," and was not in "in-plant" language which made them "look suspicious." From there he concluded that the "political aim" of these leaflets was ultimately to slow down production and/or to close down the plant. This constitutes a rather large mental jump. But he immediately ordered private detective agencies to investigate all those who were known to have engaged in the distribution of the leaflets.

As to Melrod, the detective agency Fidelfacts reported back to Martin that there was no record that Mayflower had ever employed Melrod and that his named employer "was probably involved in a revolutionary type movement" as well as the fact that he, Melrod, "was probably the editor of a radical publication called 'We, the People.'"

Martin added Guzman's name to those being checked at the time Guzman assisted in the distribution of the third leaflet, and after learning from Briggs and Stratton that Guzman had been employed there at the same time as an employee whom he was told had "spent some time in Red China" and that Guzman "was somehow mixed up" with a "Revolutionary Union" group who were distributing leaflets at that plant which Martin found to have been very similar to those distributed at his plant. At this point Martin "felt that [Guzman] might have been" affiliated with the activities of Melrod.

¹⁷ *McDonnell Douglas Corporation*, 210 NLRB 280 (1974)

V. THE REMEDY

Martin accepted these hearsay reports without question. If Respondent actually terminated Melrod and Guzman because Martin's fears of their alleged revolutionary tendencies, then it was incumbent upon Respondent to prove the truth of the matters contained in these hearsay reports. This Respondent did not do nor attempt to do. Respondent apparently preferred to rely upon hearsay accusations by unknown persons in the manner made famous some years ago by the late Senator Joseph McCarthy. That I cannot do.

As Martin acknowledged and as the facts prove beyond a peradventure, these investigations leading to the facts omitted from Melrod's and Guzman's applications, to wit, attendance and graduation from the University of Wisconsin and employment at Briggs and Stratton, stemmed directly and exclusively from the distribution of the leaflets at the Respondent's plant gates. Hence the motivating force leading to the discovery of the "falsifications" in the application forms was the distribution of these leaflets. The leaflets, in turn, dealing as they did with wages, hours, and working conditions constituted union and/or concerted activity protected by Section 7 of the Act. Section 8(a)(1) of the Act prohibits an employer from interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act, including the right to engage in concerted activities "for the purpose of collective bargaining or other mutual aid or protection." The law is settled that an employer may not threaten or discharge its employees for engaging in these activities.¹⁸ And that the discharges are violative of the Act even though motivated only in part by such consideration.

In addition the facts above found require the finding here made that Respondent used the falsification of the employment application forms here as the pretext upon which to discharge Melrod and Guzman for having engaged in union and/or concerted protected activities in order to discourage such activities on the part of its employees in violation of Section 8(a)(1) and (3) of the Act.

And I find further that the efforts of the various foremen found above to discourage the wearing of "Fight Speed Up" T-shirts in the plant and to prevent Melrod from conversing with Guzman amounted to interference, restraint, and coercion of employees in order to discourage such union and/or concerted activities in violation of Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent, set forth in section III, above, and occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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

Having found that Respondent discriminated in regard to the hire and tenure of employment of Jonathan Melrod on April 3, 1973, and Albert Guzman on April 4, 1973, because of their membership and activities on behalf of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 75, and/or because of their protected concerted activities in violation of Section 8(a)(1) and (3) of the Act, I will order that Respondent offer each of them full and immediate reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of said discrimination against him by payment to him of a sum of money equal to that which he would have earned from the date of the discrimination against him to the date of Respondent's offer of reinstatement less his net earnings during such period in accordance with the formula set forth in *F.W. Woolworth Company*, 90 NLRB 289, with interest thereon at 6 percent per annum.

Because of the type of unfair labor practices engaged in by Respondent, it is clear that Respondent has an opposition to the policies of the Act in general and, therefore, I deem it necessary to order Respondent to cease and desist from in any manner interfering with the rights guaranteed to its employees by Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record herein, I make the following:

CONCLUSIONS OF LAW

1. By discriminating in regard to the hire and tenure of employment of Jonathan Melrod and Albert Guzman by discharging them on April 3 and 4, 1973, respectively, because of their membership and activities on behalf of said union and/or because of their protected concerted activities and in order to discourage such membership and activities among its employees, Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

2. By threatening employees with the disciplinary action for wearing "Fight Speed Up" T-shirts and by preventing Melrod from conversing with Guzman, Respondent has interfered with, restrained, and coerced its employees in the rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

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

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby issue the following recommended:

¹⁸ *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962), *Hugh H. Wilson Corporation v. NLRB*, 414 F.2d 1345 (C.A. 3, 1966), cert. denied 397 U.S. 935 (1970), *NLRB v. Dee's of New Jersey, Inc.*, 395 F.2d 112 (C.A. 3, 1968)

ORDER ¹⁹

Respondent American Motors Corporation, Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating in regard to the hire and tenure of employment or any term or condition of employment of any of its employees because of their membership in and activities on behalf of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 75, or any other union of their choice or because of engaging in protected concerted activities.

(b) In any manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local No. 75, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

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

(a) Offer to Jonathan Melrod and Albert Guzman immediate and full reinstatement to his former job or, if his job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privi-

leges and make each whole for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section of this Decision entitled "The Remedy," with interest thereon at 6 percent per annum.

(b) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll, 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 Milwaukee body plant in Milwaukee, Wisconsin, copies of the attached notice marked "Appendix." ²⁰ Copies of said notice, on forms provided by the Regional Director for Region 30, 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 by Respondent to insure that said notices are not altered, defaced, or covered by any other material

(d) Notify the Regional Director for Region 30, in writing, within 20 days from the date of this Decision, what steps the Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that unless the Respondent notifies the said Regional Director within 20 days from receipt hereof that it will take the action here recommended, the Board issue an order directing Respondent to take the action here recommended.

¹⁹ 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

²⁰ 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"