

Amerace Corporation, Swan Hose Division and United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC. Case 16-CA-5807

May 12, 1975

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS JENKINS AND KENNEDY

On February 12, 1975, Administrative Law Judge Russell L. Stevens issued the attached Decision in this proceeding. Thereafter, the 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 brief and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order.

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, Amerace Corporation, Swan Hose Division, Stillwater, Oklahoma, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

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 (1950), enf. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

² The Administrative Law Judge's Decision does not resolve a conflict in the testimony as to the precise date of the first interview. Cartwright testified that the first meeting occurred on August 29, 1974, while Cavett testified that it occurred on August 27, 1974. We find it unnecessary, in reaching our result herein, to resolve this conflict in the testimony because it is the substance of the last meeting, not the date of the first, upon which this decision basically rests.

DECISION

STATEMENT OF THE CASE

RUSSELL L. STEVENS, Administrative Law Judge: This case was heard in Stillwater, Oklahoma, on January 22, 1975.¹ The complaint, issued December 11, is based on a charge filed October 18 by Don M. Weber, field representative for United

Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, hereinafter referred to as the Union. The complaint alleges that Amerace Corporation, Swan Hose Division,² hereinafter referred to as Respondent, violated Section 8(a)(1) and (3) of the National Labor Relations Act, hereinafter referred to as the Act.

Issues

The principal issue is whether Respondent violated Section 8(a)(1) and (3) of the Act by refusing to hire Charles Cartwright, hereinafter referred to as Cartwright, because he joined, assisted, or otherwise identified with the Union or engaged in union or concerted activities for the purpose of collective bargaining or other mutual aid or protection.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally. Submission of briefs was waived by General Counsel and Respondent.

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

FINDINGS OF FACT

I BUSINESS OF RESPONDENT

Respondent is, and at all times material herein has been, a Delaware corporation with a hose manufacturing facility in Stillwater, Oklahoma.

During the past 12 months, which period is representative of all times material herein, Respondent in the course and conduct of its business operations manufactured, sold, and distributed products valued in excess of \$50,000 directly to purchasers located in States of the United States other than the State of Oklahoma.

I find that Respondent is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II THE LABOR ORGANIZATION INVOLVED

United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III THE ALLEGED UNFAIR LABOR PRACTICES

Background

The controversy herein arose principally from a series of three conversations between Cartwright and Respondent's personnel manager, Donald W. Cavett, hereinafter referred to as Cavett.

Cartwright said he applied for a job with Respondent but was refused because his stepfather, Harold Davis (hereinafter Davis), is employed by Respondent and is a union activist.

Respondent contends Cartwright was not hired because he was making more money per hour when he applied than he

¹ All dates referred to hereinafter are within 1974, unless stated to be otherwise.

² Name of Respondent was amended at hearing.

would make as an entry level employee for Respondent, and that to hire him under such circumstances would be contrary to Respondent's employment policies.

Pertinent Testimony

Cartwright testified that, on or about August 29, he filled out an application for employment by Respondent and spoke with Cavett. He said Cavett looked over his application and asked how he and his stepfather were getting along. Cartwright said Davis has worked for Respondent about 4 years, and that Davis told Cartwright he has been active in the Union during that period of time, his activities including distribution of literature and service as a union observer in last year's union election on August 22.

Cartwright said Cavett talked during the interview about how much the Company had invested in its antiunion campaign,³ and about alleged union excesses and shortcomings. Cavett allegedly stated that he could not understand why Davis wanted a union in that Davis "never had it so good."

Cartwright stated, "Then I said I couldn't understand why they wanted a Union in at Swan anyway that they are the best paying company around Stillwater." At that point, Cavett allegedly said he would have to speak with Don Fisher (hereinafter Fisher, the plant manager), because of Fisher's policy relative to hiring relatives.

After two telephone conversations with Cavett between August 29 and September 7, during which Cavett said he had not yet talked with Fisher, Cartwright again met with Cavett, on September 7, in the office of the latter's secretary. Cavett again said he had not talked with Fisher and scolded Cartwright about being so persistent.

Cartwright testified that he had a final conversation with Cavett in the latter's office on September 17, during which Cavett allegedly stated, "Charles, this is the third time you've been out to see us, and we've decided not to hire you . . . because of Harold." According to Cartwright, Cavett stated:

"Harold has a good work record, but he doesn't like his job, and he's emphatically a Union man." And I said, "I thought you would hire me because of me, not for something someone else does." And Mr. Cavett said, "Well, blood's thicker than water, and as long as we can hire the people we want, we're going to hire people that are loyal to the Company."

On cross-examination Cartwright said he was introduced to Cavett 2 or 3 years ago, at a company picnic, and that he said "Hi" to Cavett several times since then, when they met, although they never had a conversation. Cartwright said Cavett did not discuss his application during any interviews.

Cavett testified that he had never met Cartwright prior to the time the latter applied for a job at Respondent's plant. Cavett stated that, after he was introduced to Cartwright August 27, the two of them "went over the application as to the possibility of shifts that he could work . . ." Cavett said Cartwright stated that he was Davis' stepson, to which Cavett replied that he was interested in Cartwright as an individual.

Cavett said Cartwright told him he was still employed as a carpenter.

Cavett's version of the September 7 interview was:

Q. What took place on September 7?

A. At that—in that meeting—it was a short meeting—he elaborated on how he could not believe in what his father-in-law was doing, that he felt there was no need for a Union, and again I told him I was not interested in what his father-in-law was doing, it was he that I was interested in, not his father-in-law.

Cavett said he could recall no discussion of unions at this meeting.

Cavett testified that he interviewed Cartwright again September 17, at which time they reviewed Cartwright's application and Cavett said he was making more than Respondent could pay; that he felt Cartwright would not be satisfied with lower pay. Cavett said he left the conversation to talk with Fisher and recommended they not hire Cartwright because of the pay differential. Cavett then advised Cartwright of the decision. Cavett testified that it was company policy to advise Fisher of all applications from relatives of current employees. There is no policy against hiring relatives.

On cross-examination, Cavett said he has known Davis about 5 years and did not know about Davis' union activity. He said he did know, however, that Davis was a union observer at the election. He stated that, possibly, he could have met Cartwright at one of the Company's family picnics, but he did not know—usually about 1,300 people attended. Cavett said he first knew that Cartwright was Davis' stepson when the former told him August 27.

Analysis

Uncontradicted testimony shows, and it is found, that Cavett had in his current files, during August and September 1974, approximately 400 applications for employment.

Additionally, uncontradicted testimony shows, and it is found, that Fisher established and followed the policy as plant manager of requiring that he be informed in advance when Cavett planned to employ a relative of a current employee, or when a decision was made by Cavett not to employ a relative. In such instances, the final decision to hire or not to hire a relative is made jointly by Fisher and Cavett. In all other instances, Cavett alone makes final decisions relative to hiring.

The record is devoid of any evidence or testimony that Cartwright was active in, or even interested in, any union or concerted activities. To the contrary, Cartwright in his testimony acknowledged telling Cavett during the interview of August 29, "Then I said I couldn't understand why they wanted a Union in at Swan anyway that they are the best paying company around Stillwater." He said he told Cavett that Davis' interest in the Union "was probably a family thing with him."⁴ It is found that Cartwright was not a union member or union supporter during any period of time relevant herein. However, the record clearly shows, and it is

⁴ The portion of Cartwright's testimony relating to his disinterest in the Union was confirmed by Cavett, but the latter testified Cartwright's statement was made September 7, rather than August 29

³ The Union lost the August 22 election at Respondent's plant.

found, that Davis was a union observer at the election of August 22, 1974. Based on that fact, and the testimony of Cartwright undisputed on this point, it is found that Davis is an active union supporter.

Cavett testified that he has known Davis approximately 5 years, and that he was present at the union election and saw Davis acting as an observer. However, when asked on cross-examination whether he knew if Davis "was quite active in the Union," Cavett replied that he did not know. Cartwright testified that Davis mentioned to him Davis' "passing out literature" and acting as a union observer, but there was no testimony or evidence showing that Cavett knew about the literature or any other activity by Davis, except his having acted as an observer. It is found that Cavett knew Davis was a union supporter, although he may not have been aware of the extent of union activity on the part of Davis.

There was testimony that was intended to show that Cavett knew who Cartwright was when the latter applied for a job, but a finding on this point is not necessary. Cavett testified that Cartwright told him during the first interview, on August 27, that he was Davis' stepson. The crucial conversation was the third interview, on September 17.

Cavett testified that he hired 23 employees during September and October, after his third interview with Cartwright on September 17. He also testified that no special training or experience is necessary for employment, and that Cartwright was qualified for any of the entry level jobs available at Respondent's plant.

In support of his complaint, General Counsel relies on several factors. Most important is Cartwright's testimony concerning the third interview, held on September 17, at which time he allegedly was told by Cavett that he was not being hired because of his stepfather's union activities. Cartwright said no other reason was given by Cavett for not hiring him. Cavett denied that testimony, and said he told Cartwright "I felt he was making too much . . . making too much money and would not be satisfied with the wage that we could give him at that point." Cartwright's application shows employment from November 1973 to the present as a self-employed carpenter at \$5 per hour, with the comment "work is not steady." Respondent's entry level jobs pay \$2.89 per hour. Cavett testified that he told Cartwright he would not be hired, immediately after Fisher agreed not to hire Cartwright, because of the latter's present earnings being higher than his entry wage at Respondent's plant would be.

Determination of the controversy thus rests upon assessment of the interview of September 17. Based on observation of the witnesses, their demeanor, and the nature of the testimony, Cartwright's version of the interview is credited. Cavett's knowledge of Davis' union activity, his evasive testimony when asked why he did not tell Cartwright at the first interview that the latter's present hourly wage presented a problem, and his shifting stance on the hiring-of-relatives question created doubts about his testimony as a whole. Further, Cavett testified that hiring of relatives required the combined decision of him and Fisher. He testified that he conferred with Fisher and they reached a decision, after which he told Cartwright he would not be hired. Under such cir-

cumstances, it would be logical to have Fisher testify about that decision. Fisher was not called as a witness. Under such circumstances, the record favors Cartwright's recitation of events. It is found that Cavett told Cartwright on September 17 that the latter would not be hired because of his stepfather's union activity. Jobs then having been available, Cartwright's being qualified and available for the jobs, and Cavett's telling Cartwright he would not be hired because his stepfather was a union supporter, it is clear that the allegations of the complaint are proved. It is so found. *J. P. Stevens & Co., Inc.*, 179 NLRB 254 (1969); *The Colonial Press, Inc.*, 204 NLRB 852 (1973).

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, 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.

V THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. I shall also recommend that Charles Cartwright be made whole by Respondent for any loss of earnings he has suffered as a result of Respondent's discriminatory refusal to hire him, with the sum to be paid to him computed in accordance with the formula approved in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon computed in the manner prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

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

CONCLUSIONS OF LAW

1. Amerace Corporation, Swan Hose Division, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.
3. By refusing to employ Charles Cartwright for discriminatory reasons, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

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

ORDER⁵

APPENDIX

Respondent Amerace Corporation, Swan Hose Division, Stillwater, Oklahoma, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to employ any person in order to discourage membership in United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, or any other labor organization.

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

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

(a) Offer to employ Charles Cartwright in the first available job opening for which he is qualified, and make him whole for any loss of pay he may have suffered by reason of Respondent's discrimination against him, in the manner described in the section of this decision entitled "The Remedy."

(b) Post at its place of business in Stillwater, Oklahoma, copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

⁵ 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.

⁶ 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"

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

After affording all sides an opportunity to present evidence and state their positions, the National Labor Relations Board has found that we have violated the National Labor Relations Act, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization, to form, join, or assist any union

To bargain collectively through representatives of their own choosing

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any such activities

WE WILL NOT refuse to employ any person in order to discourage membership in United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our applicants or employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act.

WE WILL offer to employ Charles Cartwright in the first available job opening for which he is qualified, and make him whole for any loss of pay he may have suffered by reason of our discrimination against him.

AMERACE CORPORATION, SWAN HOSE
DIVISION