

In the Matter of RENOWN STOVE COMPANY and STOVE MOUNTERS'
INTERNATIONAL UNION, LOCAL No. 76, and INTERNATIONAL BROTHER-
HOOD OF FOUNDRY EMPLOYEES, LOCAL No. 88

Case No. C-79.—Decided July 21, 1936

Stove and Furnace Manufacturing Industry—Interference, Restraint or Coercion: expressed opposition to labor organization; refusal to recognize or meet with representatives of union; denial of right of employees to be represented by non-employees—*Discrimination:* discharge; threat to blacklist—*Strike:* threatened—*Reinstatement Ordered—Back Pay:* awarded.

Mr. G. L. Patterson for the Board.

Mr. Seth Q. Pulver, of Owosso, Mich., and *Mr. Albert E. Meder*, of Detroit, Mich., for respondent.

Mr. David I. Persinger, of counsel to the Board.

DECISION

STATEMENT OF CASE

On January 22, 1936, Local No. 76, of the Stove Mounters' International Union, and Local No. 88, of the International Brotherhood of Foundry Employees, and Walter R. Smith and Frank W. Schlaack, filed a charge with the Regional Director for the Seventh Region against the Renown Stove Company, Owosso, Michigan, hereinafter referred to as the respondent, charging the respondent with violations of Section 8, subdivisions (1) and (3) of the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. Thereupon, a complaint and notice of hearing signed by Frank H. Bowen, Regional Director for the Seventh Region, as agent for the National Labor Relations Board; were issued and duly served. The complaint alleged that by discharging and refusing to reinstate two employees at its Owosso plant, for the reason that they joined and assisted labor organizations and engaged in concerted activities with other employees at the Owosso plant for the purpose of mutual aid and protection, the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act.¹

¹The complaint alleged that the discharges took place on January 15, 1935. The record gives the correct date as January 15, 1936. The respondent at no time objected to this patently typographical error.

The respondent duly filed an answer in which it admitted the discharges but averred that they were made because of inefficient and unsatisfactory work. The respondent further claimed that the Act violates Articles I, II, and III and the First, Fifth and Tenth Amendments of the Constitution of the United States, and that the activities of the respondent are intrastate and not subject to regulation by Congress or the Board. However, the respondent did not move to dismiss.

A hearing was held on March 17, 18 and 19, 1936, before David V. Martin, duly designated by the Board as Trial Examiner, at Owosso, Michigan, at which hearing full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues, was afforded to all parties. The respondent participated in the hearing after reserving all the constitutional and jurisdictional objections raised in its answer. In the course of the hearing the respondent moved to strike from the record testimony relating to an insurance plan and a welfare club organized in November, 1934, and to strike from the record Board's Exhibits Nos. 3 and 4 relating thereto. The Trial Examiner reserved ruling on the motion. It appearing from the record that this evidence is not material to the issues, the respondent's motion is granted.

On April 10, 1936, the Trial Examiner filed with the Board his Intermediate Report, finding and concluding that the respondent had engaged in unfair labor practices affecting commerce, as alleged in the complaint, by discriminatorily discharging the aforesaid two employees, and recommended that they be reinstated to their former positions without loss of seniority rights and with back pay. Exceptions to the Intermediate Report were duly filed by the respondent.

Upon the evidence adduced at the hearing and from the entire record now before it, including the transcript of the hearing and exhibits introduced, the Intermediate Report and exceptions thereto, the Board makes the following:

FINDINGS OF FACT

I. THE RESPONDENT

The Renown Stove Company is a Michigan corporation with its office and place of business at Owosso, Michigan, which manufactures, sells and distributes coal, wood, oil, and combination gas stoves and heaters and the parts and accessories incidental thereto. It produces approximately one per cent of all stoves of its types manufactured in the United States and approximately two-tenths of one per cent of all stoves of every type, including gas and electric stoves,

manufactured in the United States. During 1935, its total production was 9,386 stoves of different types and the value of its sales was \$508,000.00. It has only the one plant at Owosso at which it employs from 175 to 250 workmen, the number varying according to the volume of its business. It maintains its only display room in the American Furniture Mart in Chicago, Illinois. It employs 12 to 18 salesmen who sell only to dealers, most of whom are located in the midwestern and eastern parts of the United States.

Considerably over half of the raw materials used in the manufacture of its stoves is shipped from points outside the State of Michigan to the respondent's plant and approximately 55 per cent of the stoves manufactured by it are shipped from its plant into other states. All its contracts of purchase or sale are made in its office in Owosso and all shipments are made f. o. b. its plant. These shipments are made by either truck or rail, those made by rail being transported by the Michigan Central Railroad, Grand Trunk Railroad or Ann Arbor Railroad. Shipments of stoves and parts of stoves are made daily, but the shipments are greater during the months of September, October and November of each year than during the other months.

We conclude that the operations of the respondent constitute a continuous flow of trade, traffic, and commerce among the several States.

II. THE UNIONS

In January, 1934, a local union of the International Brotherhood of Foundry Employees was organized and its elected shop committee met once with the respondent. This local had died out by the fall of the same year. About the middle of November, 1935, Mr. Egan, of the Stove Mounters' International Union, and Mr. Hiley, of the International Brotherhood of Foundry Employees, went together to Owosso and organized Local No. 76, Stove Mounters' International Union, hereinafter referred to as Local No. 76, and Local No. 88, International Brotherhood of Foundry Employees, hereinafter referred to as Local No. 88, labor organizations composed of the respondent's mounters and foundry employees, respectively. Local No. 76 has a paid up membership of 22, and Local No. 88 has a paid up membership of 18.

Because of the small number of employees of the respondent eligible for membership in the two labor organizations, Egan and Hiley organized a joint local, with a president elected by the members of Local No. 76, a vice-president elected by the members of Local No. 88, and a joint shop committee composed of two mounters and three foundry employees. Local No. 76 and Local No. 88 each has a secretary and treasurer but no president or vice-president.

III. THE EARNED WAGE HOUR PAYMENT PLAN

On March 15, 1934, the respondent installed the Earned Wage Hour Payment Plan for the purpose of increasing production. This plan provides a time allowance for the assembly of each type of stove, the allowance having been determined by timing the mounters at work on a stove of each type and then adding to the time noted a 20 per cent increase to allow for fatigue. Payment of wages is determined by efficiency. If an assembly line produces during one day of eight hours the exact number of stoves which according to the time allowance should be produced in eight hours the line is rated as 100 per cent efficient and is paid for eight hours' work at a fixed hourly rate. If a line mounts more than the normal number of stoves, it is rated at an efficiency greater than 100 per cent and the mounters are paid for the number of hours which would normally have been required, upon the basis of the time allowance, for the number of stoves mounted. A line which is more than 100 per cent efficient is thus paid a bonus in the form of wages for time theoretically but not actually worked. Each line is paid as a unit so that a delay caused by one mounter will decrease the efficiency and consequently the pay of all workers on the same line. From March 15, 1934, to January, 1936, mounters employed by the respondent were paid at the rate of 50 cents per hour. Beginning in January, 1936, an increase of 10 per cent was granted.

For several weeks following the installation of the plan the mounters on line No. 1 were dissatisfied and loafed on the job because they believed that some of the assembly jobs had been timed too fast. Throughout 1934 and part of 1935, line No. 1 constantly requested Mr. Sperry, the superintendent in charge of production, to have the various jobs retimed. Most of them were retimed before the end of 1935.

IV. THE UNFAIR LABOR PRACTICES

Walter R. Smith and Frank W. Schlaack were mounters on assembly line No. 1 from the time the line was first installed, about 1929, until their discharge on January 15, 1936. Both were officers of the first local of the International Brotherhood of Foundry Employees. When Local No. 76 was organized in November, 1935, Schlaack became a trustee, and Smith was elected president of the joint local organized at that time. On the day that they were discharged they were told by their foreman, Mr. Skinner, that changes were to be made on line No. 1 and that there would be no place for them. He said that he could not assign any reason why they had been selected for discharge. They then called on Mr. Sperry, the plant superintendent, and asked him why they had been fired. He said that

the management was not satisfied with their work. Smith said that it was strange that it took the management nine years to find that out. Sperry replied that he had nothing further to say, but added a moment later, "Well, Walter, now you can go out and get a job at a good stove factory where they will treat you right".

Shortly after the discharges the joint local, composed of the mounters and foundry employees, met to discuss the situation and, after considering a strike in protest, decided by vote to send for Mr. Egan and Mr. Hiley. They arrived in Owosso on Saturday, January 18, and advised Local No. 76 and Local No. 88 to file a charge with the National Labor Relations Board and await its decision before voting on the strike question. They then called on Mr. Sperry and told him that they wished to discuss the labor trouble in the plant; that they represented the Stove Mounters' International Union and the International Brotherhood of Foundry Employees, both of which had a local organization in the plant. Mr. Sperry denied that there was any labor dispute and denied that either union existed in the respondent's factory. He said that the discharges were none of their business; that the respondent would hire and fire as it wished.

On Monday, January 20, while the men were at work, Mr. Skinner called all employees onto the shipping floor. Mr. Pryor, the vice-president and general manager, addressed them. He said that he had heard rumors to the effect that the employees were going to force the respondent to return Smith and Schlaack to work; that the respondent would not do so under any such compulsion; that it was still running its own plant; that the management was willing to meet with representatives of its employees but not with representatives of a union.

On January 28, Smith and Schlaack met with Mr. Elliott president of respondent, Mr. Nagelvoort, secretary and treasurer, Mr. Pryor and Mr. Sperry. Mr. Pryor said that the acts of Smith and Schlaack in filing charges with the Board precluded their reinstatement. He advised them in the best interest of all concerned to drop the charges and part as friends with the respondent, and stated, "You do not know what enemies we can be". He said that if by dropping the charges they should prove to him that they were not trouble makers and agitators he would not make it impossible for them to obtain employment elsewhere; but that if they would not withdraw the charges he would so inform their next employer. He said that the respondent had enough money to hire lawyers and fight the case; that if a strike should arise it would still fight.

The respondent contends that Smith and Schlaack were discharged for holding up production for nearly two years and for causing dissatisfaction among the other workers on their assembly line. We

cannot take the first contention seriously; employers do not permit employees to hold up production for two years without taking disciplinary action. The respondent introduced evidence to prove the inefficiency of Smith and Schlaack. In fact the evidence shows that they were the most efficient mounters on their line and that their line was consistently more efficient than the other, having been rated for the year 1935 at 107.5 per cent as compared with a rating of 104.3 per cent for line No. 2. The foreman testified that a production efficiency in excess of 100 per cent is of no value to the respondent except during the fall rush season; and that the production of line No. 1 during the fall of 1935 was satisfactory.

In support of its second contention the respondent introduced evidence to show that Smith and Schlaack were complaining constantly, and that their complaints caused ill feeling among the other mounters. The respondent produced only one mouter who testified that he had objected to Smith and Schlaack, but even he had so objected only during the two weeks immediately following the installation of the Earned Wage Hour Payment Plan in March 1934. He also testified that since that time the work had gone along smoothly and the men on the line had made money. Other evidence offered by the respondent brought out only two occasions on which Smith had complained to his foreman. It is unnecessary to discuss these incidents at length, except to point out that neither had occurred immediately prior to Smith's discharge, and that in any event the complaints were fully justified. The respondent produced no other evidence with respect to Schlaack.

It is clear that the respondent discharged these two men because of their union activity and for the purpose of discouraging membership in Local No. 76 and Local No. 88. Smith had worked for the respondent for nine years, and Schlaack had worked for the respondent 12 years but had been away for a year and a half during that time. Both men had become so efficient that they were used as instructors for the apprentices. They were regarded by their co-workers as the fastest mounters in the plant. About the middle of December 1935, their foreman first learned of the organization of Local No. 76 and Local No. 88. Before the end of December the management of the respondent had held a meeting and decided to discharge Smith and Schlaack on January 1. The discharge was delayed because of the illness of Mr. Skinner.

We find that the respondent has discriminated with respect to the hire and tenure of employment of Smith and Schlaack for the purpose of discouraging membership in Local No. 76 and Local No. 88, and that by such acts, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed

in Section 7 of the Act. We further find that the aforesaid acts of the respondent tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law:

1. Local No. 76, Stove Mounters' International Union, and Local No. 88, International Brotherhood of Foundry Employees, are labor organizations, within the meaning of Section 2, subdivision (5) of the Act.

2. Respondent, by its discharge of Walter R. Smith and Frank W. Schlaack, and each of them, discriminated in regard to their hire and tenure of employment, thereby discouraging membership in Local No. 76 and Local No. 88, and has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

3. Respondent, by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

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

ORDER

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that respondent, Renown Stove Company, and its officers and agents, shall:

1. Cease and desist from discouraging membership in Local No. 76, Stove Mounters' International Union, and Local No. 88, International Brotherhood of Foundry Employees, or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment, or by threats of such discrimination;

2. Cease and desist from in any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

3. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Walter R. Smith and Frank W. Schlaack immediate and full reinstatement, respectively, to their former positions, without prejudice to their seniority or other rights and privileges previously enjoyed;

(b) Make whole the said Walter R. Smith and Frank W. Schlaack for any losses of pay they may have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of such discharge, less any amounts earned during such period;

(c) Post notices in conspicuous places in all departments of the plant and near the time clock, stating (1) that it will cease and desist as aforesaid; and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

MR. EDWIN S. SMITH took no part in the consideration of the above Decision and Order.