

In the Matter of NOLAN MOTOR COMPANY, INC. and INTERNATIONAL
ASSOCIATION OF MACHINISTS, LOCAL No. 193

Case No. C-125.—Decided November 12, 1936

Automobile Sales and Service Business—Jurisdiction of Board in District of Columbia—Interference, Restraint or Coercion: circulation of anti-union statement among employees—*Company-Dominated Union:* interference with administration of; coercion to sign statement designating as representative—*Discrimination:* charges of, not sustained.

Mr. Jacob Blum for the Board.

Guy and Brookes, by *Mr. Louis H. Mann*, of Washington, D. C., for respondent.

Mr. Ralph Seward, of counsel to the Board.

DECISION

STATEMENT OF CASE

Upon a charge duly filed by Oliver N. Garrison, as agent for the International Association of Machinists, Local No. 193, hereinafter referred to as Local No. 193, the Regional Director for the Fifth Region, on June 8, 1936, issued on behalf of the National Labor Relations Board, hereinafter referred to as the Board, a complaint against the Nolan Motor Company, Inc., Washington, D. C., the respondent herein. The complaint alleged in substance that the respondent, a corporation engaged in the business of selling, servicing and repairing automobiles in the District of Columbia, had dominated and interfered with the formation and administration of a labor organization known as the Nolan Motor Company, Inc. Employees Beneficial Association, and had discriminated in regard to hire and tenure of employment or terms or conditions of employment against Joseph Acevez and Bruce Luttrell in such a manner as to discourage membership in Local No. 193, and that the respondent had thereby engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449, hereinafter referred to as the Act.

The complaint and the accompanying notice of hearing were duly served on the respondent and on Local No. 193. On June 20, 1936,¹ the respondent filed an answer which in substance admitted that the respondent was engaged in selling, servicing and repairing automobiles within the District of Columbia, and denied that the respondent had engaged in unfair labor practices. The answer further asserted that as a result of conferences with representatives of Local No. 193 and with the Regional Director for the Fifth Region, the respondent had posted on its bulletin board in the form suggested by the Regional Director a notice disestablishing the Nolan Motor Company, Inc. Employees Beneficial Association and had written to Joseph Acevez and Bruce Luttrell offering to reinstate them to their former positions or to positions equivalent thereto.

On June 22 and 23, 1936, a hearing was held in Washington, D. C., before Daniel M. Lyons, the Trial Examiner duly designated by the Board. The respondent appeared and took part in the hearing without waiving any rights it might have to object to the jurisdiction of the Board or its Trial Examiner, or to assert the unconstitutionality of the Act. Full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence and to file briefs was afforded to all parties. During the hearing counsel for the Board moved to amend the complaint by changing the date of the alleged discriminatory discharges from May 14 to May 13, 1936. The motion was granted. At the close of the Board's case the respondent moved to dismiss the complaint for insufficiency of the evidence. The motion was denied. At the close of the hearing counsel for the Board moved to have the pleadings conformed to the proof. The motion was granted. The rulings of the Trial Examiner on all motions and on exceptions to the admission and exclusion of evidence are hereby affirmed.

On July 3, 1936, the respondent filed with the Regional Director a motion to dismiss the complaint and a brief in support thereof. On July 8, 1936, the Trial Examiner filed his Intermediate Report, denying the above motion, finding that the respondent had engaged in and was engaging in the unfair labor practices alleged in the complaint and recommending, in substance, that it cease and desist therefrom, pay to Joseph Acevez and Bruce Luttrell sums of money equal to the wages they would normally have earned within certain specified dates,² keep posted for 30 days a notice similar to that alleged to have been posted in the respondent's answer, and file with

¹ On motion of counsel for the Board the respondent's time to answer was extended to June 22, 1936

² The Trial Examiner did not recommend reinstatement because Acevez had already been reinstated and Luttrell was going back to work after the hearing pursuant to an offer of reinstatement made by the respondent on June 16.

the Regional Director, on or before July 22, 1936, a report in writing setting forth the manner and form of its compliance with these recommendations. No such notification of compliance has been filed by the respondent, nor has it filed exceptions to the Intermediate Report or any other part of the record.

Upon the entire record as thus made, including the pleadings, the evidence adduced at the hearing, and the Trial Examiner's Intermediate Report, the Board makes the following:

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSINESS

1. The respondent, Nolan Motor Co., Inc., is and since 1928 has been a corporation duly organized under and existing by virtue of the laws of the State of Delaware. Its principal place of business is at 1111 18th Street, N. W. and 1132 Connecticut Avenue, Washington, D. C., where it engages in the sale, service and repair of new and used automobiles. In addition to its principal sales room and garage at the above address, the respondent maintains a number of service stations located at various points within the District of Columbia.

2. The respondent is a sales agent of the Ford Motor Company, of Detroit, Michigan. All of the new automobiles sold by the respondent are delivered to it from points outside of the District of Columbia, most of them coming from a Ford branch agency in Alexandria, Virginia, and the rest from Norfolk, Virginia or Chester, Pennsylvania. Cars are shipped to the respondent by a convoy company, the cost of transportation being included in the cost of the car as delivered to the respondent.

3. The respondent services the new cars which it has sold at its various service stations throughout the District of Columbia. At its garage at 1111 18th Street, N. W. it services and repairs customers' cars and used cars which have been traded in for new ones. Mechanics from this garage are on occasion sent out into Virginia or Maryland to repair automobiles broken down on the road. Likewise, a towing truck is sometimes sent by the respondent into Virginia or Maryland to bring disabled cars to its garage.

4. The aforesaid operations of the respondent constitute trade, traffic and commerce within the District of Columbia and between the District of Columbia and the several States.

II. THE STATEMENT OF MAY 12, 1936

5. Local No. 193 of the International Association of Machinists is a labor organization which exists for the purpose of dealing with

employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

6. The Nolan Motor Company, Inc. Employees Beneficial Association, hereinafter referred to as the Association, was formed, according to William J. Nolan, the respondent's president, approximately two years prior to the date of the hearing. A copy of its Articles of Association, the authenticity of which was not denied by the respondent, reveal it to be a labor organization of the respondent's employees existing for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work. The record does not reveal the circumstances of its formation. It indicates, however, that by May 12, 1936, it had become a paper organization, long dormant if not still-born. Nolan testified that he had only hearsay knowledge of its existence, had never seen its Articles of Association before they were shown to him by the Regional Director for the Fifth Region, and knew of no instance in which the Association's machinery for negotiating with the management concerning grievances or complaints had ever been used. Two of the respondent's employees, one a shop foreman, testified that prior to May 12, 1936, they had never heard of the Association. Another employee, foreman of the paint and metal shop, stated that he had heard of it when he started to work for the respondent in September, 1935, that all employees belonged and that membership in the Association was obtained by applying for an insurance policy. He had never heard of a meeting of the Association, however, or of any Association officers, or of any negotiations with the management.

7. For some time prior to the events referred to in the complaint, Local No. 193 had been conducting a strike in the plants of a large number of automobile dealers and garage owners within the District of Columbia. Prior to and during the course of this strike a form of agreement concerning wages, hours of employment and conditions of work had been presented to various of these dealers and garage owners by representatives of Local No. 193. A few days prior to May 12, 1936, such a form of agreement was presented to the respondent. Nolan testified that shortly before or after the presentation of this agreement, he asked the respondent's credit manager to determine, in view of the number of strikes being called, what the feeling of the men was and what the result would be to the respondent's organization if a strike were called by Local No. 193 at its plant. He asked him further to be prepared to meet any emergency that might arise.

8. On May 12, 1936, when the respondent's employees came to the stock room after work to get their pay, the following statement was

10. Even if the statement is not considered to have been signed under pressure, it is apparent that it did not represent a voluntary expression of the attitude of the respondent's employees toward either the Association or Local No. 193. They had no part in drafting the statement or opportunity to change its language. It states that the employee has "voluntarily sought the protection of" an Association which had never met, had apparently no officers, and of which few employees had ever heard. Though the foreman of the respondent's paint and metal shop asserted at the hearing that, in the language of the statement, he had "read the proposed agreement of the local lodge 193 of the International Association of Machinists", he admitted that he was not sure it was the same agreement as that presented to Mr. Nolan, that it consisted only of one sheet as compared to the four sheets in the agreement actually submitted, that he had not really read it but had merely scanned it, and that he had not considered it carefully enough to know whether it was "inadequate for his needs".

11. By presenting the statement to its employees for signature under these circumstances, the respondent held the dormant Association up to its employees as an organization which had the support and approval of their employer as opposed to its evident disapproval of Local No. 193. The respondent used the Association's name, without its consent, to induce its employees to adopt a policy which as Association members they had never discussed and to repudiate an agreement which apparently some, at least, had never read. A clearer case of interference with the administration of a labor organization and with the rights of employees guaranteed by Section 7 of the Act would be hard to conceive. Though Nolan testified that he knew nothing of the statement when it was presented to the employees, he admitted that it had been the work of the credit manager acting in pursuance of his instructions to determine the attitude of the men toward the current strike and to prepare for an emergency.

12. By presenting to its employees, on May 12, 1936, the statement above set forth and demanding their signatures thereto as above described, the respondent dominated and interfered with the administration of the Nolan Motor Company, Inc. Employees Beneficial Association and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

III. THE ALLEGED DISCRIMINATION

13. Alone among the respondent's employees, Acevez and Luttrell refused to sign the statement of May 12, 1936.

14. Acevez had been employed by the respondent for approximately eight months as a metal man and welder. His principal work

consisted in straightening and welding the frames and metal work of damaged cars. In most instances the damaged parts were repainted as soon as they were straightened, the straightening and painting being considered practically one job.

15. In order to comply with the fire regulations, the respondent has constructed in one corner of the second floor of its plant an enclosed paint shop, large enough to accommodate one car and equipped with a window fan to remove paint fumes. All painting is supposed to be done in this enclosed space, away from the blow torches used in the straightening operations. It has long been customary, however, for the respondent's employees—apparently with its tacit consent—to violate this rule, and in their hurry to get work finished, to paint cars outside of the enclosure, near to the blow torches. Nolan testified that ever since the respondent had been in business he had had frequent complaints from the owner of the building, the fire underwriters and fire marshals concerning the operation of the paint shop, and that it had become customary, at the time of the fire marshal's tours of inspection, to close the paint shop for a few days and then reopen it, at first on a reduced scale, and then in the normal manner. This had been done six or seven months before the date of the hearing.

16. On May 13, 1936, at about two o'clock in the afternoon, the fire marshal visited the respondent's plant and ordered that the paint shop be closed. Nolan complied at once. Acevez, W. A. Rule, another metal straightener, and two painter's helpers were laid off. From that time on until the hearing, though the foreman and two assistants did a little minor painting within the enclosed paint shop, all body and metal straightening was done for the respondent in other automobile repair shops.

17. The complaint alleged and the Trial Examiner found that the closing of the paint shop was used by the respondent as an opportune pretext to rid itself of Acevez for refusing to sign the statement of May 12, 1936. There is evidence that the cessation of operations in the paint shop this time was more complete and lasted longer than on any previous occasion, and though the record is not clear, it does not appear that Nolan had heretofore contracted out his metal straightening work as a result of the fire marshal's orders.

As we suggested in *In the Matter of Santa Cruz Fruit Packing Company, a corporation, and Weighers, Warehousemen and Cereal Workers, Local 38-44, International Longshoremen's Association*, Case No. C-51, decided April 2, 1936 (1 N. L. R. B. 454), to contract out work with the intent of eliminating a labor organization from a plant may itself constitute discrimination in regard to hire and tenure of employment within the meaning of Section 8, subdivision (3) of the Act. But there is little evidence in the record that this

was Nolan's intent. He had frequently sent work out to other firms when his staff was too busy to handle it. That he should adopt the same expedient as a result of the fire marshal's order was not unreasonable or improbable. Furthermore, it appears that when he contracted his work out he had sometimes sent along a mechanic or two to work on the job in the shop of the contracting concern, but to be paid by Nolan and considered as his employees. It was, indeed, under such an arrangement that Acevez was ultimately reinstated. Yet it does not appear that Rule, the other metal man, or any of the other men laid off with Acevez, were reemployed by the respondent in this or any other manner. From the evidence in the record, the respondent's treatment of Acevez differed in no respect from its treatment of these other employees. Though discharge of a group in order to get rid of one union member might well constitute discrimination under the Act, we do not find that that was the motive in this case.

18. The respondent did not discharge Joseph L. Acevez because of his refusal to sign the statement of May 12, 1936, and did not discriminate against him in regard to hire or tenure of employment or terms and conditions of employment.

19. Luttrell had worked for the respondent as an automobile mechanic for about two weeks and a half. At about 3:30 in the afternoon of May 13, 1936, shortly after the closing of the paint shop, Harry Arner, the respondent's shop foreman, asked Luttrell to go out to respondent's service station at Connecticut Avenue and Veazey Street, N.W., to repair a truck. Luttrell complied. Shortly after he started out for the service station it began to rain and soon was pouring so hard that he was forced to use his bright lights and even pull up temporarily to the curb. When he arrived at the service station at about four o'clock Hoffman, the manager, pointed out a Chevrolet truck that was standing out on the open ground behind the station and told him to tighten the bearings and put in a battery and clutch. The truck, he said, had to be ready by 7 A. M. the following day. Luttrell testified that he asked that the truck be placed in the station garage or at least on the pavement out of the puddles that surrounded it, and that Hoffman refused; he then asked to be allowed to use a rubber apron to place on the creeper while lying under the car, and Hoffman again refused; he requested some rags to lie on, and Hoffman said he had none; he asked for help from other mechanics standing idle at the station and was again refused. Finally he attempted to work on the truck, found it impossible because of the downpour of rain in his face while lying down, and climbed in the closed cab of the truck. When Hoffman told him to get on the job, Luttrell further testified, he asked if he had to do the work under

those conditions "or else"; Hoffman replied in the affirmative. Luttrell states that he returned at once to the respondent's main garage, that he asked Arner if he had been singled out as the man to send to Veazey Street, that Arner replied "It had to be Luttrell", and that he then quit the respondent's employment. The truck was never in fact repaired, but was still standing in the same place at the time of the hearing.

Much of Luttrell's testimony up to this point is flatly contradicted by the respondent's witnesses. Hoffman testified that on receiving orders to make the truck ready for delivery to a customer, he had called Arner and asked for a mechanic to do the work; that he did not know Luttrell, had never seen him before, and did not ask specially for him. He states further that his refusal to allow Luttrell to bring the truck into the station garage was due to a company rule that the space be left free for customers' cars. He admits refusing him the washstand apron because he did not want it covered with grease, but states that when Luttrell asked him what he should do, he suggested that he wait until the rain stopped and then bring the truck onto the concrete pavement. He denied that he ever told Luttrell he had to do the work "or else", or said anything with such a connotation. And he asserted that that evening, when he returned with another mechanic to repair the truck, he was called by some one at the respondent's central office and told that in view of the repairs that were necessary the customer did not want the truck. Arner, for his part, stated that he had been asked in general terms for a mechanic, had sent Luttrell only because he was not busy, and could not recall telling Luttrell that he had been specially asked for.

20. Even accepting Luttrell's version of the facts as in its essentials true, however, we cannot find that the respondent was guilty of discrimination in this case. For Luttrell himself testified that after his final conversation with Arner he spoke to the respondent's vice-president, Mr. Howard, and Mr. Gallagher, its manager, and told them of the conditions under which he was forced to work on the truck. According to Luttrell, Gallagher answered, "Well, I don't think they want you to work under unreasonable conditions." Gallagher then called the service station and, returning, said to Luttrell, "I think that you misunderstood me. You go back tomorrow and do that." Luttrell replied, "No, it is impossible for me to do that job, and it would be sloppy muddy, and I have already gotten wet." He then quit the respondent's employ.

Whatever Hoffman's actions may have been, it thus is clear that when the matter came to the attention of the respondent's responsible officials they indicated that he would not be penalized for his re-

fusal to work that afternoon, and that it would be all right if he did the work the following day when presumably the rain would have stopped. It seems apparent from this evidence that the respondent did not in fact insist that Luttrell work under impossible conditions, and that the allegations of the complaint to that effect have not been proved.

We wish to make it very clear, however, that our decision is based entirely upon the evidence in this case, and that it in no way implies that to force an employee to quit his job by subjecting him to peculiarly disagreeable conditions of work, thereby discouraging membership in a labor organization, is not an unfair labor practice under the Act.

21. The respondent did not insist that Bruce F. Luttrell work under impossible conditions and thereby compel him to quit and did not discriminate against him in regard to hire or tenure of employment or terms or conditions of employment.

THE REMEDY

Prior to the hearing, and as a result of negotiations between the respondent's officials, representatives of Local No. 193, and the Regional Director for the Fifth Region, the respondent, as it alleges in its answer, posted on its bulletin board a notice in the following language on its letterhead:

"JUNE 16, 1936.

"NOTICE TO EMPLOYEES OF THE NOLAN MOTOR COMPANY, INC.

"Complying with the suggestion of the National Labor Relations Board for the Fifth Region, the Nolan Motor Company, Inc. takes this occasion to make clear to its employees that:

"1. It has no intention to interfere in any manner or to restrain or coerce its employees in the exercise of their rights to self-organization, to form, join or assist any labor organization, particularly the International Association of Machinists, Local #193.

"2. It will not encourage membership in the Nolan Motor Company, Inc. Employees Beneficial Association, or discourage membership in any 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.

"3. It will not contribute financial or other support to such Employees Beneficial Association, or any other labor organization of its employees, except that it is the privilege of the Nolan

Motor Company, Inc., to permit its employees to confer with it during working hours without loss of time or pay.

"4. The Nolan Motor Company, Inc. declares the Employees Beneficial Association disestablished, and will refrain from any recognition thereof.

"NOLAN MOTOR COMPANY, INC.,
By: _____,
President."

The notice was signed by William J. Nolan.

Since the respondent has already taken such affirmative action as we would have ordered to effectuate the policies of the Act, we will make no affirmative order in the case, but merely order that the respondent cease and desist from any continuation of its violation of Section 8, subdivisions (1) and (2).

As to the allegations of discrimination against Acevez and Luttrell, we will dismiss the complaint. It may be remarked, however, that prior to the hearing, both men had been offered full and complete reinstatement, and that they have accepted the offer.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding the Board finds and concludes as a matter of law:

1. The International Association of Machinists, Local No. 193, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The Nolan Motor Company, Inc. Employees Beneficial Association is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

3. By presenting to its employees for signature the statement of May 12, 1936, as above described, thereby dominating and interfering with the administration of the Nolan Motor Company, Inc. Employees Beneficial Association, the respondent engaged in an unfair labor practice, within the meaning of Section 8, subdivision (2) of the Act.

4. By presenting the said statement to its employees for signature the respondent interfered with, restrained, and coerced its employees in the exercise of their right to join and assist the International Association of Machinists, Local No. 193, and thereby engaged in an unfair labor practice, within the meaning of Section 8, subdivision (1) of the Act.

5. The aforesaid unfair labor practices were unfair labor practices, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

ORDER

On the basis of the foregoing 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:

1. The respondent, Nolan Motor Co., Inc., shall cease and desist from

(a) In any manner interfering with, restraining, or coercing its employees in the exercise of their right to join and assist the International Association of Machinists, Local No. 193, or any other labor organization of its employees;

(b) In any manner dominating or interfering with the administration of the Nolan Motor Company, Inc. Employees Beneficial Association or any other labor organization of its employees.

2. The complaint shall be dismissed as to the allegations that the respondent discharged Joseph L. Acevez and forced Bruce F. Luttrell to quit his employment by giving him work under impossible conditions, because they refused to sign the statement of May 12, 1936.