

In the Matter of THOMPSON PRODUCTS, INC. and UNITED AUTOMOBILE
WORKERS OF AMERICA

Case No. C-190.—Decided August 16, 1937

Automobile Parts Manufacturing Industry—Interference, Restraint or Coercion: surveillance of and interference with organizational meetings; questioning employees regarding union affiliation and activity and union sentiment in plant; expressed opposition to labor organization; threats to discharge and blacklist union members; villifying union and union leaders; engendering fear of loss of employment for union membership and activity—*Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Harry L. Lodish for the Board.

Stanley & Smoyer, by *Mr. Harry E. Smoyer*, of Cleveland, Ohio, for the respondent.

Mr. Sam H. Griff, of Cleveland, Ohio, for the Union.

Mr. Abraham L. Kaminstein, of counsel to the Board.

DECISION

STATEMENT OF THE CASE

On April 19, 1937, the United Automobile Workers of America, herein called the Union, filed an amended ¹ charge with the Regional Director for the Eighth Region (Cleveland, Ohio) alleging that Thompson Products, Inc., Cleveland, Ohio, herein called the respondent, had engaged in and was engaging in unfair labor practices within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On May 12, 1937, the National Labor Relations Board, herein called the Board, by its agent, the Regional Director for the Eighth Region, issued and duly served its complaint against the respondent, alleging that the respondent had committed 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.

In respect to the unfair labor practices, the complaint alleges in substance that the respondent on April 6, 8, and 14, 1937, respectively, discharged and thereafter refused to reinstate George Casterline, Charles M. Schuller, and Herman Schneider, employees of the re-

¹ The original charge was filed by Charles M. Schuller, on April 12, 1937, and the amended charge was filed by the Union on behalf of all three discharged workers

spondent, because they joined and assisted the United Automobile Workers of America, a labor organization, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection; and that the respondent, by these acts, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On May 21, 1937, the respondent filed an answer to the complaint, which answer was amended by motion at the hearing. The amended answer admitted the allegations of the complaint as to the interstate character of its business, and admitted the discharge of the men. It denied the alleged unfair labor practices, denied that said employees were discharged because they had joined or assisted the Union, or that said discharges tended to lead to labor disputes burdening or obstructing interstate commerce, and averred specific grounds for the discharge of each man, and that they were all for good cause. During the hearing, the respondent further stipulated certain facts as to its interstate business.

Pursuant to notice, a hearing was held in Cleveland, Ohio, on May 24, 25, and 26, before William R. Ringer, the Trial Examiner duly designated by the Board. The respondent was represented by counsel and participated in the 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.

Upon the record thus made, the Trial Examiner, on June 25, 1937, filed an Intermediate Report, denying the motion of the respondent to dismiss the proceedings; finding and concluding that 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, and recommending that the respondent reinstate George Casterline, Herman Schneider, and Charles M. Schuller, with back pay. The respondent thereafter filed exceptions to the record and Intermediate Report, taking exceptions to the Trial Examiner's rulings upon its motions and objections, as well as to the Intermediate Report.

We have reviewed the Trial Examiner's rulings, findings, and conclusions, and finding that no material error was committed, we hereby affirm them. The Intermediate Report erroneously stated the number of hours Herman Schneider worked per week as 45, instead of the correct figure of 42½. With this slight exception, we find nothing in the respondent's exceptions to the Intermediate Report which require any material alteration of such findings and conclusions. In substance, the findings of fact and conclusions of law herein made embody those made by the Trial Examiner.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSINESS

The respondent, Thompson Products, Inc., is and has been since 1916, a corporation organized and existing under the laws of the State of Ohio, having its principal office and place of business in Cleveland, Ohio, where it is engaged in the manufacture, sale, and distribution of valves, pistons, bolts, rods, tie rods, drag links, and other metal products used in the automobile industry. It has manufacturing plants at Cleveland, Ohio, and Detroit, Michigan. It owns the capital stock of Toledo Steel Products, a corporation, which has a manufacturing plant at Toledo, Ohio. It owns the outstanding capital stock of Thompson Products, Ltd., which owns a manufacturing plant at St. Catherines, Ontario, Canada. It has a minority interest in S. A. Des Etablissements Mecaniques Monopole, Paris, France. It owns the controlling capital stock in Judson Motor Products Company. In 1929, it acquired the assets of Cleveland Piston Manufacturing Company and of the Cox Tool Company. It maintains warehouse stocks in San Francisco, New York, Chicago, Kansas City, Atlanta, Dallas, Seattle, Minneapolis, Boston, Portland, Los Angeles, Indianapolis, St. Louis, and Pittsburgh. Warehouse stock is also kept in Toronto, Canada, and is owned by its subsidiary, Thompson Products, Ltd.

Thompson Products, Inc. is an important producer of valves, valve set inserts, pistons and similar products.² Its volume of business in 1936 amounted to \$10,356,424.76. Replacement and service business has grown to large proportions and is handled by its jobbers and dealers in the United States and Canada. There are now approximately 900 such jobbers and dealers in the United States. The respondent has sales offices in Cleveland and Detroit.

The principal raw materials used by the respondent are steel, steel alloys, and aluminum alloys. By stipulation, the respondent stated that, of raw materials costing approximately \$1,775,000 used by the respondent at the Cleveland plant in 1936, there were brought into Ohio from other states an amount costing about \$1,250,000. It further stipulated that the percentage of its products manufactured in Cleveland and shipped out of the State of Ohio is over 50 per cent and probably over 75 per cent of the total output. The respondent's sales offices in Cleveland and Detroit sell and distribute its products to its dealers and jobbers in all parts of the United

² According to Moody's *Manual of Investments*, New York, 1937, p. 2351, the products of the respondent are used by the principal automobile and truck manufacturers, and also by large manufacturers of aeroplanes, tractors, and marine engines.

States. In addition, the respondent's subsidiaries receive raw materials from various states and distribute the manufactured products to various states in the United States.

II. THE UNION

The United Automobile Workers of America, International Union, is a national labor organization, having a membership of approximately 350,000 workers in automobile and automobile accessory plants. In June 1936, it became affiliated with the Committee for Industrial Organization.

III. THE UNFAIR LABOR PRACTICES

A. Respondent's interference with the organization of its employees

On April 2, 1937, the Union circulated handbills inviting the employees of the Company to attend an open meeting on Sunday, April 4. About 200 employees of the respondent came to this meeting. Among these, there was a group of men, identified by those testifying at the hearing, as representatives or delegates of the Employees Association,³ and one man from the personnel office of the respondent. There was some heckling of the speaker, Bert Cochrane, international representative of the Union, and when, towards the close of the discussion, the speaker asked those who did not care to join the Union to leave, this group immediately started for the door. However, on reaching the door, they did not leave, but remained to watch those who were signifying their desire to join the Union by going to the front of the room. Those who lingered about the door were thus able to note just which employees were about to join the Union or had already done so.

The reasons given by Hayes, who worked in the personnel office of the respondent, for attending the meeting and for staying after the others had left, are unconvincing. Hayes testified that he was a member of the Association, and that he had not intended to go to the Union meeting, but that, around lunch time on Sunday, it being "an elegant afternoon" and he having nothing to do, he took a sudden notion to go. He had never been to any union meetings before and was curious to know how they were run and what they talked about. Livingstone, the personnel director of the respondent, testified that none of the members of this group re-

³ There was no charge under Section 8 (2) of the Act, in regard to the Association, and consequently, testimony as to this phase was not developed. The custom of witnesses and of officials of the respondent as well, in referring to the Association as "the company union" makes it clear that the Association is a labor organization of the employees of this plant alone, and is unaffiliated with any other group.

ported to him officially in regard to this meeting, but that, in talking to him, they did tell him about the events occurring at the meeting. Of the group of representatives and delegates of the Employees Association who attended, the respondent called none to refute the testimony given as to their actions.

Officials of the respondent claimed to know nothing of any union activities at the plant, and Livingstone stated that he was not at all interested in who joined the Union. Nevertheless, the evidence showed the supervisors and officers of the respondent were aware of the actual situation and of the progress of the Union. Sopko, night foreman, testified he knew a union was being organized. The respondent's employment manager, Naff, was reported by Schneider to have asked him how the other employees felt about the Union. Schuller, another of the discharged men, testified that Ritter, day foreman, told him, "I hear you are preaching the Union around here." When Schuller denied this, Sopko, who was also present, said he had gotten this information from a reliable source, and had himself seen Schuller organizing the men. Schuller testified that Ritter told him that "the Company Union takes care of everything around the plant, and that the Union can't do anything for you, and they are a bunch of racketeers and crooks. If you join the Union, you are through here, and you will not get another job in Cleveland, we will see to that."

When Ritter took the stand at the hearing, he testified that he "never spoke Company Union to Schuller", or ever questioned him about the Union, and that he had never told Schuller that the Union could not do him any good. He denied having ever asked Schuller questions about the Union, and said, "I mentioned no fact of the Union or the Association." Ritter made exactly the same statements and denials in regard to Schneider. Yet, a few minutes later, he testified that, in speaking to Schneider, he had pointed out to him that "the employees association have good representatives and they could do for him what outsiders could not do."

It is clear from the record, therefore, that the respondent did have knowledge of the Union, and that, in its anxiety to determine the progress of the Union and to forestall its advance, it coerced its employees and interfered with their right of self-organization. It is true that, as yet, comparatively few workers are involved. There is testimony, however, pointing to the fact that the reason only 18 employees of some 200 remained until the end of the meeting, was the presence of a group of hostile observers. The fear of being singled out and reported, with the possible consequence of loss of position, acted as a sufficient deterrent. It is also apparent that the respondent made certain that it would receive reports as to the union meeting, albeit they were unofficial ones. In this way, the respond-

ent has made attendance of such meetings hazardous, and has effectively thwarted possible membership in the Union.

We find that the respondent, by its above-described conduct, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

B. The discharges

As already set forth, the open meeting took place on Sunday, April 4, 1937. On April 5, Herman Schneider was temporarily laid off; on April 6, and 8, respectively, George Casterline and Charles M. Schuller were discharged. Schneider was finally discharged on April 14. Naff, the employment manager, discharged Schneider and Casterline, while Schuller was discharged by Ritter.

George Casterline, a forge press man, had been employed by the respondent since 1928, with some lay-offs during the extreme depression years, and had a seniority rating of seven years. His work had been satisfactory throughout this period, and the respondent made no claim of poor work in its answer to the complaint. He had held his position as pressman for a year and a half, with an increase in wages from 60¢ to 81¢ per hour. He joined the Union either on March 31 or April 1, and attended the meeting on April 4. Casterline testified that on April 6, when Naff discharged him, and he asked Naff why he was being discharged, Naff hesitated and then said, "Well, for the company you keep, for one thing; then there was the Exposition, and then there was the trouble at the party, at the banquet;" and when Naff paid Casterline his money, he added, "Now you will have an opportunity of finding work some place where you will be better satisfied."

The first two reasons mentioned merit some attention. Naff could not remember whether he had mentioned the first one, though not denying that he might have done so. As to the second, Naff admitted that he himself had visited the Great Lakes Exposition some eight months before this time, and seen Casterline act as barker for a side show, and had never said anything about it before. Casterline did this when work was slack at the factory.

The respondent contends that Casterline was discharged because he attempted to steal a lamp at a party given by the respondent on March 6, 1937, in honor of its employees with service of more than five years. A further allegation in the respondent's answer, that Casterline possessed "objectionable personal habits", was not established by any evidence, nor was it shown that the discharging officials had any knowledge of such.

The Old Guard party, as it was called, was a gay affair lasting from six to twelve p. m., with an orchestra, boxing, dancing, beer

furnished by the respondent, and stronger liquor brought by the guests. Casterline testified that he was intoxicated, along with many others, who were sportively taking souvenirs of the occasion, and that several of the employees, in their inebriated condition, decided to take the four or five small ornamental lamps worth about 50 cents each for souvenirs. Mulcahy, who worked in the personnel office, the respondent's witness, admitted that nearly everyone was taking souvenirs, and that Casterline was merely doing the same. When Mulcahy required Casterline to hand the lamp over a short time after it had been taken the same evening, Casterline offered to pay him for it.

In no sense can the taking of the inexpensive lamp be regarded as theft. The lamps were the property of the caterer, not of the respondent, and in computing the value of other articles lost or broken, the caterer expressly omitted any charge for three such lamps which were found to be missing. The respondent was required by the caterer to pay for a great deal of silverware, beer glasses, pitchers and tablecloths, which had disappeared or been broken. The committee of 20 in charge of the party did nothing about the actual taking away (which they must have seen) of tablecloths and other property. That Casterline had attempted to take the lamp was known to members of the committee the night of the party, but nothing was done about it for a month, and then, without giving him any opportunity to deny or explain the charge, he was summarily dismissed. It should be noted that Mulcahy, who took the lamp from Casterline, did not think the matter worthy of mention to Livingstone, his chief, until a month after the event.

To discharge an employee of eight years' satisfactory service for a purported reason which is less than trifling would clearly indicate that other reasons were the real ones.

The shifting of ground by the respondent in its alleged reasons for discharging Casterline, the frivolous and unfounded character of some of its charges, all indicate that it merely used the lamp incident as a convenient pretext. Though the Old Guard party had occurred almost a month prior to the discharge, Casterline was not fired until two days after the union meeting.

Herman Schneider, 20 years old, was hired as a pointer on November 17, 1936, on a 30-day trial basis. Though the respondent's answer alleged that Schneider's work had slumped badly, Ritter, his immediate foreman, testified that, immediately before the discharge, he had considered it good, and that he was a good enough man to be promoted to the position of grinder. He had started working at 39¢ per hour, and had been successively raised to 42¢, 44¢, 49¢, and 53¢.

Schneider had been considered for an electrical position in the factory, but another man was selected. He was keenly disappointed, and held some resentment for what he regarded as unfair treatment. As a result, he became interested in the Union, attended the meeting of April 4th, and joined. On Monday, April 5th, he had an argument with members of the Employees Association, at the lunch counter, as to the benefits of the Union, Schneider stoutly defending the Union. He testified that, two or three minutes after he returned to work, he was called into Ritter's office, accused of talking about the Union, and asked why he was dissatisfied; that he then told of his disappointment in not getting the electrical job, and that Ritter laid him off temporarily to look for another job, after Schneider had expressed fear of his father's anger if he were discharged so suddenly. On Schneider's second visit back to the plant, on April 14th, Naff said that Ritter had decided they could not use him any more.

There was no evidence that Schneider's work was unsatisfactory or that it had slumped at any time. The respondent contends that Schneider was discharged for cause, and alleges the reason to have been inefficiency and slump in his work with a refusal to change his attitude. It is clear, however, that Schneider was efficient, and did not slump in his work. His dissatisfaction did not affect the quality or quantity of his work, and resulted only in his joining the Union and talking in favor of it on his own time. He did not wish to resign, as the respondent seems to intimate, but admittedly asked not to be discharged, and returned twice to get his job back. Livingstone testified that he knew nothing of Schneider's attitude before the conference on April 5th, and that he had received no complaints about Schneider before that date. Ritter, his foreman, said he had known nothing of Schneider's disappointment before the conference. Prior to his union activity and this conference, it is evident that there was no dissatisfaction whatever with his work. He was not discharged for inefficiency or an attitude resulting in inefficiency, but for union activity and membership.

Charles M. Schuller, aged 20, started to work with the respondent on October 6, 1936, as a grinder of valve stems, on a 30 day trial basis. He began at 39¢ per hour. About October 15, he was raised to 45¢. He testified that at that time Ritter said he was surprised at his rapid progress. After a general five per cent raise, Ritter further increased his rate to 52¢, stating, according to Schuller, that he deserved it. On November 15 he received an additional individual increase of 10¢, with the statement by Ritter that such a raise was unusual, but that he deserved it. About February 1, 1937, as the result of his record over a six weeks checking period, he received a 3¢ in-

crease from Sopko, the night foreman, and together with a general increase of 5¢ in March, his rate when he was discharged was 71¢ per hour.

The respondent contends Schuller was discharged for making excessive scrap, on the night of April 5th, or morning of April 6th. Schuller testified that he had made 25 pieces of scrap on April 5th, but explained the fact by the refusal of the operator to adjust his machine. Ritter testified that it was not absolutely certain that all the scrap the respondent contended Schuller had made that evening actually was his. In any event, it was the first time he had made excessive scrap, and it is clear that other employees on occasions made scrap and were not discharged. On the two succeeding evenings before his discharge, Schuller made no scrap at all. He testified that at the time of discharge, Ritter looked over his record of wage increases and said, "They are foolish (for joining the Union) and you are asking for it." Ritter admitted complimenting Schuller several times, and when the production records were furnished by the respondent, testified that his work had been above the average standard of his group in the test period. In its answer to the complaint, the respondent alluded to warnings previously given to Schuller. Benton, an inspector at the respondent's factory, testified that he warned at least one half the men about their work with the idea of improving it. Sopko, night foreman, testified that "he warned all the boys that way." It is clear that his work was satisfactory until after he began talking in favor of the Union on April 3rd. Schuller testified that on that date he was called to the office and accused by Ritter and Sopko of preaching union; that he denied it, but Sopko said he had heard it from a reliable source, and Ritter stated he had actually seen him doing so. Consequently, they were going to watch him and his work. On Sunday, April 4th, Schuller attended the union meeting, and joined the Union. On April 8, Schuller spoke to several men in the factory about joining the Union and showed them some application cards. At the end of that day he was called into the office and discharged by Ritter.

C. Conclusions respecting the discharges

The lay-off of Herman Schneider on April 5th, and the discharge of George Casterline, and Charles M. Schuller, on the 6th and 8th of April, respectively, all within four days of the Union meeting, when considered in connection with the antiunion actions of the respondent's officers and agents, clearly indicate that such discharges were made because these men had joined and assisted the Union. The reasons given at the time of their discharge, and the curt dismissals would indicate the same thing. Even so old an employee as

Casterline was given no opportunity to defend himself, or to explain his version of the lamp incident. In all three cases, the respondent made some claim of poor work, but failed to prove this in any of them. The evidence showed that Schuller's work was somewhat above average, that Schneider's was so good that he had been offered a better position, and that the only possible objection to Casterline's work was that he had been slow for some seven years, a period long enough for the respondent to have discovered it long before the union meeting. Other alleged reasons proved to be equally unfounded and ridiculous; Casterline's "objectionable personal habits" turned out to have been founded upon the fact that his foreman had once told him to clean up his locker and said his clothes looked dirty. The foreman testified he had never told anyone else about this, and had never spoken to Casterline about it at any other time. The objections to his working as a barker were equally farcical.

The respondent's conduct in having observers attend the union meeting and unofficially reporting on it, together with these discharges is calculated to have the necessary effect of discouraging union membership. We find that the respondent has discriminated against its employees in regard to hire and tenure of employment, thereby discouraging membership in a labor organization, and has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

The work of all three men having ceased as a result of an unfair labor practice, they at all times thereafter retained their status as employees of the respondent within the meaning of Section 2, subdivision (3) of the Act. No one of these men has obtained any other regular or substantially equivalent employment so as to terminate his status as employee of the respondent. At the time of the hearing, only Herman Schneider had earned any other money whatever, and he had received \$1.50 for an odd job.

Due to an oversight, the number of work hours per week of Herman Schneider, when working at the respondent's plant, was stated in the Intermediate Report to be 45 hours. It is hereby found to be 42½ hours per week.

IV. RESPONDENT'S CONDUCT IN RELATION TO INTERSTATE COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation 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.

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. International Union of United Automobile Workers of America is a national labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The respondent, by discharging George Casterline, Charles M. Schuller, and Herman Schneider, because they joined and assisted a labor organization, thus discriminating in regard to hire and tenure of employment to discourage membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

3. The 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 the respondent, Thompson Products, Inc., and its officers, agents, successors and assigns, shall:

1. Cease and desist from in any 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 purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

2. Cease and desist from in any manner discouraging membership in United Automobile Workers of America, 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.

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

a. Offer to George Casterline, Herman Schneider, and Charles M. Schuller, immediate and full reinstatement to their former posi-

tions, without prejudice to their seniority or other rights and privileges;

b. Make whole said George Casterline, Herman Schneider, and Charles M. Schuller, for any losses of pay they have suffered by reason of their discharge, by payment, 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, less the amount which each has earned during that period;

c. Post notices in conspicuous places in all departments of the respondent's place of business in Cleveland, stating (1) that the respondent will cease and desist as aforesaid; (2) that its employees are free to join or assist the United Automobile Workers Union, or any other labor organization of their own choosing; and (3) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of such posting;

d. Notify the Regional Director for the Eighth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.