

In the Matter of LEO L. LOWY, INDIVIDUALLY, DOING BUSINESS AS TAPERED ROLLER BEARING CORPORATION and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT No. 15

Case No. C-206.—Decided October 30, 1937

Roller Bearing Industry—Unit Appropriate for Collective Bargaining: production employees—*Representatives:* proof of choice: membership in union; no controversy as to majority representation—*Collective Bargaining:* refusal to recognize and negotiate with union; lock-out of union members—*Discrimination:* lock-out of union members; charges of, with respect to the discharge of one employee, not sustained—*Reinstatement Ordered—Back Pay:* disallowed because of evidence indicating that plant would have had to close down shortly for business reasons.

Mr. Lester Levin, for the Board.

Garfield and Seligson, by *Mr. Maurice V. Seligson,* of New York City, for the respondent.

Mr. Julius Schlezinger, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On December 29, 1936, the International Association of Machinists, District No. 15, herein called the Union, filed a charge, and on June 22, 1937, an amended charge, with the Regional Director for the Second Region (New York City) against Leo L. Lowy, individually, doing business as the Tapered Roller Bearing Corporation, Brooklyn, New York, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1), (3), and (5) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 22, 1937, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region, issued its complaint against the respondent, alleging that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act.

In respect to the unfair labor practices, the complaint, as amended at the hearing, alleges in substance that the respondent on or about

December 21, 1936, had discharged and refused to reinstate Charles Maneri and on or about April 21, 1937, had locked out and refused to reinstate all of his other production employees for the reason that such employees had joined and assisted the Union; and that the respondent on April 21, 1937, and at other times since such date, had refused to bargain collectively with the Union as the exclusive representative of the production employees employed by the respondent, said employees constituting an appropriate bargaining unit. The complaint and accompanying notice of hearing were duly served upon the parties.

The respondent filed an answer to the complaint in which he admitted some of the specific acts alleged therein but denied that the respondent had engaged in unfair labor practices.

Pursuant to the notice, a hearing was held on July 8, 1937, before Samuel Gusack, the Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to the parties. No exceptions to the rulings of the Trial Examiner were made during the course of the hearing.

On July 28, 1937, the Trial Examiner duly filed his Intermediate Report. He found that the respondent had engaged in the unfair labor practices alleged in the complaint and recommended that the respondent cease and desist from such unfair labor practices and offer reinstatement to the discharged employees with back pay. Exceptions to the findings of the Intermediate Report were subsequently filed by the respondent. The Board has considered these exceptions and finds them without merit.

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

FINDINGS OF FACT

I. THE RESPONDENT AND ITS BUSINESS

Leo L. Lowy operates in Brooklyn, New York, a plant for the manufacture of tapered roller bearings. In addition to his plant in Brooklyn the respondent maintains general offices in the Borough of Manhattan. Approximately 45 workmen are employed in the Brooklyn plant.

The only raw materials used by the respondent in the manufacture of roller bearings are steel bars, tubing, and sheets. These raw materials are purchased from New York dealers who in turn purchase them from steel mills located outside the State of New York. All of the products manufactured by the respondent are shipped by him to the Leterson Sales Company of Chicago, Illinois. Its total sales amounted to about \$100,000 in the year 1936.

II. THE UNION

The International Association of Machinists, District No. 15, is a labor organization affiliated with the American Federation of Labor. It admits into membership all of the respondent's production employees, excepting clerical and supervisory employees.

III. THE UNFAIR LABOR PRACTICES

A. *The discharge of Charles Maneri*

Charles Maneri commenced working for the respondent in July 1936. He was the instigator of a movement to organize a union at the respondent's plant. In September of that year he made the first contact with the International Association of Machinists. Maneri continued active in the organization drive until his discharge by Saul Weiss, the superintendent of the plant, on December 25, 1936.

Weiss testified at the hearing that he had discharged Maneri because the latter was constantly loafing and smoking in the toilet rooms. He stated that he had given Maneri several warnings and on Monday, December 21, had threatened him with dismissal if he caught him loafing again. Despite these repeated warnings he had again found Maneri smoking in the toilet rooms on December 23. Two days later, at the close of work for the week, Maneri was discharged.

Maneri complained to John J. Hurley, the union organizer, concerning his discharge, and the latter arranged a conference with Lowy. At the hearing both Maneri and Hurley testified that Lowy had told them at this conference Maneri's discharge was due to his union activities. Lowy and Weiss contradicted this testimony and stated that Lowy had informed Hurley that Maneri had been discharged because he had been caught loafing and smoking in the toilet rooms. Hurley admitted that Lowy had complained about Maneri having been found loafing by Weiss.

Maneri's case is not free from doubt, and Lowy's later actions with respect to the Union lend support to the Union's contention that he was discharged because of his union activities. However, upon the whole record the Board is of the opinion that union membership or activity was not the cause for the discharge. We find that the respondent, in the case of Charles Maneri, did not discriminate in regard to hire and tenure of employment for the purposes of discouraging membership in a labor organization.

B. *The refusal to bargain collectively*

1. The appropriate unit

The complaint alleges that all of the respondent's production employees, excepting clerical and supervisory employees, constitute an

appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act. The respondent does not assert that any other unit is the proper one. All of such employees are eligible to membership in the Union.

In order to insure to the employees of Leo L. Lowy the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, we find that all of the production employees, excepting clerical and supervisory employees, of Leo L. Lowy constitute a unit which is appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. Designation of the Union by a majority in the appropriate unit

On March 17, 1937, 29 of the respondent's employees had joined the Union. The respondent conceded that this number represented a majority of the production workers in his employ. We find that on March 17, and at all times thereafter, the Union was the duly designated representative of a majority of the employees in the appropriate unit, and that, by virtue of Section 9 (a) of the Act, was the exclusive representative of all of the employees in such unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

3. The refusal to bargain

On March 17, 1937, John J. Hurley, a union organizer, called on Lowy and informed him that the Union represented a majority of the employees in his plant. Hurley requested Lowy to install a 40-hour week in the plant in place of the 50-hour week which was then in effect. Lowy replied that he would check up on his production and, if possible, comply with the Union's request.

That evening, however, Lowy called a meeting of his employees in the plant and told them to beware of labor unions. He stated that unions were composed largely of racketeers. Lowy informed the men that he was willing to recognize a shop committee but that he would not recognize any labor organization. He then told them that he was going to put into effect a 40-hour week, and such a schedule was actually installed a few days later.

On April 20, 1937, Charles Rivers, another one of the Union's organizers, called at Lowy's office to attempt to negotiate an agreement.¹ Not finding him in, Rivers left with Lowy's stenographer a draft form of contract. Two days later the two men and the Union shop committee in the plant met by appointment and Lowy stated to Rivers that his employees had broken faith with him and that he was disappointed

¹ Rivers had replaced Hurley as the organizer in charge of this plant.

in them. He said that he was going to put the question of the Union squarely up to them and that if they insisted on retaining membership in it, he would stop operating entirely or retain only a few skilled workmen. At the conclusion of the meeting Lowy attempted without success, to persuade the shop committee to abandon the Union.

The next evening Lowy called a meeting of all the employees of the plant with the exception of the assembly department.² At this meeting he again attacked the Union and stated that he would not recognize it. Lowy asked the employees to vote on the question of remaining with the Union and informed them that he would close down the plant if they chose to do so. The men voted unanimously in favor of the Union. Lowy then paid them off and discharged them.

The above actions of the respondent clearly constitute a refusal to bargain with the Union. The fact that Lowy was willing to meet with union representatives is of no importance in the face of his closing down of his plant in preference to negotiating with the Union. We find that the respondent has refused to bargain collectively with the Union as the exclusive representative of his employees in the appropriate unit in respect to rates of pay, wages, hours of employment, and other conditions of employment.

C. The lock-out of April 23, 1937

Twenty-seven of the respondent's employees³ were discharged on April 23, 1937, following their refusal to give up the Union, and had not been reinstated at the time of the hearing. The respondent contended that these men were discharged because of an 80 per cent decrease in his business during the early part of 1937 and not because of their union activities. The testimony in regard to the decrease in business was not rebutted at the hearing and the evidence indicates that the respondent would shortly have been forced to close down his plant for business reasons. However, the actions of the respondent which have been discussed above leave no doubt that the plant would have been kept open later than it was, had it not been for the Union.⁴ It is clear that the effective reason for the discharge of these 27 employees on April 23 was their membership in the Union and their efforts to bargain with the respondent.

² The assembly department had just been moved to Brooklyn from Manhattan and its employees had not yet been organized by the Union.

³ Simon Nuzzo, Salvatore C. Frasca, Albert Di Fiore, George Scheibe, Albert Berardelli, John Holler, Edward McComb, Alex Ancesany, Thomas Testa, Joseph De Masi, Edward Straube, Anthony Jablowski, Charles Dellacroce, Edward Fadde, Josef Kraus, Harry Straube, Stephen J. Slipek, Joseph Dombroski, Michael Semerski, William De Sena, Harold May, Steve Vitez, George Maletec, Arthur Borchus, David Emanuel, and Frank Pelitoch.

⁴ The assembly department remained open for about two weeks after the rest of the plant was closed down.

We find that the work of these men ceased as a consequence of and in connection with unfair labor practices and that, as a result of such practices, a labor dispute arose which is still current.

The employees in the respondent's assembly department were not present at the meeting and were not discharged at that time. However, Edward Mackritis, one of these employees, refused to return to work a few days later when he saw the picket line established by the Union and learned of the events of April 23. We find that the work of Edward Mackritis ceased as a consequence of, or in connection with, the current labor dispute referred to above.

We find that the respondent has refused to bargain collectively with the representative of its employees, 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 the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON 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 have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

The 27 employees who were discharged on April 23, having lost their jobs as the result of unfair labor practices, would normally be entitled to reinstatement with back pay. However, the respondent's plant closed down almost entirely within a short time after the lock-out, and was still closed down at the time of the hearing in this case, and the evidence indicates that such closing would have taken place for business reasons even if the respondent had not indulged in these practices. Since it is impossible to determine from the record how much time, if any, would have elapsed before the closing of the plant, we have no basis upon which to calculate the amount of pay which the employees have lost through the unfair labor practices of the respondent. In this case, therefore, we shall not require him to pay them back pay. However, we shall order the respondent, as jobs become available, to offer reinstatement to these men, in the order of their seniority and, in as much as several months have elapsed since the date of the hearing and the respondent may have reopened his plant with employees who had not been employed prior to April 23, we shall order the respondent to discharge, if necessary, any persons who have been hired for the first time since such date.

Although Edward Mackritis quit his work voluntarily, he did so because of the respondent's unfair labor practices. We shall therefore follow our usual rule in such cases by ordering the respondent to offer him reinstatement without back pay.

CONCLUSIONS OF LAW

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

1. International Association of Machinists, District No. 15 is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All of the production workers employed by the respondent, excepting clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. By virtue of Section 9 (a) of the Act, International Association of Machinists, District No. 15, having been selected as their representative by a majority of the employees in an appropriate unit, was on March 17, 1937, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

4. By refusing to bargain collectively with International Association of Machinists, District No. 15, as the exclusive representative of his employees in an appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. Simon Nuzzo, Salvatore C. Frasca, Salvatore Frasca, Albert Di Fiore, George Scheibe, Albert Berardelli, John Holler, Edward McComb, Alex Ancsany, Thomas Testa, Joseph De Masi, Edward Straube, Anthony Jablowski, Charles Dellacroce, Edward Fadde, Josef Kraus, Harry Straube, Stephen J. Slipek, Joseph Dombroski, Michael Semerski, William De Sena, Harold May, Steve Vitez, George Maletec, Arthur Borchus, David Emanuel, and Frank Pelitoch were at the time of their discharge, and at all times thereafter, employees of the respondent, within the meaning of Section 2 (3) of the Act.

6. Edward Mackritis was at the time he ceased working, and at all times thereafter, an employee of the respondent, within the meaning of Section 2 (3) of the Act.

7. The respondent, by discriminating in regard to the hire and tenure of employment of the employees named in Paragraph 5, thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

8. The respondent, by interfering with, restraining, and coercing his 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 (1) of the Act.

9. The afore-mentioned unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

10. The respondent, by discharging Charles Maneri, has not discriminated in regard to hire and tenure of employment, within the meaning of Section 8 (3) of the Act.

11. The respondent, by discharging Charles Maneri, has not interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, within the meaning of Section 8 (1) of the Act.

ORDER

On the basis of the findings and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Leo L. Lowy, and his agents, successors, and assigns, shall:

1. Cease and desist from discharging or refusing to reinstate any of his employees, or from in any other manner discriminating in regard to hire and tenure of employment of any of his employees, in order to discourage membership in International Association of Machinists, District No. 15, or any other labor organization of his employees;

2. Cease and desist from refusing to bargain collectively with International Association of Machinists, District No. 15, as the exclusive representative of the production workers, exclusive of clerical and supervisory employees, in his employ; and

3. Cease and desist from in any manner interfering with, restraining, or coercing his 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 National Labor Relations Act.

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

a. To the extent that work is available, within ten days offer on the basis of seniority, to Simon Nuzzo, Salvatore C. Frasca, Salvatore Frasca, Albert Di Fiore, George Scheibe, Albert Berardelli, John Holler, Edward McComb, Alex Ancsany, Thomas Testa, Joseph

De Masi, Edward Straube, Anthony Jablowski, Charles Dellacroce, Edward Fadde, Josef Kraus, Harry Straube, Stephen J. Slipek, Joseph Dombroski, Michael Semerski, William De Sena, Harold May, Steve Vitez, George Maletec, Arthur Borchus, David Emanuel, Frank Pelitoch, and Edward Mackritis, full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges, discharging, if necessary, any persons who have been hired for the first time since April 23, and place such of them for whom employment is not available on a preferred list to be offered employment on the basis of seniority as it arises;

b. Upon request, bargain collectively with International Association of Machinists, District No. 15, as the exclusive representative of the production workers, exclusive of clerical and supervisory employees, in his employ, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment;

c. Post immediately notices to his employees in conspicuous places throughout his place of business, stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

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

And it is further ordered that,

6. The allegations of the complaint be, and they hereby are dismissed with respect to the discharge of Charles Maneri.