

In the Matter of NEW IDEA, INC. and THE A. F. OF L.

In the Matter of NEW IDEA, INCORPORATED and AMERICAN FEDERATION
OF LABOR

Cases Nos. R-485 and C-334.—Decided February 18, 1938

Farm Implements Manufacturing Industry—Interference, Restraint or Coercion: threats of retaliatory action for attending union meetings—*Company-Dominated Union:* sponsorship, domination, and interference with formation and administration; support of; assistance in organization; soliciting and encouraging membership by supervisory employees during, and after, working hours; disestablished as agency for collective bargaining—*Discrimination:* layoffs; charges of, dismissed—*Investigation of Representatives:* controversy concerning representation of employees; refusal by employer to recognize petitioner as exclusive bargaining representative of its employees—*Unit Appropriate for Collective Bargaining:* hourly wage production and maintenance employees exclusive of clerks, supervisory employees, watchmen, and draftsmen—*Election Ordered*

Mr. Harry L. Lodish and *Mr. Max W. Johnstone*, for the Board.
Hedges, Hoover & Tingley, by *Mr. H. R. Tingley* and *Mr. George R. Hedges, Jr.*, of Columbus, Ohio, for the Company.

Meredith & Meredith, by *Mr. Harry R. Meredith*, of Lima, Ohio, for the Association.

Mr. Aaron Lewittes, of counsel to the Board.

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by American Federation of Labor, on behalf of Federal Labor Union No. 21218, herein called the Union, the National Labor Relations Board, herein called the Board, by James P. Miller, Regional Director for the Eighth Region (Cleveland, Ohio), issued and duly served its complaint, dated November 4, 1937, against New Idea, Incorporated, Coldwater, Ohio, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2),

(3), and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

The complaint alleged in substance (1) that on or about August 30, 1937, on or about September 14, 1937, and at all times thereafter, the respondent had refused to bargain collectively with the Union as the duly authorized representative of the respondent's production employees, said employees constituting an appropriate bargaining unit; (2) that during the month of September 1937, the respondent in laying off men discriminated against some 200 members of the Union; (3) that the respondent dominated and interfered with the formation and administration of The New Idea Employees Association, Inc., herein called the Association, and contributed support thereto; (4) and that the respondent discouraged employees from joining the Union. On November 12, 1937, the respondent filed an answer to the complaint denying that it had engaged in the alleged unfair labor practices. By an order dated November 10, 1937, the Board, by the Regional Director, granted the motion of the Association to intervene.

On August 31, 1937, the American Federation of Labor, herein called A. F. of L., filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of New Idea, Inc., Coldwater, Ohio, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On October 4, 1937, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On October 4, 1937, the Board, acting pursuant to Article III, Section 10 (c) (2), and Article II, Section 37 (b), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that the two cases be consolidated for the purposes of the hearing.

On November 4, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the A. F. of L., and upon the Association. Pursuant to the notice, a hearing was held on November 15, 16, and 17, 1937, at Celina, Ohio, before Leo J. Kriz, the Trial Examiner duly designated by the Board. The Board, the Company, and the Association were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several

rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

At the hearing counsel representing the Board moved to withdraw the allegations of its complaint charging unfair labor practices within the meaning of Section 8 (5) of the Act. The Trial Examiner granted the motion.

On December 13, 1937, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had dominated and interfered with the organization and administration of the Association, and had interfered with, and coerced its employees in the exercise of their right to self-organization, but had committed no acts of discrimination within the meaning of Section 8 (3) of the Act. On December 31, 1937, and on January 8, 1938, the respondent and the Association, respectively, filed Exceptions to the Intermediate Report, in which they excepted to several of the Trial Examiner's rulings at the hearing and to several of the findings in the Intermediate Report. The Association's Exceptions included an Appendix containing comment, brief, and argument in support of its exceptions. The respondent also submitted a brief in support of its exceptions.

We find no prejudicial errors pointed out by the exceptions. They are hereby overruled.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The respondent, New Idea, Inc., is a corporation organized and existing under the laws of the State of Ohio, with one plant in Coldwater, Ohio, another in Sandwich, Illinois, branch warehouses in Pennsylvania, New York, Minnesota, Nebraska, and numerous transfer warehouses. The Company manufactures and sells farm implements. The Coldwater plant, the only unit involved in these cases, employs some 500 persons, engaged in production, maintenance, supervision, and clerical work. The respondent stipulated that approximately 33 $\frac{1}{3}$ per cent of the raw materials for the Coldwater plant are purchased outside the State of Ohio and that about 85 per cent of the finished products are shipped to States other than Ohio.

II. THE ORGANIZATIONS INVOLVED

Federal Labor Union No. 21218 is a labor organization affiliated with the American Federation of Labor. The record does not show which persons the Union admits to membership.

The New Idea Employees Association, Inc., is a labor organization admitting to its membership all employees of the Coldwater plant of the Company, excluding executives.

III. THE UNFAIR LABOR PRACTICES

A. *Domination and interference with the Association and discrimination against the Union*

At the request of Company employees, Alfred T. Murphy, representative of the A. F. of L., called a meeting in Coldwater for August 16, 1937, for the purpose of organizing the Coldwater plant. Several hundred of the respondent's employees attended, and joined the Union by signing membership application cards. The evidence of the events that followed leaves no doubt that the Company set out to crush the nascent Union by intimidating the men and by sponsoring a rival labor organization. Numerous witnesses testified to specific acts of interference with the organization of the men. The respondent called no witnesses to deny or rebut this testimony.

The Company wasted no time in launching its campaign against the Union. Richard Bonifas testified that on August 17, the day following the organization meeting of the Union, his foreman came over during the lunch hour and said: "The boys will be got for this, for going to the A. F. of L. meeting". Two days later handbills were distributed to the workmen on plant grounds by unidentified children announcing an "important meeting" for the purpose of forming an "independent factory union sponsored by Coldwater business men".¹ The meeting was held on August 19 at the City Hall of Coldwater.

The respondent clearly sought to encourage attendance at the meeting. Foremen, quoting Harry Luken, the plant superintendent,² told the men in the night shift that they were free to check out to attend the businessmen's meeting. That the permission was in effect an order is made clear by the case of one of the employees. Joe Weimert, one of the foremen, asked the witness, Carl Willman, whether he was attending the meeting. Willman indicated he was not interested, and made ready to operate his press, but he could not work his machine because the foreman shut down the power. The respondent further fostered the meeting by the attendance thereof of a number of foremen.

At the meeting, John Boeke, ex-mayor of the town, acted as chairman, and announced the object of the meeting to be the organization of an independent union at the respondent's factory. Boeke stated:

¹ Board's Exhibit No. 3.

² The evidence showed that the plant superintendent was the head of all the foremen. The persons herein referred to as foremen are so designated in the Company's pay roll introduced in evidence (Board's Exhibit No. 10); their supervisory function was not disputed in the testimony.

"You men have enough brains to run your own affairs. We don't have to call for no outsiders." Another speaker—the mayor of Coldwater—warned that outside interference by the A. F. of L. would cause the men trouble and that the Company would rather recognize a "home union" than the A. F. of L.

At the close of this meeting application cards were distributed calling "for membership in an Independent Factory Union of the Employees of the New Idea, Inc., of Coldwater, Ohio, subject to incorporation under the laws of the State of Ohio".^a Cecil Monroe, a Company employee called by the Association, testified on cross-examination that he attended this meeting, signed one of the membership application cards handed out, and invited the employees present to come to another meeting to be held the following night, August 20, at the City Hall.

The meeting was held as scheduled. Harry R. Meredith, counsel for the Association, spoke. According to Meredith's testimony, Boeke came to his office in Lima and asked him to address the meeting on the National Labor Relations Act. Monroe, the respondent's employee above referred to, took a leading part in arranging for the August 20 meeting. During this period he conferred with Boeke a number of times. He spent the day of August 20 conferring with various persons, including a local attorney and the secretary of the Automobile Club. Although away from work on August 20 because of these activities, he was not asked by the respondent about his absence. Monroe accompanied Meredith to the August 20 meeting, telling him, on the way, of plans to organize an independent union and asking him to speak on the National Labor Relations Act.

As the result of the August 20 meeting Monroe rounded up eight of the men to go with him to Meredith's office in Lima to act as incorporators of the Association. The respondent must be deemed to have assisted Monroe in getting the incorporators together. At Monroe's request, Luken, the superintendent, called seven men away from work, a few at a time, to confer about the trip. In all likelihood Luken knew the purpose of the conferring because he attended the August 19 meeting at which Monroe announced the August 20 meeting; Monroe's activity on behalf of the incipient Association was open; and Luken did not bother to ask Monroe why he was interrupting the routine of the plant by remaining absent from work and by conferring with seven employees during their working hours. At Monroe's request, Kanorr, a foreman, got one of the employees out of bed to discuss the trip.

Thus was born The New Idea Employees Association, Inc. The businessmen's meeting was the first, the Association the ultimate,

^a Board's Exhibit No. 7.

link in the chain forged with the full cooperation of the Company. Admittedly the Association stemmed directly from the August 20 meeting which admittedly was called at the August 19 businessmen's meeting, and held in the same place. Further, there is no dispute that the two principal participants in the August 19 meeting, Boeke and the mayor, procured Meredith to address the second meeting, ostensibly called by Monroe. Also, Monroe agreed that he had several conferences with Boeke in this period about the organization of the New Idea employees, and that he reported the incorporation of the Association to Boeke immediately upon returning from Lima, pursuant to Boeke's prior request. The membership application cards distributed at the businessmen's meeting called for an independent incorporated union. Monroe testified that in his talk with Meredith on the way to the City Hall he said he wished to establish an independent union. The Association did incorporate. The employees failed to distinguish between the independent incorporated union proposed at the businessmen's meeting and the independent incorporated association actually brought into being. That the Association, after incorporation, distributed application cards slightly different from those issued at the August 19 meeting does not loosen the intimate causal connection between the August 19 meeting and the Association; since organizations commonly change the form of their application blanks. Indeed, though Monroe himself signed the first kind of card, it was he who organized the Association and became its president.

The Company did more than help form the Association. Many witnesses testified to specific instances of solicitation for the Association by foremen and assistant foremen. Neither the respondent nor the Association called witnesses to contradict such testimony. The solicitation took place during working hours at the plant, and after, in the men's homes. Thus, Arthur Braun testified that his foreman, Fred Heyne, asked him if he would sign up for the Independent, telling him a card was ready for his signature, and that he could keep his job by signing.⁴ Lawrence Braun testified that two foremen asked him to join the Independent, and that one, Fred Moorman, volunteered to lend him a dollar and a half for his initial dues. Braun neither accepted nor rejected the offer and never paid dues to the Association. Yet an Association membership

⁴ A conversation between Heyne and Hart, an employee, testified to by Hart, further tends to show that management policy rather than personal conviction induced the foreman to solicit for the Association.

I asked him if right down in his heart, he didn't believe that the A. F. of L. between the two Unions was the only Union that would really help the men, and he said, "I do, and I hope that—I think that it would be better for the men and better for myself," and I said, "Fred, it is a damn shame to have one man believing one thing and preaching another to a bunch of poor suckers who didn't have enough sense to use their own head."

card in his name carries the notation WR⁵ which, according to the testimony of the president of the Association, means that a \$1.50 payment had been made. Edward J. Link testified that during working hours he followed Monroe through the forge room to the foundry, saw Monroe drop membership application cards on the desk of Foreman Froning who handed them to Leo Brown; Brown took them to the grinding room, threw them on the desk saying, "There they are, boys."

Activity on behalf of the Association went hand in hand with discrimination against the Union. Thus John Franks testified that shortly after his night shift started, on the day of the second A. F. of L. meeting—which occurred about August 23, according to other testimony—the superintendent "approached me . . . and said that if any of my force wanted to attend the meeting I should let him know and he would be paid off in the morning"; in other words, discharged. True, on or about the same day Henry Synck, president of the respondent, assembled the men to call their attention to a notice which he had posted on the bulletin boards. This notice quoted Sections 7, 8 (1), and 8. (2) of the Act, and forbade all activity "for or against any labor organization during working hours" threatening "drastic action" against violators.⁶ However, the evidence shows that after such date solicitation for the Association by foremen continued as before. Richard Koester testified that, after August 23, he was asked by Kanorr, a foreman, whether he had paid his dues in the Independent; this occurred in the plant during working hours. Foremen continued to visit homes to persuade men to join the Association.

The evidence also shows that a majority of the foremen themselves became members of the Association and attended its meetings. One foreman, Paul Froning, helped draft a Code of Regulations for the Association.⁷

We find that the respondent has dominated and interfered with the formation and the administration of, and has contributed support to, the Association; and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. Discrimination in regard to hire and tenure of employment

The complaint alleges a discriminatory lay-off of approximately 200 employees who are members of the Union. The evidence shows

⁵ Board's Exhibit No 8

⁶ Board's Exhibit No 6

⁷ Intervenor's Exhibit No 3. The Code (Article III, "Meetings") provides for only one regular meeting a year. Special meetings may be held on five days' notice upon call of (a) the President, (b) a majority of the Board of Trustees, or (c) 30 per cent of the membership. A strike cannot be declared unless "approved by a two-thirds ($\frac{2}{3}$) vote of the entire membership of the association."

that with the onset of the slow season, the respondent temporarily laid off most of its employees. The men were laid off in groups all during the month of October, as the work for each department slackened. Both members of the Union and members of the Association were furloughed. The record does not show that a disproportionate number of Union members were among those laid off. Some members of the Union continued to work. At most there is a suggestion in the record that more Union officials than Association officials may have been furloughed; but this evidence is too indefinite for the Board to find that the respondent discriminated against the Union members in regard to hire and tenure of employment.

We shall dismiss that part of the complaint which alleges an unfair labor practice within Section 8 (3) of the Act.

IV. THE QUESTION CONCERNING REPRESENTATION

The Union claiming to represent a majority of the men in an appropriate unit designated a committee to interview Synck, the president of the Company. Synck informed the committeemen that he did not know when or whether he could meet with them, and further that he had to consider the Association. Whereupon the Union filed its petition with the Regional Director. On September 14, 1937, Murphy, the Union agent, telephoned Synck for an appointment that afternoon. In granting the request, Synck said he did not see of what use the conference would be. At the interview Murphy requested Synck to bargain collectively with the Union as the representative of the majority of the production employees. Synck replied that the matter would have to go through the channels of the Board. The Company, in a letter to the Regional Director for the Eighth Region, preferred "that the matter should properly be determined by the Board".⁸

We find that a question has arisen concerning representation of employees of the Company.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES AND THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, and the question concerning representation which has arisen, occurring in connection with the operations of the Company 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.

⁸ Board's Exhibit No. 5.

VI. THE APPROPRIATE UNIT

The Union and the Association agreed, and the Company did not dispute, that only hourly wage production and maintenance employees should constitute the appropriate unit; but that supervisory employees—foremen, subforemen and the paint overseer—watchmen, and clerical employees should be excluded. We shall exclude them.

There is some disagreement about excluding the draftsman. The Union argued for exclusion. The draftsman's work is different from the work of the other hourly wage employees. It is carried on in a separate part of the plant, and in close cooperation with the designer, a salaried employee. We see no reason for departing from our usual practice of excluding draftsmen.

We find that the hourly wage production and maintenance employees of the Company, excluding clerks, supervisory employees, watchmen and draftsmen, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VII. THE DETERMINATION OF REPRESENTATIVES

A list of workmen on the pay roll of the respondent's Coldwater plant from September 1 to September 15, 1937, was introduced in evidence, showing somewhat under 450 employees in the appropriate unit. The Union had at the hearing membership application cards which were not introduced in evidence, but which were handed to the Trial Examiner for examination. After such examination, the Trial Examiner stated for the record that there were 282 signed applications "all of which cards were for members of the above Union and who are or have been employees of the New Idea, Incorporated." There is nothing in the record to show that any check was made to determine whether the signatories were ever on the Company pay roll. Besides, the Trial Examiner included in the count the cards of persons who "have been employees"; that is, persons who may have quit or been discharged for cause. The record does not show how many Union card signatories fall within this class. Accordingly, we shall order an election.

We have found that the respondent has dominated and interfered with the formation and administration of the Association and has contributed support to it. The Association does not represent the free exercise by the employees of their rights to self-organization and collective bargaining. We shall make no provision for the designation of the Association on the ballot.

The Union filed its petition on August 31, 1937. Because of a slow season commencing sometime before October 1937, the Company temporarily laid off a number of men. All parties in interest agreed that the employees temporarily laid off should be eligible to vote and that the pay-roll period from September 1, 1937, to September 15, 1937, would be the proper period for the determination of the question of eligibility. We shall so direct.

VIII. THE REMEDY

We have found that the respondent has dominated and interfered with the formation and administration of the Association and has contributed support to it, and that its growth has been due to encouragement received from the respondent's officials, and the accompanying attacks upon the Union. Under such circumstances, the Association does not and cannot offer to the employees the free representation for collective bargaining which the Act guarantees. We shall, therefore, order the immediate disestablishment of the Association. We shall also order the respondent to cease and desist from its unfair practices.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. Federal Labor Union No. 21218, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.
2. The New Idea Employees Association, Inc., is a labor organization within the meaning of Section 2 (5) of the Act.
3. The respondent, by dominating and interfering with the formation and administration of The New Idea Employees Association, Inc., and by contributing support to said organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.
4. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by 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.
5. The aforesaid labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.
6. The respondent, by laying off men, has not engaged in and is not engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

7. A question affecting commerce has arisen concerning the representation of employees of New Idea, Inc., Coldwater, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

8. The hourly wage production and maintenance employees of the Company, excluding clerks, supervisory employees, watchmen, and draftsmen constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

ORDER

Upon the basis of the above findings of fact 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, New Idea, Inc., Coldwater, Ohio, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) 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 purpose of collective bargaining and other mutual aid or protection, as guaranteed by Section 7 of the National Labor Relations Act;

(b) From in any manner dominating or interfering with the administration of The New Idea Employees Association, Inc., or with the formation or administration of any other labor organization of its employees, and from contributing support thereto.

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

(a) Withdraw all recognition from The New Idea Employees Association, Inc., as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely disestablish said Association as such representative;

(b) Immediately place notices in conspicuous places throughout its plant and maintain such notices for a period of thirty (30) consecutive days stating (1) that the respondent will cease and desist as aforesaid, and (2) that The New Idea Employees Association, Inc., is disestablished as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and that the respondent will refrain from any recognition thereof;

(c) 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 therewith.

The complaint is hereby dismissed to the extent that it concerns the alleged discriminatory lay-off of members of the Union.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with New Idea, Inc., elections by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this manner as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all the hourly wage production and maintenance employees of the Coldwater, Ohio, plant of New Idea, Inc., who were on the Company's pay roll in the pay-roll period from September 1, 1937 to September 15, 1937, except clerks, supervisory employees, watchmen, and draftsmen, and any other employees who have since said pay-roll period quit or been discharged for cause, to determine whether or not they desire to be represented by Federal Labor Union No. 21218 for the purposes of collective bargaining.