

IN THE MATTER OF THE CUDAHY PACKING COMPANY *and* PACKINGHOUSE
WORKERS LOCAL INDUSTRIAL UNION No. 62, AFFILIATED WITH THE
COMMITTEE FOR INDUSTRIAL ORGANIZATION

Case No. C-267.—Decided February 18, 1938

Meat Packing Industry—Interference, Restraint or Coercion: interfering with formation and administration of a labor organization; lay-off of a union member—*Company-Dominated Union:* presence of plant superintendent during organization; solicitation of members by supervisory employees; use of company time and property for organization purposes—*Discrimination:* discharge; charges of, sustained as to one employee, not sustained as to two other employees—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Thurlow Smoot, for the Board.

Mr. E. S. Stringer, of St. Paul, Minn., and *Mr. Thomas Creigh,* of Chicago, Ill., for the respondent.

Mr. William C. Green, of St. Paul, Minn., for the Independent Union.

Mr. Julius Schlezinger, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Packinghouse Workers Local Industrial Union No. 62, herein called the Industrial Union, the National Labor Relations Board, herein called the Board, by Robert J. Wiener, Acting Regional Director for the Eighteenth Region (Minneapolis, Minnesota), issued its complaint, dated July 28, 1937, against The Cudahy Packing Company, Newport, Minnesota, 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), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect to the unfair labor practices the complaint alleged in substance (1) that the respondent on July 6, 1937, laid off Arthur Maurer and Oliver Simpson, production workers at the Newport plant, and on July 17, 1937, laid off Leonard Weiss, a production

worker at the Newport plant, because of their membership in and activities in behalf of the Industrial Union; and (2) that the respondent has dominated and interfered with the formation and administration of a labor organization at the Newport plant known as Packing House Workers' Union of St. Paul and has contributed support to it.

The complaint and accompanying notice of hearing were duly served upon the parties. The respondent filed an answer to the complaint in which it denied that it had engaged in unfair labor practices.

Pursuant to the notice, a hearing was held at Minneapolis, Minnesota, on August 6, 9, 10, and 11, 1937, before James C. Batten, the Trial Examiner duly designated by the Board. At the commencement of the hearing, Packing House Workers' Union of St. Paul, herein called the Independent Union, filed a petition to intervene. The petition was granted by the Trial Examiner. The Board, the respondent, and the Independent Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties.

During the course of the hearing exceptions were taken by the parties to various rulings of the Trial Examiner. The Board has reviewed these rulings and finds that no prejudicial errors were committed. All rulings of the Trial Examiner are hereby affirmed.

Subsequently the Trial Examiner filed an Intermediate Report. He found that the respondent had laid off Arthur Maurer and Oliver Simpson because of their membership in the Industrial Union and had dominated and interfered with the formation of the Independent Union and contributed support to it. He found further that by virtue of such acts the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act. In the lay-off of Leonard Weiss, the Trial Examiner found that the respondent had not engaged in unfair labor practices.

Exceptions to the Intermediate Report were thereafter filed by the respondent and the Independent Union. We have reviewed the exceptions and except in one instance as indicated below, find them without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Cudahy Packing Company is a Maine corporation having its principal executive offices at Chicago, Illinois.¹ It is chiefly engaged

¹ The company was incorporated on October 7, 1915.

in the purchase and slaughter of livestock and the processing and marketing of the products therefrom.² The respondent transacts business throughout the United States and in many foreign countries.³

The respondent's slaughtering and meat packing plants are located in Omaha, Nebraska; Kansas City, Kansas; Sioux City, Iowa; Los Angeles, California; Wichita, Kansas; North Salt Lake, Utah; Jersey City, New Jersey; Newport, Minnesota;⁴ San Diego, California; Denver, Colorado; Detroit, Michigan; and Albany, Georgia. It owns and operates a soap and Old Dutch Cleanser factory and shops for the construction and repair of refrigerator cars in East Chicago, Indiana; a plant for the refining of vegetable oils near Memphis, Tennessee; an Old Dutch Cleanser and soap factory in Toronto, Ontario, Canada; a wool scouring, combing, and storage plant in Providence, Rhode Island; and a salt mine and refinery in Lyons, Kansas. The respondent also owns and operates produce collecting and processing plants in many States and operates eighty branch houses located in the principal cities of the United States. In addition, it owns and operates 1,496 refrigerator cars and 44 tank cars. The respondent's securities are registered on the New York and Chicago Stock Exchanges.

At the close of its fiscal year ending October 31, 1936, the respondent had total assets of more than eighty-two million dollars. During such year its sales amounted to \$201,605,000.00.⁵ The company's annual pay roll amounts to \$7,873,727.00.

The only plant of the respondent involved in this proceeding is the one located at Newport, Minnesota, herein called the Newport plant. Approximately 650 production workers are employed in the Newport plant which has an annual pay roll of from six to seven hundred thousand dollars.

A substantial proportion of the livestock slaughtered at the Newport plant originates outside the State of Minnesota. Approximately 75 per cent of the products of such plant are shipped by the respondent to points without Minnesota.

² In addition, the respondent is engaged in the following lines of business: Refining vegetable oils and the production and sale of shortening and cooking and salad oils; manufacturing and marketing of soaps and cleansing powders; pulling, scouring, and combing wool and the marketing of wool and tanned sheep skins; purchasing, packing, and selling eggs, poultry, and cheese; purchasing cream and butter, and manufacturing and selling butter, margarine, and ice cream; mining rock salt, operating brine wells, and producing, refining, packing, and selling all kinds of salt; and owning, maintaining, and operating refrigerator and tank cars for the transportation of its products

³ The respondent owns all, or substantially all, of the stock of the following subsidiaries: The Cudahy Packing Co. of Alabama; The Cudahy Packing Co. of Louisiana, Ltd; Barry Machinery Co.; The Dow Cheese Co., Bissell Leather Co.; Olneyville Wool Combing Co.; Willows Cattle Co.; The Cudahy Packing Co., Ltd. (foreign); Cudahy and Company, Ltd. (foreign); and American Salt Corporation.

⁴ This plant is located just outside of St. Paul and is often referred to as the St. Paul plant.

⁵ Board Exhibit 28.

The Newport plant is operated as a part of the general accounting system of the respondent rather than as a separate entity and its operations are governed by the Chicago office. The labor policies of the plant are determined in Chicago.

The Newport plant is registered for inspection with the United States Department of Agriculture.⁶ Approximately 18 Federal inspectors are present at the plant during manufacturing operations.

II. THE ORGANIZATIONS INVOLVED

A. *Packinghouse Workers Local Industrial Union No. 62*

Packinghouse Workers Local Industrial Union No. 62 is a labor organization affiliated with the Committee for Industrial Organization. It admits into membership employees of the packing plants in the vicinity of South Saint Paul.

B. *Packing House Workers' Union of St. Paul*

Packing House Workers' Union of St. Paul is a labor organization limited to employees of the Newport plant.

III. THE UNFAIR LABOR PRACTICES

A. *Packing House Workers' Union of St. Paul*

On April 16, 1937, William Callahan and D. J. Peabody, two of the employee members of the Plant Conference Board in the respondent's Newport plant, decided to organize a labor union limited to employees of such plant. Their decision was motivated by the belief that the Plant Conference Board, a plan for the handling of employee grievances which had been in existence for about 12 years at the Newport plant,⁷ was invalid under the Act, which had been sustained a few days before in the Supreme Court decisions of April 12, 1937, and by a desire to forestall the organization drive of the Committee for Industrial Organization then being conducted among the packing house employees in the vicinity.

The following morning Callahan and Peabody contacted Grover J. Foster, the superintendent of the Newport plant, with respect to the formation of the new union. Foster informed them that he could neither encourage nor discourage them and that whenever they had 51 per cent of the employees of the plant organized he would have to recognize them. Callahan and Peabody then called William C. Green, a St. Paul attorney who had often represented the respondent, and

⁶ Board Exhibit 2.

⁷ The Plant Conference Board consisted of an equal number of employer and employee representatives. Similar Boards were in existence in the other plants of the respondent throughout the country.

arranged to see him that afternoon concerning their plans.⁸ Following their telephone conversation with Green, they told Foster that they wished to consult with him. He agreed to meet them outside of the plant that afternoon and arranged for a room in the Hotel Lowry in St. Paul.

Callahan and Peabody then approached several other members of the Plant Conference Board and requested them to attend the meeting at the Hotel Lowry. This group constituted itself into an organizing committee.⁹ The committee got in touch with Green and asked him to come to the hotel. According to Callahan, Foster informed Green, when he arrived, that "the boys had started organizing and that he guessed we wanted him for our attorney". Arrangements were then made for the organizing committee to meet at the hotel on the following day and for Green to prepare petitions for membership in the new union, which was to be called Packing House Workers' Union of St. Paul.

On Sunday and Monday, April 17 and 18, the committee staged an organization drive with the Hotel Lowry as its headquarters.¹⁰ Several hundred employees were called to the hotel where they signed the petitions which Green had prepared. Foster and A. D. Challenge, the assistant superintendent of the Newport plant, were present in the hotel rooms where these activities occurred at various times during this drive. Several other supervisors were also seen at the hotel on both Sunday and Monday. At least two straw-bosses, Harry Donovan and Frank Glass, brought other employees to the hotel with them and Donovan admitted at the hearing that the men whom he had solicited for the Independent Union were employees working under his supervision at the plant.¹¹ Several workmen testified that the persons calling them to the hotel had stated that Foster or Challenge wished to see them there.

Callahan explained that he had requested Foster to come to the hotel on both Sunday and Monday because some of the employees were hesitant in joining and wished to speak to the plant superintendent. Callahan added that this hesitancy disappeared when Foster convinced them that they were on the "right side".

By Wednesday, April 24, the committee had secured the signatures of more than 400 of the 650 production employees in the plant. On that date it wrote to the respondent demanding recognition as ex-

⁸ Cudahy Packing Company is listed in the 1937 edition of Martindale-Hubbell Law Directory as a client of the law firm of which Green is a member.

⁹ Several other persons were added to the organizing committee on the following day. Almost all of the members of the committee were former members of the Plant Conference Board and of the Blue Vase, a social organization composed of the respondent's "best employees." Callahan testified that the members of the Blue Vase are selected by the respondent and are persons upon whom the company can depend.

¹⁰ The Newport plant is usually closed on Monday.

¹¹ Donovan has since received a promotion to the position of assistant foreman

clusive bargaining agent. Such recognition was quickly granted by the respondent despite the fact that the Independent Union had not as yet elected any officers or adopted a constitution.

In the meantime Green had prepared articles of association for the Independent Union. These articles of association were signed in the plant cafeteria during working hours by approximately 600 of the respondent's employees on Saturday, Monday and Tuesday, April 24, 26, and 27, the men being sent to the cafeteria in relays by their foremen at the request of the organizing committee.

Employees who were reluctant to join the Independent Union were, during working hours, sent by their supervisors to speak to Callahan and other members of the committee. These talks and the other activities of the organizing committee consumed a great deal of time. In no case did any employee receive a deduction in pay for such loss of time, however.

The Independent Union held its first meeting, notice of which had been posted in the plant during the day, on Tuesday, April 27. George French, a member of the organizing committee, served as chairman. At this meeting, officers and a board of trustees were elected and bylaws adopted.¹²

Subsequently, the board of trustees elected two representatives to a meeting in Omaha, Nebraska, of representatives of independent unions which had been organized in different plants of the respondent. At this meeting a contract between the Independent Union and the respondent was negotiated. The contract was thereafter signed by the board of trustees and ratified by the members. The evidence indicates, however, that the agreement was not discussed by the Independent Union prior to the Omaha trip and that the first opportunity the members had to consider it was after its execution had already taken place.

There can be no doubt from the above facts that the Independent Union was formed with the active assistance and support of the respondent. The leading figures in its organization were the respondent's own attorney and members of its Plant Conference Board. Employees were encouraged to join the Independent Union by the presence at the Hotel Lowry of the plant superintendent and other officials of the plant and were actively solicited to do so by at least two supervisory employees. Those reluctant to join were convinced by the plant superintendent that if they did they would be on the "right side". Solicitation of members was openly permitted within the Newport plant on company time and the members of the organ-

¹² The bylaws limit membership to employees of the Newport plant and provide that any person, including officers and trustees, who ceases to be an employee of such plant shall be automatically dropped from membership. The bylaws also empower the trustees to enter into agreements with the management without submission to the members.

izing committee were paid by the respondent for the time they lost in forming the Independent Union.

It is clear from the record that not only did the respondent actively assist in the formation of the Independent Union, but that it still dominates that organization. Ralph Foldenauer, a C. I. O. organizer, testified that on one occasion when he had been speaking to E. L. Ross, the Independent Union's financial secretary and treasurer, the latter, noticing Foster approaching, had exclaimed, "Don't let Mr. Foster see you in here talking to me, because I got hell for talking to you guys once before". When Ross was accused of making this statement and of belonging to a company-controlled union at a meeting of an independent union of Armour & Company employees a short time later, he virtually admitted the accusation by replying, "After all, you fellows have a dictator; John L. Lewis dictates to you."

We find that the respondent has dominated and interfered with the formation and administration of Packing House Workers' Union of St. Paul and has contributed support to it; that by the activities above set forth, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. *The discharges*

The respondent has had a system of seniority in effect in its Newport plant for a period of about 16 years. The seniority system has been based upon departmental seniority without regard to plant seniority. Under the system an employee must have worked six months in a particular department before he acquires any seniority rights. Whenever lay-offs have been made, the seniority rules have, except in the case of particularly qualified employees, been strictly observed.

On July 6, 1937, the respondent, as a result of a falling off in its business, laid off approximately 60 employees in its Newport plant. The complaint alleges and the answer denies that three of these employees, Arthur Maurer, Oliver Simpson, and Leonard Weiss, were laid off because of their membership in and activities in behalf of the Industrial Union. We shall take up in order the circumstances surrounding each lay-off.

1. *Arthur Maurer.* With the exception of several temporary lay-offs and of a one-day period in May 1936 when he quit his job, Arthur Maurer was employed by the respondent continuously from November 17, 1931, until July 6, 1937. On the latter date he was working as a loin puller in the pork cutting department and was earning 85½ cents an hour.

Maurer was apparently the key figure in the labor situation at the respondent's plant and the Independent Union sought vigorously to obtain his membership. Although Maurer signed the membership

petition at the Hotel Lowry he was very reluctant to become a member of the Independent Union and did not sign the articles of association until April 27, after he had been told to do so by his straw-boss. That night he was overwhelmingly elected president of the Independent Union at its organization meeting. However, his sympathies were with the Committee for Industrial Organization and at the next meeting of the Independent Union on May 4, he resigned the presidency, stating that he was unable to represent the members in the manner they expected of him and that he did not wish to "double cross" them. A few days later he was questioned by Foster concerning the resignation.

On May 20, 1937, after Maurer had requested and been granted an increase in pay from 74½ to 75 cents an hour, Ed Burns, his department superintendent, called him aside and offered him an extra week's vacation and another increase in pay to 85½ cents an hour if he would stay away from the C. I. O. and pay his dues to the Independent Union. Maurer agreed to do this and was granted both the extra vacation and the increase. He retained his membership in the C. I. O., however, and on July 3, commenced wearing a C. I. O. button. On July 6, he was laid off. Maurer was the highest paid loin puller in the plant.

Maurer's name had appeared twelfth from the top, with seniority dating from October 18, 1932, in a list covering approximately 30 men which had been posted in his department prior to July 6, 1937. On that date a new list was posted in which his name appeared sixth from the bottom, with seniority dating from May 13, 1936. Six men were then laid off in his department, including himself.

Under the seniority rules an employee loses all of his rights when he voluntarily quits his job. Maurer acquired six months' seniority in the pork cutting department on October 18, 1932. However, he had quit his job on May 12, 1936, and been rehired on May 13, 1936.

Maurer contended that his seniority had been restored following his return to work on May 13, 1936. He stated that both Burns, his department superintendent, and Anderson, the employment manager, had informed him that Foster had granted a restoration.

Foster and Burns denied that Maurer's seniority had been returned to him and contended that the revised seniority list of July 6, 1937, was the correct one. Inconsistent with this contention, however, was the fact that Foster had approved Maurer's written application for a second week's vacation which contained the statement, "I started working for the Cudahy Packing Company last starting date which was October 18, 1932. At the present time I am entitled to one week's vacation and I feel that I am entitled to a second week."¹³

¹³ Board Exhibits 6-A and 6-B. An employee is not entitled to two weeks' vacation at the Newport plant until he has worked there for a period of five years.

The record leaves no doubt that Arthur Maurer was laid off on July 6, 1937, because of his membership in the Industrial Union, and we so find. 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 the rights guaranteed in Section 7 of the Act.

Maurer has not earned any money since the date of his lay-off.

2. *Oliver Simpson.* Oliver Simpson was first employed by the respondent on October 24, 1935, and, with the exception of a few brief lay-offs, continued working at the Newport plant until his lay-off on July 6, 1937. He had acquired seniority rights in the beef killing department on February 24, 1936. For the last three months before his lay-off, however, he had worked in the sausage department, a department in which he had no seniority. Simpson was the only worker in his department to commence wearing a C. I. O. button on July 3.

Since Simpson had been employed in the sausage department for less than six months at the time of his lay-off, he had not acquired any seniority in that department. However, he contends that the transfer of Gerald P. Lasky, another worker in the sausage department, to the beef killing department on July 13, indicates that the reason for his lay-off was his union membership. Lasky had about three weeks' less seniority in the beef killing department than Simpson.

On July 19, Simpson and Ralph Foldenauer, a C. I. O. organizer, had visited Foster in an attempt to secure reemployment for the former. After checking the employment records, Foster agreed with them that Simpson had more seniority than Lasky in the beef killing department and was entitled to the latter's job. He told Simpson to report to Anderson on the following morning.

When Simpson arrived at the plant on July 20, he was informed that no work was available for either Lasky or him in the beef killing department. Lasky, however, had been transferred again, this time to the beef cutting department.

Neither Lasky nor Simpson had acquired any rights in the beef cutting department. Lasky did have approximately three weeks' general plant seniority over Simpson, however. Upon the evidence in this case, we cannot sustain the charge that Simpson's lay-off was due to his membership in the Industrial Union.

3. *Leonard Weiss.* Leonard Weiss commenced working for the respondent on September 28, 1932. He acquired seniority as a "beef boner" and on July 6, 1937, he was fifth in seniority in a group of "six beef boners". On that date he was laid off in accordance with the seniority list. Weiss was a member of the Industrial Union.

Weiss was reemployed on July 14, 1937, immediately after he joined the Independent Union. He contends that such reemployment indicates that his lay-off had been due to his membership in the Industrial Union. Weiss' reinstatement was in accordance with the seniority list, however.

Upon the evidence, we cannot find that Weiss was laid off because of his membership in the Industrial Union.

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 tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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

CONCLUSIONS OF LAW

1. Packinghouse Workers Local Industrial Union No. 62 is a labor organization, within the meaning of Section 2 (5) of the Act.

2. Packing House Workers' Union of St. Paul 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 Packing House Workers' Union of St. Paul and by contributing support to it, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

4. The respondent, by discriminating in regard to the hire and tenure of employment of Arthur Maurer, 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.

5. 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 (1) of the Act.

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

7. The respondent, by laying off Oliver Simpson and Leonard Weiss, has not engaged in unfair labor practices, within the meaning of Section 8 (1) and (3) of the 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, The Cudahy Packing Company, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner dominating and interfering with the administration of Packing House Workers' Union of St. Paul or any other labor organization of its employees, or contributing financial or other support to Packing House Workers' Union of St. Paul or any other labor organization of its employees;

(b) Giving effect to its contract with Packing House Workers' Union of St. Paul;

(c) Discouraging membership in Packinghouse Workers Local Industrial Union No. 62 or any other labor organization of its employees by discriminating in regard to hire or tenure of employment or any term or condition of employment;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or 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.

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

(a) Withdraw all recognition from Packing House Workers' Union of St. Paul as 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 organization as such representative;

(b) Offer to Arthur Maurer immediate and full reinstatement to his former position, without prejudice to his seniority and other rights and privileges;

(c) Make whole said Arthur Maurer for any loss of pay he has suffered by reason of his lay-off by payment to him of a sum of money equal to that which he would have earned as wages during the period from the date of his lay-off to the date of such offer of reinstatement, less the amount he has earned during such period;

(d) Post immediately in conspicuous places throughout its plant in Newport, Minnesota, notices to its employees stating that the respondent will cease and desist in the manner aforesaid;

(e) Maintain such notices for a period of at least thirty (30) consecutive days from the date of posting;

(f) Notify the Regional Director for the Eighteenth 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 the allegations of the complaint be, and they hereby are, dismissed with respect to Oliver Simpson and Leonard Weiss.