

In the Matter of *WHITEROCK QUARRIES, INC. and LIMESTONE WORKERS*
UNION No. 19450

Case No. C-205.—Decided February 24, 1938

Limestone Quarrying Industry—Interference, Restraint, and Coercion: expressed opposition to labor organization; questioning employees regarding union affiliation and activity:—*Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* awarded, excluding period during which case was closed because of failure to take exceptions to Intermediate Report dismissing complaint.

Mr. Emmett P. Delaney, for the Board.

Mr. John B. Love, of Bellefonte, Pa., for the respondent.

Mr. Joseph B. Robison, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On April 8, 1936, Limestone Workers Union No. 19450, herein called the Union, filed a charge with the Regional Director for the Sixth Region (Pittsburgh, Pennsylvania) alleging that Whiterock Quarries, Inc., herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On May 4, 1936, the National Labor Relations Board, herein called the Board, by the Regional Director, duly issued and served upon the respondent and the Union a complaint and notice of hearing. The complaint alleged that the respondent had engaged and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act.

With regard to the unfair labor practices, the complaint, as amended at the hearing, alleged in substance that the respondent, during September 1935, discharged and refused to reinstate 23 of its employees for the reason that they assisted the Union and engaged in concerted activities with other employees for the purposes of collective bargaining; that by such action the respondent discriminated and is discriminating against such employees with regard to hire and tenure

of employment and thereby discouraged and is discouraging membership in the Union; and that the respondent by such action interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On May 9, 1936, the respondent filed an answer and objection, in which it reserved the right to answer the allegations of the complaint, and objected to the proceeding on the ground that the allegations of the complaint did not bring the respondent within the jurisdiction of the Board.

Pursuant to the notice, a hearing was held in Bellefonte, Pennsylvania, on May 15 and 16, 1936, before David Harrison, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the commencement of the hearing, counsel for the respondent moved to dismiss the complaint on the basis of its answer and objection theretofore filed. The motion was denied. Thereafter the respondent took no further part in the hearing. During the course of the hearing, counsel for the Board made several motions to amend the complaint in various particulars, including the addition of the name of Ben Confer to the list of discharged employees. The motions were granted. On May 16, 1936, the hearing was adjourned to June 6, 1936, for the presentation of further testimony on behalf of the Board. Following the decision of the Supreme Court of the United States in *Carter v. Carter Coal Co.*, 298 U. S. 238, on May 18, 1936, the further hearing was canceled by notice duly served upon the parties.

Thereafter on June 1, 1936, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act, by the discharge of and refusal to reinstate 18 of its employees; but that such unfair labor practices were not unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act. He therefore recommended that the complaint be dismissed.

On July 9, 1937, after the decision of the Supreme Court in *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301 U. S. 1, the Union moved to reopen the proceedings in this case and to be permitted to file exceptions to the Intermediate Report. After considering this motion and the answer of the respondent thereto, which was filed on July 14, 1937, the Board, on July 28, 1937, issued an order reopening the case and permitting the filing

of exceptions to the Intermediate Report by the Union. Such exceptions were duly filed on August 5, 1937.

The Board has reviewed and hereby affirms the rulings of the Trial Examiner on the motions made at the hearing. The Board has considered, and it hereby sustains the exceptions to the Intermediate Report.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent was incorporated in Pennsylvania on September 20, 1905. Its principal office is located in Bellefonte, Pennsylvania, and it operates six quarries in the vicinity of Bellefonte for the production and distribution of various kinds of lime, building and furnace stone, and allied products. It normally employs from 110 to 115 men, exclusive of clerical employees. It maintains a railroad siding which connects with the Pennsylvania Railroad.

A prospectus issued by the respondent during 1935, in connection with the sale of an issue of bonds,¹ states that the appraisal value of the respondent's property is \$936,613.08 and claims a large interstate area as the market for the more important of its products.² In addition, G. E. Hillegas, the freight agent of the Pennsylvania Railroad at the station from which the respondent's products are shipped, testified as to the amount of the respondent's products which are shipped on that railroad to points within and without the

¹ Board's Exhibit No 3.

² The prospectus states the following with regard to the markets of its various products:

Chemical and Industrial Lime and Spray Lime is marketed from Maine to Virginia and as far west as Michigan

Crushed stone is confined to Pennsylvania.

Furnace Stone is marketed in Tri-State territory of Pennsylvania, West Virginia and Ohio.

Pulverized Limestone is sold in States of Pennsylvania, New York, New Jersey, Delaware, Maryland and West Virginia. Agricultural Hydrated Lime is sold in same area.

Building Stone, at present, is confined largely to local markets

The prospectus also shows that the lime, which, as opposed to the stone, is sold to a greater extent on an interstate scale, constitutes the major portion of the respondent's business. The prospectus states its sales as follows:

	Year 1934	First 6 Months 1935
Stone—Combined Kinds.....	\$88,896 90	\$53,474 43
Lime—Combined Kinds.....	170,426 88	142,681. 07
	259,323 78	196,156. 40

State, during August 1935 and March 1936. The figures given by the witness show that in the first of these months 42 per cent, and in the second, 20 per cent, of the products shipped went to points outside of Pennsylvania.³ Hillegas stated that the figures for August 1935, were average figures for all months but that the percentage of intrastate shipments in March 1936, was unusually high, due to reconstruction work being done after floods which had occurred at this time.

The raw materials used by the respondent consist chiefly of the limestone which is procured from its own quarries. In addition it uses a large amount of coal, which is shipped to it chiefly by truck. Other items, such as shipping materials and machinery, are procured in large part outside of Pennsylvania.

II. THE UNION

Limestone Workers Union No. 19450 is a labor organization, affiliated with the American Federation of Labor, which admits to membership employees in certain quarries, including employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. The organization of the Union

In August 1935, a group of the respondent's employees went to the headquarters of the Union and asked to be permitted to become members. They were given a petition to circulate, whereby the signers stated their desire to join the Union.⁴ This petition was circulated among the respondent's employees during August and

³ Board's Exhibit No 6, a compilation drawn up under the supervision of the freight agent, shows the following:

	Interstate		Intrastate	
	Number of shipments	Pounds	Number of shipments	Pounds
<i>August 1935</i>				
Less than carload lots.....	4	3,191	11	15,075
Carload lots.....	22	9,385,713	49	13,049,026
Total.....	26	9,388,904	60	13,064,101
<i>March 1936</i>				
Less than carload lots.....	8	12,240	4	16,220
Carload Lots.....	28	3,496,000	55	13,857,988
Total.....	36	3,508,240	59	13,874,208

⁴ Board's Exhibit No 5.

September and was eventually returned to the Union with 56 signatures. On September 26, 1935, 37 men, most of whom had signed the petition, were formally initiated into the Union, at a meeting held in the evening of that day.

Some time in September the respondent, by means not disclosed in the record, procured a copy of the Union petition and the names of the men who had signed it. It is significant that the last employee to sign the petition, who kept it for a day without procuring any additional names, did not join the Union, was never discharged by the respondent, and at the time of the hearing in the case had been promoted to the rank of a foreman. At any rate, Ray Noll, the respondent's general manager, on numerous occasions stated to various employees that he knew who had signed the list, and that he even knew the positions of some of the names on the list. A copy of the list was shown to at least one employee by the general manager's mother.

Noll was also kept well-informed of the further activities of the Union. He knew in advance when its meeting was to be held, and knew approximately which of the employees were appointed to the committee which was to deal with him. Moreover, he took pains to let the employees know that he had this knowledge.

The discharges discussed in some detail below took place throughout the month of September, but most of them occurred between September 23 and 27. On the last of these days Noll called a meeting of all the employees, which was attended also by a large number of those who had been discharged. Noll made a long speech, which included several highly uncomplimentary remarks about certain of the more active Union men. He stated that he could not run the quarry if he had to abide by Union rules, and that it would be impossible for the respondent to pay wages every two weeks, as the Union would require. He made clear that he knew which employees had signed the petition and that he intended to dismiss them all. Finally, he stated that those who had signed need not return to work the following Monday. Following this meeting, the Union appears to have abandoned all activity except on behalf of its discharged members.

B. The discriminatory discharges

The complaint, as amended, alleges the discriminatory discharge of 23 employees. Seventeen of these employees testified in detail as to the circumstances of their discharges. It should be noted, however, that the respondent failed to deny in its answer any of the averments of the complaint. It thereby admitted that all of the employees

named were discharged and that their discharges were for union activity.⁵

All of the men who were discharged during September 1935 had signed the petition or in some other manner indicated sympathy toward the Union. None of them were ever told that their work was unsatisfactory. All were replaced by new men almost immediately.

The respondent's intention to discharge its active union employees on a mass scale can be clearly seen from the facts above described; and can be seen further in the incidents surrounding some of the individual discharges, which will now be considered in chronological order.

Claude McClintic. Claude McClintic was hired by the respondent in April 1935. He signed the petition in August. On September 7, he was told by his foreman that he was no longer needed, and was given his checks for the back pay that was due him. No explanation of his dismissal was ever given him by the foreman or by Noll, whom he saw when he returned to Bellefonte to get his last check.

Milford Herman. Milford Herman worked for the respondent for four years. He signed the petition in August 1935. On September 11 he was given his back-pay checks by his foreman and told he was no longer needed. He went to see Clair Hazel, the superintendent, to discover the reason for his discharge. Hazel laughed, and told him that some of his supposed friends had "cut" his "throat".

Ben Confer. Ben Confer started to work for the respondent in June 1928. He signed the petition in August 1935. On September 17 he was discharged by his foreman, who was unable, however, to state the reason for this action. He went to the superintendent, who told him that he was being discharged because he had made too many complaints about the delay in paying wages, although he was forced to agree that the complaints were justified and that Confer's work was satisfactory.

Charles Clapper. Charles Clapper was hired by the respondent on January 18, 1935. He signed the petition in August. He was dis-

⁵ The respondent's answer contains only three points, which challenge the jurisdiction of the Board, but do not deny any of the allegations of the complaint. The answer was prefaced as follows:

Whiterock Quarries, Inc., reserving unto itself the right to answer the averments of fact contained in a certain Complaint, * * * now makes answer and preliminarily objects thereto, * * *

Article II, Section 10, of National Labor Relations Board Rules and Regulations—Series I, as amended, provides that the respondent shall have the right to answer a complaint within five days, and that, "Any allegation in the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Board." Section 18 provides, "The right to make motions * * * shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the Trial Examiner or the Board." Section 28, after providing for the making of objections with respect to the conduct of the hearing, provides that, "No such objection shall be deemed waived by further participation in the proceeding."

charged on September 23 by his foreman, who referred him to Clair Hazel for the reason. Hazel told him he was being discharged because he was dissatisfied and because he had signed the petition.

Richard Alterio. Richard Alterio worked for the respondent for three or four years. On September 24, 1935, he was asked by Hazel whether he had signed the petition. He replied in the affirmative, and was thereupon told that there was no more work for him.

Gibson Baney. Gibson Baney started to work for the respondent in March 1929. He signed the petition on about September 17, 1935. On September 24 his foreman told him that he had been ordered to discharge him. The previous day, Hazel had asked him why he had signed the petition and had told him that those who had done so were going to be laid off.

John Simpson and Melvin Snare. John Simpson and Melvin Snare both started to work for the respondent in April 1935. The latter was laid off for a two-month period between June and August. On September 24 both were told by their foreman that they were discharged because they had signed the petition. They saw Hazel at the respondent's office. He told them that if they did not draw all the pay that was due them, they might be taken back later. When they went back two weeks later they were told that they could not be rehired, since they had joined the Union.

George Zeleznick. George Zeleznick started to work for the respondent in 1926. He signed the petition on September 15, 1935. On the morning of September 24, upon being asked by the superintendent whether he had signed the petition, he denied that he had done so. That evening he was discharged by his foreman who gave as the reason that he was dissatisfied with his job. The foreman mentioned that he had signed the petition. Zeleznick saw Hazel two weeks later and was told that the respondent "was laying them all off for signing that paper. That's why you got laid off."

John Zeleznick. John Zeleznick worked for the respondent for nine years. He signed the petition in August 1935. On September 24 he was discharged by his foreman for "dissatisfaction on the job and signing the Union paper." Previous to that date he had been accused by Hazel of having signed the petition, but had denied doing so.

William A. Duck. William A. Duck worked for the respondent for two and one-half years. He signed the petition on about September 22, 1935. On September 25, while at the store which is owned and managed by W. H. Noll, father of the respondent's general manager, he was shown his name on a copy of the petition, and told by W. H. Noll that he had as good as lost his job, since all the men who had signed were to be laid off. That night, his foreman told him he had been replaced and that "You know why."

Lester Poorman. Lester Poorman worked for the respondent for five years, during a period of seven years. He signed the petition on August 26, 1935. On September 25 he was asked by Hazel whether he had signed the petition. When he admitted he had, Hazel assured him that he would be laid off. That evening he heard that he had been discharged, but he reported for work the following day, nevertheless. Hazel refused to put him to work, saying that he had orders not to let any of the Union men work.

Boyd J. Rachau. Boyd J. Rachau started to work for the respondent in 1921. He signed the petition late in August or early in September 1935. On September 25 he was called into the office by Ray Noll and discharged. The reason given him was that he was dissatisfied with his working conditions.

Joseph Mango. Joseph Mango worked for the respondent for nine years. He signed the petition on September 18 or 20, 1935. On September 25 Hazel asked him whether his name was on the Union paper. He said it was not, but Hazel assured him it was, and that he had seen it. The following day he was laid off by his foreman, who told him it would only be for a few days, "If you will use your head." However, he was never rehired.

Byron Detwiler. Byron Detwiler worked for the respondent for six weeks. He did not sign the petition, but he became a member of the Union on September 26, 1935. He was discharged the following day. On September 28 Hazel told him that if he procured a statement from the Union to the effect that he had not been associated with it, he could return to work; but he refused to do so.

Lloyd B. Fry. Lloyd B. Fry started to work for the respondent on May 11, 1934. Some time in August 1935 he signed the petition. At the meeting called on September 27 he heard Nolls' announcement that all who had joined the Union need not return for work. Since he had joined the night before, he did not return. He was given his back pay a week later.

John Musser. John Musser started to work for the respondent on May 14, 1935. He signed the petition on about September 1. He was discharged on September 27, and was told at the time that the reason for his discharge was his having signed the petition.

Anthony Alterio, Lewis Dorman, Henry H. Hay, Homer Saxion, Sam Tanallia, and Earl Waite. Six of the men alleged in the complaint to have been discriminatorily discharged did not testify at the hearing. However, as noted above, the failure of the respondent to deny the allegations of the complaint constitutes an admission that, as alleged in the complaint, "The Respondent discharged and refused to reinstate the above-named individuals * * * for the reason that the above-named individuals assisted a labor organization known as Limestone Workers Union No. 19450 and engaged in concerted

activities with other employees at the plant and quarries of the Respondent * * * for the purpose of collective bargaining and other mutual aid and protection." The evidence of the respondent's firm intention to extirpate all signs of Union activity at its quarries, lends added support to the allegations of the complaint. It is not necessary to give in detail the evidence as to these six men which appears in the record.

We find that by discharging the employees named above, who are listed in Appendix A, the respondent has discriminated against its employees with respect to hire and tenure of employment for the purpose of discouraging membership in the Union, and that by such act the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. EFFECT OF 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.

V. THE REMEDY

The employees who were discriminatorily discharged are entitled to reinstatement with back pay. The Intermediate Report in this case, which recommended the dismissal of the complaint, was filed on June 1, 1936. Because of the failure of the Union to file exceptions to the Intermediate Report, the case became closed, and remained so until reopened by an order of the Board on July 28, 1938.⁶ Although the Trial Examiner was mistaken in finding that the respondent's unfair labor practices did not affect commerce, within the meaning of Section 2 (6) and (7) of the Act, the respondent should not be required to grant back pay for the long period during which no action in the case was being taken.⁷ Our order for back pay will therefore be for the period between the dates of the discharges and June 1, 1936, and the period between July 28, 1937, and the respondent's offer of reinstatement.

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

⁶ Article II, Section 36, of National Labor Relations Board Rules and Regulations—Series 1, as amended.

⁷ Cf. *Matter of Cherry Cotton Mills and Local No. 1821, United Textile Workers of America*. 4 N. L. R. B. 731.

CONCLUSIONS OF LAW

1. Limestone Workers Union No. 19450 is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of the employees listed in Appendix A, and thereby discouraging membership in or affiliation with the Union, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. The respondent, by interfering with, restraining, or 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.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) 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, Whiterock Quarries, Inc., 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 purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act;

(b) From discouraging membership in Limestone Workers Union No. 19450 or any other labor organization of its employees by discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire or tenure of employment or any terms or conditions of their employment.

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

(a) Offer to the persons listed in Appendix A immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole the persons listed in Appendix A for any loss of pay they have suffered by the respondent's discriminatory acts, by payment to each of them of a sum of money equal to that which he would normally have earned during the periods from the date of his discharge, as stated in Appendix A, to June 1, 1936, and from

July 28, 1937, to the date of the respondent's offer of reinstatement, less any amount earned by him during said periods, which he would not have earned if working for the respondent;

(c) Post immediately in conspicuous places at or near the quarries which it is operating, and in its office, notices to its employees stating that the respondent will cease and desist as aforesaid;

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

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

APPENDIX A

<i>Employee</i>	<i>Date of Discharge</i>
Anthony Alterio-----	September 26, 1935
Richard Alterio-----	September 24, 1935
Gibson Baney-----	September 24, 1935
Charles Clapper-----	September 23, 1935
Ben Confer-----	September 17, 1935
Byron Detwiler-----	September 27, 1935
Lewis Dorman-----	September 23, 1935
William A. Duck-----	September 25, 1935
Lloyd B. Fry-----	September 27, 1935
Henry H. Hay-----	September 24, 1935
Milford Herman-----	September 11, 1935
Joseph Mango-----	September 26, 1935
Claude McClintic-----	September 7, 1935
John Musser-----	September 27, 1935
Lester Poorman-----	September 25, 1935
Boyd J. Rachau-----	September 25, 1935
Homer Saxion-----	September 25, 1935
John Simpson-----	September 24, 1935
Melvin Snare-----	September 24, 1935
Sam Tenallia-----	September 9, 1935
Earl Waite-----	September 25, 1935
George Zeleznick-----	September 24, 1935
John Zeleznick-----	September 24, 1935