In the Matter of THE HOOVER COMPANY *and* UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, LOCAL NO. 709

Case No. C-374.—Decided April 21, 1938

Vacuum Cleaner Manufacturing Industry—Interference, Restraint, or Coercion: anti-union statements, circulation of among employees; expressed opposition to outside labor organizations; persuading employees to refrain from joining outside union—*Company-Dominated Union:* domination of or interference with formation or administration; active solicitation of members permitted during working hours; disestablished as agency for collective bargaining—*Discrimination:* discharge for supposed union activity—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Harry L. Lodish and *Mr. Max Johnstone*, for the Board.

Black, McCuskey, Ruff & Souers, by *Mr. Homer E. Black* and *Mr. Walter S. Ruff*, of Canton, Ohio, for the respondent.

Mr. Stanley Denlinger, of Akron, Ohio, for the United.

Mr. Paul Gnau, of Canton, Ohio, for the Association.

Mr. Spurgeon Avakian and *Mr. Daniel J. Harrington*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by the United Electrical and Radio Workers of America, Local No. 709, North Canton, Ohio, herein called the United, the National Labor Relations Board, herein called the Board, by James P. Miller, Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated October 4, 1937, and its amended complaint dated October 14, 1937, against The Hoover Company, North Canton, 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, as amended, alleged in substance that the respondent had discouraged its employees from becoming or remaining members of the United; that the respondent had urged, aided, and assisted in the formation and maintenance of a labor organization known as the Hoover Em-

ployees Association, herein referred to as the Association, for the purpose of bargaining collectively with respect to wages, hours, and other conditions of employment; that on or about July 16, 1937, the respondent had discharged Harley Reikowski, a member of the United, and at all times since had refused to reinstate him, for the reason that he had joined and assisted the United and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection; and that prior to May 17, 1937, and at all times since, the respondent had refused to bargain collectively with the United, despite the United's claim that it represented a majority of the respondent's employees.

Copies of the complaint, of the amended complaint, and of notice of hearing were duly served on the respondent, the United, and the Association.

On October 14, 1937, the respondent filed its answer, admitting the discharge of Harley Reikowski, but alleging that the reason therefor was absence from work for 2 days without reporting his absence, in violation of the respondent's factory rules; denying that the respondent had discouraged its employees from becoming or remaining members of the United; and denying that the respondent had urged, aided, and assisted in the formation and maintenance of the Association. The answer also denied that the United, either prior to May 17, 1937, or subsequent thereto, made representations that it represented a majority of the respondent's employees, and alleged that the respondent has always recognized the right of any employee or group of employees to present grievances to the respondent.

On October 8, 1937, Hoover Employees Association filed a motion to intervene and participate in the proceedings. The motion was granted on October 11, 1937, by the Regional Director.

Pursuant to the notice, a hearing on the complaint was held in Canton, Ohio, commencing on October 18, 1937, before George Bokat, the Trial Examiner duly designated by the Board. The Board, the respondent, the United, and the Association 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.

At the commencement of the hearing the attorney for the Board moved to withdraw that portion of the complaint which alleged that the respondent had refused to bargain collectively with the United, in violation of Section 8 (5) of the Act. The motion was granted. The attorney for the Association moved to dismiss that portion of the complaint which related to the respondent's conduct toward the Association on the grounds that the facts recited therein did not constitute an unfair labor practice on the part of the respondent, and that the conclusions contained in the complaint and its

amendment were not supported by the facts alleged therein. This motion was renewed at the conclusion of the Board's case and at the conclusion of the hearing. The motion was denied in each instance. During the course of the hearing the Trial Examiner made several rulings on other motions and on objections to the admission of evidence. The Board has reviewed these rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On January 20, 1938, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act. The respondent and the Association filed exceptions to the Intermediate Report and requested an opportunity to argue the exceptions before the Board. On March 29, 1938, counsel for the respondent and the Association orally argued the exceptions before the Board in Washington, D. C. and submitted briefs in support of their exceptions.

We have fully considered the exceptions to the Intermediate Report and 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 Hoover Company is an Ohio corporation having its principal office and factory in North Canton, Ohio. It is one of the three largest vacuum cleaner manufacturers in the United States, its sales amount to several million dollars annually, and according to its advertisements its product is known in every civilized country. The principal raw materials used by the respondent are aluminum, magnesia, bakelite, rubber products, bag material, and steel. Sixty per cent of the raw materials are purchased outside of Ohio. Almost the entire output of the respondent's factory is sold in Ohio to a Delaware corporation also having the name of "The Hoover Company." The Delaware corporation, a wholly owned subsidiary of the respondent, sells about seventy-five per cent of the respondent's product outside of Ohio.

The respondent has a trade-mark, registered with the United States Patent Office, for use in commerce among the several States.

II. THE ORGANIZATIONS INVOLVED

The United Electrical and Radio Workers of America, Local No. 709, North Canton, Ohio, is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership all production and maintenance employees of the respondent, except em-

ployees in supervisory positions. It was organized in December 1936.

The Hoover Employees Association is a labor organization admitting to membership all employees of the respondent except foremen, assistant foremen, supervisors, and salaried employees. It was organized in April 1937.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint and coercion*

The United began its organizational activities early in December 1936. On December 21, 1936, a few days after the United's activities had commenced, the respondent posted on bulletin boards throughout its factory a letter addressed "To all Hoover Company Employees," which began as follows:

> Hoover Company employees are being solicited to join an outside labor organization with the promise that by so doing outstanding benefits will be obtained.

It then recognized the right of the employees to join any organization of their choice, went on to describe the fairness of the respondent's dealings with its employees in the past, and closed with the following statements:

> It seems in order to suggest that labor organizers are prompted in their efforts by the fees they collect from those who join the organizations they are promoting.
>
> It is well to remember that long drawn out strikes are usually settled on a basis whereby more has been lost by factory employees than is gained through increased pay schemes or improved working conditions.
>
> The Hoover Company has always cherished the splendid personal relationship that has existed between it and its employees and looks with great disfavor upon having this relationship cancelled through such efforts as are now being made by outside labor organizers desiring to step in and serve as Go-Between of the Hoover Company and its employees.
>
> Hoping there may be preserved that friendly and cooperative spirit that has so long existed and asking the active support of all who join us in wishing for its continuation, we remain,
>
> Respectfully,
>
> THE HOOVER COMPANY.

The obvious purpose and effect of this circular letter was to discourage membership in an outside union. By circulating it the respondent interfered with the freedom of organization guaranteed to employees by Section 7 of the Act.

There are other instances of such interference by the respondent. On one occasion, in April 1937, Bosford, a foreman, told Bradley, a member of the United, that as soon as the labor situation in the plant was cleared up, "a lot of you fellows will be looking for jobs."

Though the respondent frequently met with the representatives of the United, its opposition to the United is clearly evident from the facts stated above, as well as from those discussed below in connection with the other alleged violations of the Act. We find that the respondent, by the facts set forth above, has interfered with, restrained, and coerced its employees in the exercise of their right 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.

B. *The Association*

In 1933, pursuant to the National Industrial Recovery Act, the respondent organized the Employees Representation Plan, herein called the Old Plan. All employees were automatically made members, meetings were held on company time and property, and the time spent by the representatives in the work of the Old Plan was charged to a special account, No. 3392, from which the respondent paid the representatives at their usual rates of pay. The plant was divided into ten divisions, with the employees of each division selecting one of their members to act on the representative committee. The representatives chose one of their number as chairman and another as secretary. The meetings of the representatives were usually attended by the respondent's officers, and copies of the minutes were subsequently sent to the respondent.

Following the decisions of the Supreme Court of the United States on April 12, 1937, upholding the National Labor Relations Act, there apparently was some question in the minds of the employee representatives and of the respondent's officers concerning the validity of the Old Plan. On or about April 20, 1937, one of the Old Plan representatives, Wayne Douglas, upon being asked to join the United, replied that there was "something in the wind," and then stated that the management had asked the Old Plan representatives to form a new union. On April 21 and 22, 1937, the Old Plan representatives flooded the plant with mimeographed circulars announcing plans for the formation of a Hoover Employees Organization, provided a majority of the employees signed the attached applications for membership. These were circulated during working hours, on company time, in the presence of foremen, and the time spent by the representatives was charged to account No. 3392 and paid for by the respondent. This account No. 3392 was a separate account of

the respondent, kept solely for the purpose of defraying the expenses of and payment for time spent to employee representatives of the Old Plan. The respondent's foremen read the applications, but made no attempt to halt their circulation; nor was any move made at this time by the respondent's officers, despite their knowledge that the plant was being flooded with the circulars.

Horton, the chairman of the Old Plan, testified that 777 signed application blanks were collected by representatives from among the approximately 1,500 employees of the respondent. A mass meeting of the employees was called by Horton for Monday night, April 26, 1937, in the North Canton Community Building. Post cards previously mailed to the employees were required for admission. It is not shown to how many employees such post cards had been mailed, but between 450 and 600 employees attended the meeting. At this meeting, at which Horton presided, the Association was formally organized and officers were elected. Horton, chairman of the Old Plan, was elected president, and Humbert, secretary of the Old Plan, was elected secretary. Other officers were a treasurer and one representative from each of the ten divisions of the factory. Of the 13 officers of the Association, nine had been representatives under the Old Plan.

The first meeting of the Association's officers was held on April 28, 1937, at which time a constitution was discussed. On the same date Humbert wrote a letter to the respondent advising it of the formation of the Association. It is the contention of the respondent and the Association that prior to this letter not one word was ever uttered by the representatives to the respondent's officers, or by the respondent's officers to the representatives, concerning the formation of a new union. The letter, however, states, in part:

> . . . we are asking for a meeting with the management to discuss our organization *further*. . . . [Italics supplied]

The inference to be drawn from the use of the word "further" is that prior discussions with the management had occurred. This inference is strengthened by the facts set forth below.

On April 23, 1937, the respondent gave oral notice to the Old Plan representatives, and on April 29, 1937, posted notices throughout its factory, that the respondent would no longer pay the representatives for time spent on representative work. The daily time cards show, however, that some of the representatives continued to charge a substantial number of hours to account No. 3392 between April 23 and May 21, 1937. The representatives could not remember at the hearing what they did during such hours, and had neither minutes nor personal recollections of meetings on most of the dates involved. They thought that such time must have been spent on unfinished business of the Old Plan, but could not give any description of

the unfinished business except to say that it must have involved canteen service, a baseball team, time and a half for overtime, and revision of the death-benefit laws. The respondent's officers were likewise unable to provide much illumination as to what unfinished business of the Old Plan remained after April 23, 1937. It is significant that the time cards charging time to account No. 3392 were approved daily by the foremen without any attempt to discover whether the time had been so charged in violation of the respondent's notices of April 23 and April 29, 1937.

Since Horton and Humbert, the leaders in the formation of the Association, were responsible for almost the entire time charged to account No. 3392 between April 23 and April 30, it is not likely that such time was spent in meetings of the representatives of the Old Plan. It is more probable that Horton and Humbert spent this time in making plans for the Association. The letter of April 28 which is quoted in part above indicates that some of the plans were discussed with the respondent's officers.

Undisputed facts are that the Association was formed by the representatives of the unlawful, company-dominated Old Plan, and that the organizational drive of the Association occurred on the respondent's property, during working hours, with the knowledge and tacit consent of the respondent's foremen and executive officers. In addition, though the evidence is conflicting, the most reasonable inference from the entire record is that the organizational plans of the Association were discussed with the respondent's officers, and that the respondent paid Horton and Humbert after the notices of April 23 and 29, for time spent on Association work.

Subsequent to its formation the Association engaged counsel and conducted negotiations with the respondent. On May 14, 1937, the Association presented the respondent with an affidavit that it represented 882 of the respondent's employees and asked for recognition. On May 17, 1937, the respondent posted notices throughout the plant stating that the Association had been recognized as the bargaining agent for its members and all others wishing to be represented by it.

On June 1, 1937, the Association presented a proposed contract which embodied the existing working conditions in the respondent's factory, except that it made a few minor changes and recognized the Association as the exclusive bargaining agent for all the employees. The respondent refused to accept the contract because of the exclusive bargaining provision. From that time until the hearing the Association has been considered the bargaining agent only for its members and others wishing to be represented by it.

We find that the respondent, by the acts set forth above, has domi nated and interfered with the formation and administration of the Association, and has contributed support to it. We find that the

respondent, by the acts set forth above, has interfered with, restrained, and coerced its employees in the exercise of the right 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 and other mutual aid and protection as guaranteed in Section 7 of the Act.

C. *The discharge of Reikowski*

Harley Reikowski was first employed by the respondent on August 1, 1936, and performed general maintenance work. The respondent's rules provided that no seniority rights were acquired until after a year's employment, and that 2 days' absence from work without reporting rendered an employee subject to dismissal.

On Sunday night, July 11, 1937, Reikowski and three companions were riding in an automobile in Massillon, where there were current labor difficulties at a plant of the Republic Steel Company. While driving near the Republic plant they were arrested. They were held in jail until Tuesday night, July 13, when they were released without any charges having been filed against them. On both days of his incarceration Reikowski requested the use of a telephone, but without success. The news of the arrest of the four men was reported in the Canton "Repository" on Monday, July 12, 1937. On the following day, Tuesday, the respondent's personnel manager, Highfield Johnson, wrote a memorandum to F. G. Hoover, the respondent's vice president, attaching a copy of the Canton "Repository" and stating:

> Note Monday evening's Repository, July 12th, which lists Harley Reikowski being arrested on Sunday night at Massillon during the disturbance at the Republic Steel Plant. . . .
>
> He is held at the Canton police station for further hearing from the Massillon Police Department. It is the writer's recommendation that at the end of his three days absence that we remove him from our pay-roll.

On Wednesday, July 14, Reikowski telephoned the respondent's employment office and was told to report to Johnson the next day. Reikowski reported Thursday but, because of Johnson's absence, was told to return Friday. On Friday Johnson told him that he had been replaced by an employee named John Lux with 15 years of seniority who, unless given Reikowski's job, would have had to be discharged because of lack of work in the department in which Lux had been working. However, the respondent did not show that there was an actual shortage of work in the department in which Lux had been working or that Lux could not have been placed elsewhere. The respondent, likewise, failed to show that Lux was actually placed on Reikowski's job. Reikowski stated then, and again on the follow-

ing Monday when he received his last pay check, that he would like to be hired at some subsequent date, but he was never recalled by the respondent even though several maintenance men were hired after that time. He has earned about $35 or $40 since July 19, 1937.

Reikowski had joined the United in June 1937 but had never been very active, and Johnson denies ever having known of such membership. It is apparent, however, from the letter written by Johnson to F. G. Hoover, that the reason for the discharge was Johnson's belief that Reikowski was engaging in union activities.

Johnson's testimony at the hearing, that the sole reason for Reikowski's discharge was to make way for Lux, was discredited by his subsequent remarks. He admitted that he had checked the names of the three men arrested with Reikowski, to see if they were employees of the respondent. When asked why he had written to F. G. Hoover recommending Reikowski's discharge, he replied that in the past some men who had been dismissed had secured a reinstatement by appealing to F. G. Hoover, and added:

> I wrote that letter to Mr. Hoover to acquaint him with the condition under which one of our employees of the Hoover Company had been detained or had been picked up in Massillon on that night, that Sunday night, July 11th. For his information as well as the other executives.

It is singular that Johnson's alleged reason was not mentioned in this letter, which admittedly was written to acquaint his superiors with the circumstances attending Reikowski's discharge.

We find that the respondent, in discharging Harley Reikowski, has discriminated against him in regard to hire and tenure of employment because of his supposed union activities and has thereby discouraged membership in a labor organization.

We find that the respondent, by the acts set forth above, has interfered with, restrained, and coerced its employees in the exercise of the right 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 and other mutual aid and protection as guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that 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.

The Remedy

In addition to ordering the respondent to cease and desist from the unfair labor practices described above, we shall require the respondent to offer reinstatement to Harley Reikowski and to pay him for his loss of wages since his discharge on July 19, 1937. We shall also require the respondent to withdraw all recognition from the Association and to completely disestablish said Association as the representative of any of the employees.

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

Conclusions of Law

1. United Electrical and Radio Workers of America, Local No. 709, and Hoover Employees Association are labor organizations within the meaning of Section 2 (5) of the Act.

2. The respondent, by dominating and interfering with the formation and administration of Hoover Employees Association, 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.

3. The respondent, by discriminating in regard to the hire and tenure of employment of Harley Reikowski, thereby discouraging membership in labor organizations, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

4. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the right 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, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

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

ORDER

On 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 Hoover Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Hoover Employees Association or any other labor organization of its em-

ployees, and from contributing support to Hoover Employees Association or any other labor organization of its employees;

(b) Discouraging membership in United Electrical and Radio Workers of America, Local No. 709, North Canton, Ohio, or any other labor organization, by discharging, threatening to discharge, or refusing to reinstate any of its employees, or discriminating in any other manner against them in regard to hire or tenure of employment;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right 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.

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

(a) Offer to Harley Reikowski immediate and full reinstatement to his former position without prejudice to his seniority and other rights and privileges;

(b) Make whole Harley Reikowski for any loss of pay he has suffered by reason of his discharge, by payment to him of a sum of money equal to that which he would normally have earned as wages during the period from July 19, 1937, to the time of such offer of reinstatement, less any amount earned by him during such period;

(c) Withdraw all recognition from Hoover Employees Association as 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 conditions of work, and completely disestablish Hoover Employees Association as such representative;

(d) Post immediately notices to its employees in conspicuous places throughout its plant in North Canton, Ohio, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating (1) that the respondent will cease and desist in the manner aforesaid, and (2) that the respondent withdraws all recognition from Hoover Employees Association as 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 conditions of work, and completely disestablishes Hoover Employees Association as such representative;

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