

In the Matter of DUNBAR GLASS CORPORATION *and* COMMITTEE FOR  
INDUSTRIAL ORGANIZATION

*Case No. C-352.—Decided April 23, 1938*

*Glass Manufacturing Industry—Interference, Restraint, or Coercion:* expressed opposition to labor organization; threats of retaliatory action; anti-union statements; threat to close plant unless organization cease—*Discrimination:* discharge of employees for union membership and activity—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. Albert Ornstein*, for the Board.

*Mr. John V. Ray*, of Charleston, W. Va., for the respondent.

*Mr. Herbert Fuchs*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon amended charges duly filed by the Committee for Industrial Organization, herein called the C. I. O., the National Labor Relations Board, herein called the Board, by Philip G. Phillips, Regional Director for the Ninth Region (Cincinnati, Ohio), issued its complaint dated November 9, 1937, against Dunbar Glass Corporation, Dunbar, West Virginia, 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) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

The complaint and accompanying notice of hearing were duly served upon the respondent and the C. I. O. The complaint alleged, in substance, that the respondent had discharged two of its employees, William Basil Spradling<sup>1</sup> and Herold Preston Mains, because they had joined and assisted the C. I. O., and that by these discharges and by other acts the respondent had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. The respondent filed an answer denying the unfair labor practices charged.

<sup>1</sup> Referred to in the complaint as Basil Spradling.

Pursuant to the notice, a hearing was held at Charleston, West Virginia, on November 18, 19, 20, and 22, 1937, before Lawrence J. Kusters, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

On January 7, 1938, the Trial Examiner filed his Intermediate Report, in which he found that the respondent had engaged in 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, and recommended that the respondent cease and desist from its unfair labor practices, reinstate with back pay the two individuals named in the complaint as having been discriminatorily discharged, and take certain other action to remedy the situation brought about by the unfair labor practices. On January 18, 1938, the respondent filed exceptions to the findings and recommendations of the Intermediate Report.

Pursuant to notice, a hearing for the purpose of oral argument was held before the Board in Washington, D. C., on January 27, 1938. The respondent was represented by counsel, participated in the argument, and filed a brief.

The Board has fully considered the exceptions to the Intermediate Report, and, in so far as they are inconsistent with the findings, conclusions, and order set forth below, finds no merit in them. The Board also has reviewed the rulings of the Trial Examiner on motions and on objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

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

#### FINDINGS OF FACT.

##### I. THE BUSINESS OF THE RESPONDENT

The respondent is a West Virginia corporation having its manufacturing plant and principal office in Dunbar, West Virginia. It is engaged in the manufacture and sale of pressed and blown glassware.

The principal raw materials used by the respondent in manufacture are sand, lime, soda ash, feldspar, and borax. It also purchases corrugated strawboard boxes in which the products of its manufacture are packed for shipment. The raw materials purchased by the respondent cost approximately \$120,000 annually. About 90 per cent of such raw materials are shipped to the respondent's plant by railroad from points outside the State of West Virginia.

The principal products of the respondent's plant are lamp chimneys, tumblers, vases, jugs, pitchers, cocktail shakers, and glass shades for

lighting fixtures. Sales of such products aggregate approximately \$660,000 annually. About 90 per cent of the products sold are shipped from the respondent's plant by railroad to points outside the State of West Virginia.

The respondent's plant employs 454 men, of whom 29 are in supervisory or clerical capacities. In addition, the respondent maintains sales offices and agents in New York City and Chicago, Illinois, and employs from 30 to 35 salesmen, most of whom work on a commission basis, to solicit orders throughout the United States.

## II. THE UNION

The Committee for Industrial Organization is a labor organization, national in scope, admitting to membership all employees of the respondent except those in supervisory or clerical capacities.<sup>2</sup>

## III. THE UNFAIR LABOR PRACTICES

### A. *Background of the unfair labor practices*

The first instance which the record affords of concerted action on the part of the respondent's employees occurred early in 1934 when a petition addressed to the National Recovery Administration and requesting enforcement of the wage provisions of a code issued by that agency for the glass manufacturing industry was circulated among and signed by employees of the plant and sent to the Administrator in Washington. Some time later, the respondent put the wage provisions of the code into effect. In March or April of the same year, the American Flint Glass Workers Union, a labor organization affiliated with the American Federation of Labor, started to organize the employees at the plant. Within a short time this organization attained a 90-per cent membership among the plant workers, and requested the management to bargain with it as the representative of the respondent's employees. The management refused. Very shortly thereafter, the respondent shut its plant for a week. When the plant reopened, several employees were denied admittance and remained locked out for 6 months. The lock-out destroyed the organization of the American Flint Glass Workers Union among the respondent's employees. Spradling and Mains, the two employees named in the complaint, actively participated, as hereinafter set forth, in these early organizational efforts.

Although these events, occurring before the effective date of the Act, afford no basis for a charge of unfair labor practices thereunder,

<sup>2</sup>No local branch or affiliate of the national organization having been established for or available to employees of the respondent who wished to become members, some of them applied for membership directly in the C. I. O., and were accepted on behalf of that organization by the West Virginia Industrial Union Council, a State labor organization affiliated with the C. I. O., and composed of local units in the State of West Virginia.

they properly may be considered<sup>3</sup> as tending to explain the hostility of the respondent which later was manifested towards the self-organization of its employees and its treatment of Spradling and Mains.

*B. Interference, restraint, and coercion*

The C. I. O. began to organize the respondent's employees in April 1937. On a number of occasions both before and after the advent of the C. I. O., Thomas Saunders, the general superintendent of the plant, expressed interest in, and hostility toward, organization of the respondent's employees, and threatened to close the plant if a labor organization gained a foothold. Several witnesses called by the Board testified to that effect.

Elza Miller, a former employee and a member of the American Flint Glass Workers Union, testified that in January 1937, while still working at the plant, he had a conversation with Saunders who asked him what an officer of the American Federation of Labor affiliate was doing in the locality. When Miller pleaded ignorance, Saunders replied, "Well, I know what he is here for."

Carl M. Gabbert, 10 years in the respondent's employ, testified that he was one of a committee of workers who, in March 1937, asked Saunders for a wage increase. Saunders refused the request, saying, "If you have all got organization in your mind, you might as well get it out. . . . We will not run under organization, . . . By God, we don't want nobody from Pittsburgh coming down here and telling us how to run it."

The witness Miller told of another conversation in April 1937 in the course of which Saunders said, "The union principles are fine, but we don't want any union in our plant," and added that if an organization did come, the plant would be unable to operate and a number of people would be out of work.

Mack Huling Spradling, a brother of one of the men alleged in the complaint to have been discriminatorily discharged, and an employee at the plant for 17 years, related that early in May 1937 Saunders sent for him and said, "I understand that you are quite interested in an organization or union." Receiving an affirmative reply, Saunders is alleged to have continued, "Why do you want a union here? . . . It ain't worth a damn to none of us. . . . Do you know what the other one happened to here? . . . Well it is going to be the same thing again. . . . We can't run under an organization here. We will shut her down before we will. . . . You don't have to belong to an organization to work here, why do you want to fool with it." Mack Spradling testified further that Saunders warned him he would lose his job if he persisted in "fooling around," and

<sup>3</sup> *Jeffery-Dewitt Insulator Co v National Labor Relations Board*, 301 U S 731

urged him to tell other employees whom he heard talking about the union not to fool with it.

William Herman Vornbrock, an employee of the respondent for 12 years, testified that in May 1937 Saunders said he was depending on Vornbrock and other employees to "work against the C. I. O."

The witness Gabbert related the substance of a conversation overheard by him in July 1937 between Saunders and another employee, as follows:

Q. What did you overhear of this conversation?

A. I was standing there pretty close to the water fountain, and Kessel, he spoke up to Mr. Saunders and said, "Dave, is the tank going down Saturday?" And he said, "Who the hell has been talking to you." He went on, "We are not going to shut down for repairs to July 26 to 28." That is what I heard. They went ahead and talked. Saunders said, "We are not ready to shut down, but we are ready to shut down at ten minutes notice if the C. I. O. comes in." He whirled on me. . . . He went ahead and talked a little more. "We are going to shut down for repair, but if the C. I. O. still wants to come in, we are ready to turn the fire out in ten minutes notice."

· Saunders admitted the occurrence of each of the conversations related by the witnesses for the Board, but denied the compromising utterances attributed to him in that connection. Upon all the evidence, we affirm the conclusion of the Trial Examiner in his Intermediate Report that the conversations took place as testified by Miller, Gabbert, Mack Spradling, and Vornbrock. Saunders' disparaging remarks concerning the C. I. O., his attempts to persuade employees to shun the organization, and his threats to close the plant should the C. I. O. succeed in its organizing drive were all calculated to hamper the self-organization of the respondent's employees. We find that the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

### C. *The discriminatory discharges*

*William Basil Spradling* and *Herold Preston Mains* were discharged from the respondent's employ on June 23, 1937. Spradling had worked at the plant for 15 years, and Mains for 6 years. Spradling helped circulate the petition sent to the National Recovery Administration in 1934, and he and Mains signed it. In the organizing drive of the American Flint Glass Workers Union, Spradling took an active part and served as secretary-treasurer of the semi-skilled division of that organization at the plant. Both men were locked out by the respondent after the unsuccessful attempt of the American Federation of Labor affiliate to bargain with the management in 1934.

Spradling and Mains joined the C. I. O. on April 16, 1937, became active in its behalf, attended meetings, and induced others to join. Spradling testified that he was in charge of organizational work among the plant employees, and that he and a few others, including Mains, had signed up about 75 members.

The record leaves no doubt that Saunders kept himself informed of the activities of the respondent's employees on behalf of the C. I. O. Vornbrock testified, and Saunders admitted, that in May 1937 Saunders asked Vornbrock whether Spradling was a member of the C. I. O. Spradling testified that on May 13, in the plant, Saunders stopped him, and that the following conversation ensued:

He said, "What in the hell are you and your buddies going to do, shut us down again?" I asked him what he meant, and he said, "This damn C. I. O." I asked who told him I belonged to the C. I. O. He said, "I have an idea you are one of the first four". . . . He said, "I am not operating under a union of any kind. Before we will operate under it, we will turn the fires out. For my part, I am ready to turn it out now." He said, "I can get a job anywhere, and you can go down and tell them damn stinking sons of bitches what I said if you want to." He said they knew it anyway . . . when I left him he said, "Remember what I am telling you, and if you don't cease you are going to lose your job."

On the same occasion, Saunders said, according to Spradling, "If you don't belong, what were you doing down in the meeting the other night, throwing the man out of the meeting?"

Saunders' version of this conversation was that he had merely asked Spradling to cease union activities during working hours. He testified that some employees had complained to him that Spradling had used "language" and threatened them. He volunteered the further information, however, that on the occasion in question he asked Spradling "if he didn't think his promise of sixty-five cents an hour to the unskilled labor in the plant wasn't a little high. . . ."

Spradling and Mains worked as "cracking off and carrying in" boys on one of the automatic blowing machines. The operation of a blowing machine requires a full crew of six men, consisting of one feeder, three gatherers, and two cracking off and carrying in boys. The respondent's practice is to operate its machines over three 8-hour shifts daily: from midnight to 8 a. m.; from 8 a. m. to 4 p. m.; and from 4 p. m. to midnight. Every Monday, each crew of six transfers to the shift preceding the one it has just worked.

Spradling and Mains had worked together in the same crew since 1934. In addition to their work together and their joint union activities, the two men were close personal friends.

The week of Monday, June 21, 1937, the crew of which Spradling and Mains were members was scheduled to work the 4 p. m. to midnight shift. After working as scheduled on Monday, the two men reported for work shortly before 4 p. m. on Tuesday, the 22nd. One of the gatherers was absent. The remaining five members of the crew waited for nearly an hour, but no substitute gatherer was found and they were dismissed. Before Mains left the plant, an employee named Casto told him he was wanted to work the midnight shift. Mains refused. Casto reported his refusal to Nichols, the day foreman. A few minutes later, Nichols instructed Casto to ask Spradling to report for the midnight shift. Spradling already had gone home, and Casto went there to deliver his message. He found Mains with Spradling. Upon being told to report for work at midnight, Spradling replied that he had piles and did not feel like working, especially as he would have to work the next day on his regular shift. Neither Spradling nor Mains returned for the midnight shift. The next morning, Nichols reported their refusal to work to Saunders. When Spradling arrived at the plant on the 23rd, he was sent to Saunders who asked why he had refused to report for the midnight shift. Spradling's reply that he had been unable to report did not satisfy Saunders. He discharged Spradling, and said, "Don't go back into the blow room and fool around. Get the hell out of here." When Mains later arrived at work, he was similarly interrogated and discharged.

Since their discharge, Spradling has earned \$9, and Mains \$200. Neither has succeeded in securing regular employment.

The respondent contends that it discharged the two men solely for insubordinate violation of a plant rule in refusing to work the midnight shift on the morning of June 23. It asserts that neither their membership in, nor their organizational work in behalf of the C. I. O., induced or contributed to their loss of employment.

The respondent has issued no printed rules or specific oral instructions for the guidance of its employees. Abney Payne, its vice president and general manager, testified that the employees acquire knowledge of the rules of the plant "by absorption." All witnesses were agreed that, except when the plant is operating on a 7-day week (a situation with which we are not faced in this proceeding), no employee is required to work more than one 8-hour shift in any 24 hours. The respondent's witnesses contended, however, that, within the foregoing limitation, the respondent must be, and is, free to transfer employees from crew to crew and from shift to shift as the exigencies of production demand, and that inasmuch as Spradling and Mains had not worked since Monday, the 21st, either could properly have been required, under this rule, to work on Tuesday at midnight.

At the hearing, Spradling stated that he had piles which prevented him from working, and Mains testified that he had a cold. Both men further testified that they had the privilege, under the rule as they understood it, of refusing to work at midnight because they would be expected to work again with their regular crew on Wednesday at 4 p. m. To this, Saunders, in his testimony, replied that when the men refused it was unlikely that their regular shift would be able to work on the ensuing day, and that, in any event, had the men worked at midnight, they would have been excused from working at 4 p. m.

A number of employees, including Vornbrock, who served as feeder on the crew of which Spradling and Mains were members and who exercised a degree of supervisory authority, testified that the common understanding of regular employees was that the acceptance of work on a shift other than his own did not excuse an employee from reporting for work the next time his shift was scheduled. The respondent had on call a number of "extra" men who worked in the place of absentees and were subject to being required to work at any time. It made a practice of posting the working hours of its various crews of employees. It was testified by several employees, and admitted by Saunders, that refusals to work an extra turn were not infrequent, and had never before been the cause of a discharge or other penalty. Upon all the evidence bearing on custom and usage at the plant, Spradling and Mains were justified in their belief that they had the right to refuse to work out of their regular turn.

Other circumstances negate the respondent's contention that the two men were discharged for insubordination. The request that they work the midnight shift was transmitted to each of them by a fellow employee several hours before midnight. No official or supervisor attempted to persuade them to withdraw their refusal. The respondent's own witnesses testified that it was the policy of the management to transfer a "regular" employee only when it was absolutely necessary. Yet nothing was said to Spradling or Mains by which they could differentiate this request to work from a request to work an extra turn, a type of request which, it was testified, was frequently made and might casually be refused. In each case, Nichols, the day foreman, received the messenger's report of the refusal in silence. He informed the night foreman, Brownlow, that a man was needed for the midnight shift, and went home. Brownlow managed to find an "extra" man to fill the vacancy. Thus, the inconvenience to the respondent was slight.

On the morning of the 23rd, Nichols reported the refusals to Saunders. At the hearing, Nichols admitted that customarily he reported to Saunders only matters of importance, that other men had refused to work an extra shift and he had not reported their

refusals, and that his report on Spradling and Mains had been made without investigation.

Saunders and other witnesses testified that Spradling and Mains had been very satisfactory workers. There is no contention that they were discharged for inefficiency. In the light of their long record of satisfactory service, it is not plausible that they were summarily discharged for once refusing to work out of turn.

One contention of the respondent remains to be considered. On June 29, 1937, Spradling and Mains filed charges with the Board in the present proceeding. On the morning of July 13, the two men met with Payne and Saunders and entered into negotiations looking toward their reinstatement. Spradling testified that when they saw Saunders, he asked them, "If you come back, will you tell the boys it is all your fault and the Labor Board had nothing to do with it?"; that Spradling and Mains would not agree; and that they were told to return at 4 p. m. for Saunders' decision as to whether he would reemploy them. At 4 p. m. the two men met Saunders, and Payne drafted a letter to the Board for the signature of Spradling and Mains. The conference, however, ended inconclusively. When the two men demanded that they be returned to their former positions Payne and Saunders brought the meeting to a close. No other conferences ensued.

The respondent contends that Spradling and Mains were actually rehired during the discussion on the morning of July 13, and that the afternoon conference had for its sole purpose the determination of the shift to which they were to be assigned. Its witnesses stated that Spradling and Mains insisted that they be returned to their former positions *until they were given better ones*, and that the condition implicit in this demand broke up the conference. We are concerned only with whether the men were, in fact, reinstated. After the final conference on July 13, Payne wrote the following letter and sent it to the office of the Regional Director for the Ninth Region:

While Mr. Saunders and I were conferring with Spradling and Mains this afternoon I drew up a letter to your board for their approval and signatures. They asked to take the letter with them and give us their decision tomorrow morning.

We are of the opinion that this letter negates the contention that Spradling and Mains were reinstated in the course of conferences on the 13th of July.

We find that the respondent discharged William Basil Spradling and Herold Preston Mains for the reason that they had joined and assisted the C. I. O., thereby discriminating against its employees in regard to their hire and tenure of employment, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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.

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. The Committee for Industrial Organization 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 William Basil Spradling and Herold Preston Mains, and thereby discouraging membership in the Committee for Industrial Organization, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent 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, Dunbar Glass Corporation, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in the Committee for Industrial Organization, or any other labor organization of its employees, by discharging or refusing to restate any of its employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(b) 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 and 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 William Basil Spradling and Herold Preston Mains immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole William Basil Spradling and Herold Preston Mains for any loss which they may have suffered by reason of the respondent's discrimination in regard to their hire and tenure of employment, by payment to each of them of a sum of money equal to that which he normally would have earned as wages during the period from the date of his discharge to the date of the offer of reinstatement, less any amount which he may have earned during that period;

(c) Post immediately in conspicuous places throughout its plant, and keep posted for a period of at least thirty (30) consecutive days from the date of posting, notices stating that the respondent will cease and desist as aforesaid; and

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