

In the Matter of BENJAMIN LEVINE, DOING BUSINESS UNDER THE NAME AND STYLE OF ESTELLITE FIXTURES COMPANY *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. 438

*Case No. C-258*

*Lighting Equipment Manufacturing Industry—Interference, Restraint, or Coercion—Discrimination:* charges of, in regard to hire and tenure of employment, dismissed, where reinstatement was on basis of seniority—*Remstatement Ordered:* preferential list established, with consent of employer.

## AMENDMENT TO DECISION

AND

## ORDER

*May 14, 1938*

On April 4, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Order<sup>1</sup> in the above-entitled case. The Board found that the respondent, Benjamin Levine, Hoo-sick Falls, New York, had engaged 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, and ordered him to cease and desist from such unfair labor practices and to take certain affirmative action, including reinstatement and backpay for Charles Rugemer, back pay for Raymond Armitage, and the placement of John Griffin upon a preferential list for employment whenever available. The Board predicated its conclusion that the respondent discriminated against Raymond Armitage and Charles Rugemer, Union employees, in respect to hire and tenure of employment, by reinstating, after a lay-off, Ernest Gibbons, Jr., a nonunion worker, upon its finding that Gibbons, Jr., was the youngest in seniority rank among the employees in the department where all three worked.

On April 16, 1938, the respondent filed with the Board a petition, supported by affidavit, to amend the Decision and Order. In the petition the respondent avers that he hired Gibbons, Jr., Armitage, and Rugemer on the following dates, respectively: April 27, 1936, May 14, 1936, and September 28, 1936, and recalled Gibbons, Jr., to

<sup>1</sup> 6 N. L. R. B. 400

work in preference to Armitage and Rugemer in recognition of the higher seniority status of Gibbons, Jr. The petition further shows that the respondent reinstated John Griffin in February 1938 and that Griffin is now in his employ. In its petition the respondent asks that the Decision and Order be modified with respect to the alleged discharges of Raymond Armitage and Charles Rugemer and consents to the entry of an amended order requiring the respondent to place Rugemer on a preferential list for employment whenever work should become available.

Copies of the petition and affidavit, and notice of opportunity to request hearing or oral argument upon the petition were duly served upon the Union. The Union made no application to the Board for further proceedings.

The Board has carefully considered the requests contained in the petition and they are hereby granted. In accordance with said petition and affidavit, the Board hereby amends its Decision of April 4, 1938, by striking all findings of fact or conclusions of law therein in so far as they are inconsistent with the findings of fact and conclusions of law, hereinafter set forth. Upon the basis of the entire record in the case, including the petition and affidavit, the Board makes the following:

#### FINDINGS OF FACT

1. The respondent has not discriminated against his employees in regard to hire and tenure of employment, thereby discouraging their membership in a labor organization.

2. The respondent has not discouraged membership in a labor organization by discriminating in regard to hire and tenure of employment of Raymond Armitage and Charles Rugemer.

Upon the basis of the above findings of fact and the findings set forth in the decision issued April 4, 1938, as amended, the Board makes the following:

#### CONCLUSION OF LAW

The respondent has not discouraged membership in a labor organization by discriminating in regard to hire and tenure of employment of Raymond Armitage and Charles Rugemer, thereby engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

#### AMENDMENT TO ORDER

Upon the basis of the above findings of fact and conclusion of law and the findings of fact and conclusions of law set forth in the decision issued April 4, 1938, as amended, the Board, acting pursuant

to Section 10 (d) of the National Labor Relations Act, hereby amends its order of April 4, 1938, as follows:

1. By striking therefrom paragraphs 1 (a), 2 (a), 2 (b), and 2 (c) of the order and substituting in lieu thereof the words "Place Charles Rugemer on a preferential list to be offered employment as it arises on the basis of seniority by classification before any other persons are hired."

2. By inserting the words "Raymond Armitage and John Griffin" after the words "Arthur Cutler" in the second line of the last paragraph of the order.