

In the Matter of AMERICAN MANUFACTURING COMPANY, INC. and
INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL UNION No. 791

Case No. C-378.—Decided May 23, 1938

Oil Field Supplies Manufacturing Industry—Interference, Restraint, and Coercion: threat to close plant—*Company-Dominated Union:* domination of and interference with formation and administration; support; soliciting membership in; participation of supervisory employees; permitting organizational activities during working hours; special form of remedial order: cease and desist from dominating or interfering with administration of, and contributing support to—*Discrimination:* discharge: for union membership and activity; to discourage membership in union—*Reinstatement Ordered—Back Pay:* awarded to discharged employees.

Mr. E. P. Davis, for the Board.

Mr. D. A. Brillhart, of Dallas, Tex., *Slay & Simon*, by *Mr. H. J. Zimmerman*, of Fort Worth, Tex., and *Mr. Fred H. Barney*, of Fort Worth, Tex., for the respondent.

Mr. A. L. Miner, of Fort Worth, Tex., and *Mr. James F. Leahy*, of Cleburne, Tex., for the Union.

Mr. Sumner Marcus, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by International Association of Machinists, Local Union No. 791, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Sixteenth Region (Fort Worth, Texas), on September 27, 1937, issued and served its complaint and a notice of hearing upon American Manufacturing Company, Inc., Fort Worth, Texas, herein called the respondent, and upon the Union. The complaint alleged that 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 National Labor Relations Act, 49 Stat. 449, herein called the Act. On October 9, 1937, the respondent duly filed its answer, in which it denied all the allegations of the complaint, except those relating to the respondent's business, and in which it set forth as an affirmative defense that John J. Gutoski, with respect to whom the complaint alleged that the respondent had engaged

in unfair labor practices within the meaning of Section 8 (3), of the Act had been discharged because of insubordination. The respondent also filed a motion to continue the date of the hearing until the beginning of November, on the grounds that it was impossible for W. J. Gourley, the president of the respondent, who had left Fort Worth before the hearing was ordered, to return to Fort Worth in time for the hearing, and that his testimony was vitally necessary to the proceedings. The motion was denied. This ruling is hereby affirmed.

Pursuant to the notice of hearing, a hearing was held at Fort Worth, Texas, on October 11, 12, 13, and 14, 1937, before Madison Hill, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Union were represented at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties.

At the beginning of the hearing, the respondent repeated its motion for a continuance on the grounds mentioned above. At this time, counsel for the respondent stated that Gourley knew of the hearing but was in Wyoming on business and pleasure. The Trial Examiner denied this motion. His ruling is hereby affirmed. At the close of the hearing, upon the request of the respondent, the Trial Examiner ordered that the deposition of Gourley should be taken in Fort Worth, Texas, sometime during the week of November 1, 1937, on a date to be agreed upon by counsel.

At the close of the hearing, the Trial Examiner granted a motion made by the attorney for the Board to amend the complaint to conform it with the proof. This ruling is hereby affirmed.

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 December 14, 1937, the Board ordered an extension of the time within which to take Gourley's deposition to December 22, 1937. On December 20, 1937, the time within which to take the deposition was extended to January 3, 1938. On December 31, 1937, a third request for further extension of the time within which to take the deposition was denied.

On January 20, 1938, the Trial Examiner filed and served upon the parties 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), (2), and (3), and Section 2 (6) and (7), of the Act, and in which he recommended that the

respondent cease and desist from such practices, disestablish the Employees' Federation of the American Manufacturing Company of Texas, herein called the Federation, and offer full reinstatement to John J. Gutoski with back pay.

Thereafter, the respondent duly filed exceptions to the Intermediate Report and also requested the Board to reopen the record for the purpose of receiving the testimony of W. J. Gourley and the revised testimony of J. R. Hammond, a witness who testified at the hearing on behalf of the Board. The request that the Board receive Hammond's testimony was based upon an affidavit of Hammond which the respondent annexed to its statement of exceptions. The respondent also filed a brief in support of its various contentions. The Board hereby denies the respondent's request that the Board reopen the record for the purpose of receiving the afore-mentioned evidence. The respondent has had ample opportunity to produce Gourley's testimony. Hammond's revised testimony is, for reasons mentioned below, not material to the issues in the case.

On May 4, 1938, the respondent and the Union were offered an opportunity to apply within 10 days for oral argument or for permission to file briefs but neither so applied.

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 Texas corporation, having its principal office and place of business in Fort Worth, Texas, and warehouses at Hobbs, New Mexico, and at Ellenwood, Kansas. It manufactures oil field supplies, including pumping equipment, pumping jacks, shackle irons, and pumping units. In the manufacture of these articles it uses approximately 40,000 tons of raw material annually, almost all of which is shipped from Pennsylvania, Ohio, Colorado, Alabama, and Illinois. Thirty per cent of the respondent's sales are made in southern and western States, other than Texas.

II. THE ORGANIZATIONS INVOLVED

International Association of Machinists, Local Union No. 791, is a labor organization affiliated with the American Federation of Labor, admitting to its membership production employees of the respondent.

Employees' Federation of the American Manufacturing Company of Texas is an unaffiliated labor organization which admits to membership all the respondent's production employees.

III. THE UNFAIR LABOR PRACTICES

A. *The Federation*

The Union began an organizational drive among the respondent's employees in the latter part of April 1937. A meeting of the Union was held in Fort Worth on May 10, 1937.

At approximately the same time, W. H. Thompson, a salesman employed by the respondent, who was stationed at Houston, Texas, came to Fort Worth with the intention of persuading the respondent's production employees to form an "inside" union patterned along the lines of the Employees' Federation in the Humble Oil & Refining Company, one of Thompson's customers. In order to aid him in accomplishing his purpose, Thompson had acquired several photostatic copies of the constitution of the organization in the Humble plant and of newspaper accounts of an election at which the employees of the Humble Company had voted in favor of this organization. At Thompson's suggestion, these photostatic copies were posted on bulletin boards of the respondent's plant by, among others, Jake Davis, brother of Winfield Davis, one of the respondent's foremen. The photostatic copies remained on the bulletin boards for approximately a week.

On May 17, 1937, and also on an occasion a few days thereafter, meetings were held at the respondent's engineering offices, at which some of the respondent's employees, including several foremen, were present. At both of these meetings Thompson spoke in favor of the formation of an "inside" union. Cummings, who was employed by the respondent on the night shift, testified at the hearing that he had gone to one of these meetings after having been "invited" by Sam Yost, his foreman, to do so. He also testified that he went at approximately 5 o'clock, that he stayed for an hour, and that he did not lose any wages on that account. There was some conflict in the evidence as to when the night shift began work at the respondent's plant at the time of these events. There was no testimony, however, that placed the beginning of the night shift later than 5:30 p. m. The meeting which Cummings attended was therefore held at least partially during working hours of the respondent's plant. No evidence was offered to prove that Yost had not asked Cummings to go to the meeting.

At one of these meetings C. B. Nabors, J. D. Paul, and R. L. Arnold were appointed officers of a temporary committee for the purpose of organizing the Employees' Federation of the American Manufacturing Company of Texas. R. L. Arnold and four other members of the committee were foremen. At Thompson's suggestion, the committee circulated and posted on bulletin boards in the respondent's plant a mimeographed letter in which the members of the committee, whose names appeared on the letter, advised the respondent's em-

ployees to read the constitution and the bylaws of the Federation which were circulated with the letter and to prepare themselves for an election which would be held shortly for the purpose of determining whether the respondent's employees desired the Federation.

Thompson left Fort Worth at about this time, after having placed orders for the printing of not only the constitution of the new organization but also ballots and other material necessary to the organization of the Federation.

On May 20 or 21 the announced election was held. The ballots were distributed during working hours and, after being marked, were placed in a wooden box which stood near the time clock for 24 hours. The manner in which the election took place was thus calculated to give to the respondent's employees the impression that the respondent's officials regarded the new organization favorably. The vote in favor of the Federation was 139 to 18.

The election also provided a ready means whereby the new organization could acquire members, since there was printed at the bottom of each ballot an application for membership in the Federation to be signed by the voter. It is further to be noted that an examination of the marked ballots would have yielded to any one who might be interested the names of the respondent's employees who were in favor of an "inside" union.

After the election, the organizational activities of the Federation continued. By the beginning of June some 55 membership cards had been signed by the respondent's employees in addition to those which had been signed by approximately 140 of the employees as part of the process of casting a vote in the election. Solicitation of membership was carried on during working hours. During this period, a second election was held in the same manner as the first for the purpose of electing departmental representatives to a committee which was to represent the Federation in negotiations with the respondent. Voters were again required to sign their names to the ballots, and the ballots were numbered.

Among those who were active in the successful launching of the Federation after Thompson's departure was Mike Lavy. At one time during this period, Lavy was acting as a clerk whose duties included the making of time and material studies on various jobs and involved his constantly moving around the plant. He helped to supply employees with ballots for the elections. He solicited members in the new organization during working hours. He was elected secretary of the Federation at a meeting of the Federation held on June 20, 1937, attended by approximately 30 persons. It was he who on his own initiative caused the Federation to become dormant after he had been told by a representative of the Board on July 9, 1937, that the

legality of the Federation was in question. In August 1937 Lavy was transferred by the respondent to a position which paid \$15 per month more than his old job had paid, and where it became Lavy's duty to help speed up production. Lavy kept some of the Federation records in his office, which he shared with K. Barney, superintendent of the respondent's plant, and two other clerks.

On June 21 the Federation requested a collective bargaining conference with the respondent. Gourley, on this same day, assented to this request. On July 9 a meeting was held at which the question of a contract was discussed between the respondent's president and representatives of the Federation. The respondent refused to make any concessions. On the same day the respondent's plant was visited by a representative of the Board for the purpose of investigating the charges which have given rise to the present proceedings. As noted above, the Federation has been dormant since July 9.

The respondent's contention is that the Federation was organized solely by employees of the respondent and without the aid or authorization of any of the respondent's officials. It relies on the fact that in the period during which the Federation came into being—that is, from May 15 to June 1—both Gourley, the president, and F. H. Barney, the vice president of the respondent, were out of Fort Worth, and on the fact that F. H. Barney, the only official of the respondent who testified at the hearing, stated that whenever the question of unionism arose he would say: "I cannot dictate to you and do not want to. Now, you boys be just fair in every way. That is all the American Manufacturing Company wants and I will have nothing to do with it." On other occasions, he testified that he had said: "Boys, whatever you do, be fair, but don't ask me to tell you what to do."

The plant's functions did not cease, however, during the absence of Gourley and F. H. Barney. K. Barney, F. H. Barney's son, was superintendent and had full charge of the production aspects of the respondent. Some of the activities of the Federation in the plant, such as the elections, were so overt that he could not have failed to have seen them. Moreover, his subordinates, the foremen in the plant, and Lavy, his office mate, actually participated in the activities of the Federation.

The evidence also fails to support the respondent's contention that it maintained a strictly "hands off" policy in regard to its employees' union activities. The uncontradicted testimony of Napps and Cummings shows that on at least two occasions when Gourley had met with a group of the respondent's employees in order to discuss the question of wages and hours he had gratuitously volunteered the opinion that a person was foolish to pay \$3 a month to a union for

the privilege of working and that if he could not operate his business the way he wanted to he would close the gate and go fishing. On May 6, on one of those occasions, Gourley had also suggested the formation of an independent union. Moreover, there was testimony by two employees who attended the first meetings of the Federation in May that Thompson had expressed the opinion that Gourley would never recognize an outside union. Thompson denied at the hearing that he had made such a statement; but the logic of the situation, as well as the weight of the evidence, leads us to the conclusion that he did make this statement and that this was doubtless an accurate appraisal of Gourley's attitude towards unions.

The Trial Examiner found that Thompson had conceived the plan for introducing the Federation into the respondent's plant in April. This finding was based on the testimony of J. R. Hammond, an employee of the Sam H. Lane Printing Co., which printed the ballots, constitution, and other printed material used by the Federation in its formation and organizational activities. Hammond's testimony was also the basis of the granting of a motion by the Board to amend the complaint to conform to the proof.

After the filing of the Intermediate Report, the respondent submitted a sworn statement by Hammond that his original testimony was in error and that the orders for the printing had been given in May and not in April. It is immaterial whether Thompson placed the printing orders in April or May. The significant fact in Hammond's testimony is that Thompson, who had nothing to gain from the formation of the Federation, placed all the orders for the Federation's printing requirements.

We find that the respondent, by making clear to its employees its hostility toward outside unions, by permitting the Federation to organize during working hours, and by donating the services of one of its salesmen and of several of its supervisory employees, has dominated and interfered with the formation and administration of the Federation and has contributed support to it. By so doing, it has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. The discharge of Gutoski

Prior to June 12, 1937, John J. Gutoski had been employed continuously by the respondent for 3 years. His foreman, Winfield Davis, testified at the hearing that he had been an average worker. The evidence indicates that this was an understatement. Early in May 1937, Gutoski had been granted a 5 cents per hour raise when he requested it. In the middle of May 1937, he was made an assistant

foreman. There is a dispute in the evidence whether this was a change in Gutoski's employment but both F. H. Barney and Davis referred at the hearing to Gutoski's having been "promoted."

Gutoski testified that prior to June 12, 1937, he as well as other employees customarily "laid off" several times a month; that is, if on a given day he felt so inclined he would not go in to work. He also testified that he often left work during the day after securing permission to do so. Davis, his foreman, testified that since he had been granted a raise, Gutoski had left work early three or four times without securing permission to do so. He admitted, however, that he had never said anything about the matter to Gutoski.

On June 12, 1937, Gutoski left his work at noon. The regular quitting hour was later in the afternoon. He testified that before work started on the morning of June 12 he had asked Davis' permission but that Davis had not made any response; that at 11 a. m. he had said to Davis: "Cap, you might as well get off and go with me," and that Davis had replied: "No, I have too much work to do and I had better stay here"; and that at noon, as he was leaving the plant, Davis had said to him "Nobody said you could go yet," and had turned around, meanwhile laughing. Davis testified that when Gutoski asked permission to leave, Davis had told him that he could not because there were three or four men off at the plant and Davis could not spare him; that at noon, as Gutoski was leaving, Davis had said: "John, there hasn't any one told you that you could leave"; and that Gutoski said nothing and left. Davis further testified that he reported this incident to K. Barney and recommended Gutoski's discharge. The Trial Examiner found that Gutoski was not guilty of insubordination, because there was evidence that in the past Davis had often delivered orders in a joking manner to his subordinates and that Gutoski believed that Davis was joking this time.

The evidence clearly indicates, however, that whether or not Gutoski was guilty of insubordination, such insubordination was not the cause of his subsequent discharge. On Monday, June 14, when Gutoski returned to work, he was told by K. Barney that Gourley had ordered him to be laid off for a week. Barney added at this time that Gutoski's work had not been satisfactory and, when asked what he meant by this, he said: "I do not think you have been doing as much work as you could do.". On Tuesday, June 15, when Gutoski asked Gourley why he had been laid off, Gourley replied: "Well, from what I can find out you have been trying to run the plant down there and I have men hired to run things." He said nothing at this time about Gutoski's having disobeyed his superiors or about his work having been unsatisfactory. Gutoski then asked Barney to intercede with Gourley on his behalf, and Barney said he would do

so that night. When Gutoski returned the following morning, June 16, Barney said that he would see Gourley that morning concerning Gutoski's case. While Gutoski was waiting for the result of this interview, Gourley happened along and said that there was no use in Gutoski's hanging around and that he might as well look for another job. According to Gutoski's testimony, this was the first indication that he had that he was discharged and not merely laid off temporarily. Gourley gave no reason at this time for the discharge.

"The respondent, at the hearing, offered no explanation of the actions of Gourley and K. Barney in regard to Gutoski. The only explanation that can be garnered from the evidence is the one which Gutoski testified that Gourley offered to him when Gutoski, on July 9, asked Gourley for another chance. Gourley said at this time: "No, sir. I won't put you back to work. If I put you back, it would just make the Union stronger." Gourley also refused to give Gutoski a letter of recommendation, on the ground that this would be the best piece of evidence Gutoski could get hold of.

That Gutoski was discharged for his union activity becomes even more apparent from his uncontradicted testimony that he had joined the Union in the middle of May; that he had spoken to 40 or 50 of the respondent's employees about the Union; and that he had refused to join the Federation when asked to do so by Grady Carter, a foreman.

A. L. Miner, the local representative of the International Association of Machinists, testified that some of the respondent's employees stated that they would not join the Union since they believed Gutoski was fired because of his activities with respect to the Union and since they feared a similar fate if they joined.

Upon all the evidence, we conclude that the respondent discharged Gutoski for the reason that he had joined and assisted the Union and that it thereby discriminated in regard to the hire and tenure of his employment thereby discouraging membership in a labor organization. By discharging Gutoski, the respondent has interfered with, restrained, and coerced 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.

THE REMEDY

We have found that the respondent has dominated and interfered with the formation and administration of the Federation and has contributed support to it. Under such circumstances, the Federation does not and cannot offer to the respondent's employees the free representation for collective bargaining which the Act requires. We shall therefore order the respondent to refuse to recognize the Federation as a collective bargaining representative.

We have also found that John J. Gutoski was discharged by the respondent for the reason that he joined and assisted the Union. We will order, therefore, that the respondent offer him reinstatement to his former position and pay him the amount of money which he would normally have earned from June 16, 1937, the date of the discharge, to the date that the respondent makes its offer of reinstatement, less any amount earned by him during that period.

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. International Association of Machinists, Local Union No. 791, and Employees' Federation of the American Manufacturing Company of Texas are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By its domination of and interference with the formation and administration of Employees' Federation of the American Manufacturing Company of Texas, and by its contribution of support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By discriminating in regard to the hire and tenure of employment of John J. Gutoski, and thereby discouraging membership in International Association of Machinists, Local Union No. 791, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. 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.

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

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, American Manufacturing Company, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From dominating or interfering with the administration of Employees' Federation of the American Manufacturing Company of Texas, or the formation or administration of any other labor organization of its employees, and from contributing financial or other support to Employees' Federation of the American Manufacturing Company of Texas, or to any other labor organization of its employees;

(b) From discouraging membership in International Association of Machinists, Local Union No. 791, or in any other labor organization of its employees, by discharging its employees or otherwise discriminating in regard to hire or tenure of employment or any term or condition of employment;

(c) From 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 and other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Offer John J. Gutoski immediate and full reinstatement to his former position without prejudice to his seniority and other rights and privileges;

(b) Make whole John J. Gutoski 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 from June 16, 1937, the date of his discharge, to the date of such offer of reinstatement, less the amount which he has earned during such period;

(c) Refuse to recognize Employees' Federation of the American Manufacturing Company of Texas, as a 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, and other conditions of employment;

(d) Immediately post notices in conspicuous places throughout its plant, and maintain such notices for a period of thirty (30) consecutive days, stating that the respondent will cease and desist in the manner aforesaid, and that the respondent refuses to recognize Employees' Federation of the American Manufacturing Company of Texas, as a 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, and other conditions of employment;

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