

In the Matter of HERCULES-CAMPBELL BODY Co., INC. and UNITED
AUTOMOBILE WORKERS OF AMERICA, LOCAL #118

Case No. C-382.—Decided May 25, 1938

Automobile and Bus Body Manufacturing Industry—Interference, Restraint, and Coercion: expressed opposition to labor organization; threat to transfer operations to other plants—*Discrimination:* discharge: for union activity; to discourage membership in union—*Reinstatement Ordered:* discharged employee—*Back Pay:* awarded.

Mr. Mark Lauter, for the Board.

Bertcher & Gottlieb, by *Mr. Louis Bertcher,* of New York City, for the respondent.

Emil Schlesinger & Abraham Schlesinger, by *Mr. Alfred Berman,* of New York City, for the Union.

Mr. Victor A. Pascal, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by United Automobile Workers of America, Local #118, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region (New York City), issued a complaint, dated December 8, 1937, against Hercules-Campbell Body Company, Inc., a New Jersey corporation, 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. Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

The complaint alleged in substance that the respondent had discharged one of its employees, John Foy, because of his Union affiliation and organizational activity, thereby discriminating in regard to his tenure of employment; and that by this discharge and other acts and conduct the respondent had interfered with, restrained, and

coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act. On December 15, 1937, the respondent filed its answer denying the alleged unfair labor practices and setting forth certain affirmative matter.

Pursuant to the notice, a hearing was held at New York City on December 18 and 21, 1937, before H. R. Korey, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Union 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 on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on 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 24, 1938, the Trial Examiner filed an Intermediate Report, copies of which were duly served upon all parties, finding that the respondent had committed unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7), of the Act, and recommending that the respondent cease and desist therefrom and, affirmatively, offer full reinstatement with back pay to John Foy. On February 3, 1938, exceptions to the Intermediate Report were filed with the Board by the respondent. The Board has considered the exceptions to the Intermediate Report and finds them to be without merit. Neither the Union nor the respondent availed themselves of the opportunity given them to present oral argument before the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Hercules-Campbell Body Company, Inc., is a New Jersey corporation with its principal office in South Kearney, New Jersey. It is engaged in the business of manufacturing, assembling, servicing, selling, and distributing commercial and special bodies for automobiles, busses, and related products. The respondent maintains plants at South Kearney, New Jersey, at Tarrytown, Albany, and Waterloo, New York, at Cambridge, Massachusetts, and at Portland, Maine. This proceeding involves only the respondent's plant at Tarrytown, New York. All reference herein to the respondent, unless otherwise indicated, is confined to its Tarrytown plant.

During the period from June 1, 1937, to December 1, 1937, the respondent's purchases of materials amounted to approximately \$90,000 in value. Approximately \$70,000 of this amount represented materials shipped to it from points outside the State of New York. Dur-

ing the same period, the approximate value of its sale of finished products amounted to \$120,000. Thirty per cent of this amount was shipped by the respondent out of the State of New York.

The number of the respondent's employees depends upon the amount of its business, which is not stable throughout the year. In April 1937, there were approximately 22 employees engaged in production work at the respondent's plant.

II. THE UNION

United Automobile Workers of America, Local #118, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership the respondent's production employees.

III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion; and the discharge*

There does not appear to have been any labor organization among the respondent's production employees prior to April 16, 1937. Between that time and April 23, 1937, 14 of the respondent's 22 production employees became members of the Union through the efforts of John Foy, who is alleged in the complaint to have been discriminatorily discharged on April 23, 1937.

Robert Campbell, the respondent's president, and Karl Bernhardt, the respondent's foreman, maintained at the hearing that they had no knowledge of the Union's activity among the respondent's employees prior to Foy's discharge on April 23, 1937. Nevertheless, when Campbell returned to the plant on April 19, after an absence of about 10 days, he was perturbed by what he termed "what was going on" in the plant. Therefore, according to Campbell's testimony, he called five employees, selected at random, into his office and spoke to them. According to the testimony of Harry Krapser, one of the five employees, Campbell informed them that "he was willing to meet with the boys at any time . . . and try to straighten matters out with them . . . but he said he could tell us that he would not have anything to do with an outside union or any outside agency." A Union meeting was held the same night, April 19. A committee of three employees was appointed to confer with Campbell respecting an increase in wages. The committee held a conference with Campbell the following day, April 20, at which time he again expressed his determination not to deal with a union. According to his own testimony, Campbell informed the committee that he would not confer with an outside union or with anyone not connected with the respondent. Although Campbell made no direct threats of discharge or other reprisals, a member of the committee testified

that Campbell informed them that he could eliminate the major part of the respondent's business at Tarrytown by transferring it elsewhere. The committee was unsuccessful in its effort to secure an increase in wages.

On April 23, 1937, Foy was discharged under circumstances set forth below. On April 26, 1937, the Union filed charges against the respondent with the Regional Director. The following day the respondent gathered its employees together in a room in the plant. Campbell addressed them, announcing a general increase in wages and holding forth the promise of an additional increase in the future. According to the testimony of Charles Mechling, one of the employees present, Campbell stated that "he had no right to tell us what to do, whether to join any organization, but he figured that it was like throwing money away and he brought us all up there and he was going to give us an increase in wages." Mechling's testimony is corroborated to some extent by the respondent's foreman, who admitted that Campbell told the employees that it was not necessary for "the boys to join anything." It is clear that, after the failure of the Union committee to secure an increase in wages, Campbell's announcement of a general wage increase, coupled with his statements concerning the futility of unions, was intended, at least in part, as striking proof of these and his previous statements regarding the positive benefits of not having a union at the respondent's plant.

The discharge of John Foy. The complaint alleged that on April 23, 1937, the respondent discharged and thereafter refused to reinstate John Foy because of his union activities. The respondent's answer avers that Foy was not discharged on April 23, but was laid off in accordance with its usual practice because of lack of work, and that he was not reinstated subsequently because of certain abusive and improper remarks which, it is asserted, he made to the respondent's foreman at the time of the lay-off.

Foy entered the respondent's employ as a production worker about August 12, 1934. During slack periods it was the respondent's practice to lay off a number of its employees who would return to work when business improved. During his term of employment with the respondent, Foy, along with other employees, had been laid off on several occasions when business was dull and taken back when production increased.

Foy had been a member of the Union before he entered the respondent's employ, but his membership had lapsed. On February 12, 1937, Foy rejoined the Union. He was the chief proponent of the Union at the respondent's plant, and, as previously stated, his efforts resulted in 14 of the respondent's 22 production workers becoming members of the Union. Foy persuaded 11 employees to join the Union on April 16, 1937, two on April 19, 1937, and one more on April 23, 1937.

At the close of work on April 23, 1937, Bernhardt informed Foy that he was being laid off because of lack of work. An argument, which was carried on in loud tones, ensued between the two men in the presence of several employees. According to Bernhardt's version of the incident, Foy was impertinent and used obscene expressions in reference to him and to Campbell. On the other hand, Foy denied that he had used improper language and testified that, when he asked Bernhardt why he was "drawing lines" between him and William Thachuk in disregard of Foy's seniority rights, Bernhardt became enraged and declared that he "didn't care for the C. I. O." Bernhardt not only denied that he had mentioned the C. I. O. in the course of the argument, but also asserted that he was unaware, at the time of the argument, that Foy or any other employees were members of the Union. Later in his testimony, however, Bernhardt admitted that for about a week prior to the discharge he had suspected that Foy was a member of the Union.

Two other employees who were laid off at the same time as Foy subsequently returned to work. Foy applied for reinstatement on April 26, 1937, but Bernhardt refused to speak to him. Campbell testified that when he learned of the incident of Foy's lay-off from Bernhardt, he instructed Bernhardt not to reemploy Foy. Bernhardt testified that he would have reemployed Foy, when business so warranted, if he had not been impertinent, used obscene language, and conducted himself as he did.

In view of the conflicting versions by Foy and Bernhardt respecting their altercation on April 23, especial weight attaches to the testimony of third persons who were present and heard the argument. As previously stated, several employees witnessed the incident. At the hearing one such employee, Mechling, substantially corroborated Foy's testimony. On the other hand, the respondent failed to produce any witnesses to corroborate Bernhardt's version of the incident. We find that the evidence adduced at the hearing does not sustain the affirmative allegation of the respondent's answer as to its reasons for laying off Foy and refusing to reinstate him.

The respondent maintained that Foy was not discharged on April 23, but was temporarily laid off because of lack of work. The evidence shows that the respondent's production was decreasing and that it was necessary to lay off some employees. Thus, the question that confronts us is whether the respondent laid off Foy on April 23 because of his union activity or because of business reasons. When Bernhardt informed Foy that he was being laid off, Foy did not object on the ground that no lay-off was necessary, but on the ground that William Thachuk, who performed work similar to his, was retained in spite of Foy's seniority. Thachuk was about 19 years old

and began his employment with the respondent in December 1936, while Foy had entered the respondent's employ more than 2 years earlier. There is some conflict in the testimony concerning the extent to which the respondent observed seniority of employment in laying off and taking back its employees, but this much is clear: according to Bernhardt, seniority was considered between employees of equal ability, and, according to Campbell, seniority was a factor in determining the order in which employees were to be laid off. Therefore, significance attaches to the manner in which the respondent had previously laid off and rehired its employees. On January 29, 1937, when both Foy and Thachuk were in the respondent's employ, the respondent laid off a number of employees. When business increased, the respondent took Foy back to work before Thachuk. Its failure to follow this precedent, particularly in the light of Foy's seniority, seems to us significant in view of its occurrence at a time when Foy was very active in union affairs and had just been instrumental in causing 14 of the respondent's employees to join the Union. We find that the evidence does not sustain the respondent's contention that Foy was laid off because of lack of work.

The evidence clearly reveals that Foy was the chief proponent of the Union, that for about a week prior to his discharge he had been instrumental in causing 14 of the respondent's 22 employees to join the Union, and that shortly prior to Foy's discharge, Campbell had on 2 occasions made it clear to the employees that he was opposed to the Union.

We find that the termination of Foy's employment was not a temporary lay-off, but a discharge, and that the discharge, occurring under these circumstances, coupled with the respondent's failure to substantiate its reasons for the discharge and for its refusal to reinstate him thereafter, was motivated by Foy's union activity.

Subsequent events. About June 1937, under circumstances which do not fully appear in the record, the respondent posted a notice in its plant, stating in effect that the respondent would abide by the provisions of the Act, that it had no objection to its employees organizing, forming, or joining any union, and that it would not discriminate against any employees because of his membership in a labor organization. About the latter part of August 1937, the respondent's employees went out on strike. Subsequently the strike was settled and the employees returned to work. The respondent and the Union executed a contract, which expressly provided that it was without prejudice to the Union's charges which had been filed with the Board concerning the discharge of Foy.

Neither the respondent's posting of the notice in its plant nor the execution of the contract with the Union affect the issues raised by the complaint herein.

Concluding findings. We find that the respondent, in discharging, and thereafter refusing to reinstate John Foy, discriminated in regard to his tenure of employment, thereby discouraging membership in the Union. We further find that the respondent, by discharging Foy and by its other acts and conduct described above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

IV. EFFECT OF THE 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.

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 Automobile Workers of America, Local #118, is a labor organization within the meaning of Section 2 (5), of the Act.

2. The respondent, by discriminating in regard to the tenure of employment of John Foy, and thereby discouraging membership in United Automobile Workers of America, Local #118, 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, and coercing its employees in the exercise of their 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, Hercules-Campbell Body Company, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From discouraging membership in United Automobile Workers of America, Local #118, or any other labor organization of its

employees by discriminating in regard to hire or tenure of employment or any term or condition of employment;

(b) From in any other 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 purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

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

(b) Make whole said John Foy for any loss of pay he has suffered by reason of his discharge, by the payment to him of a sum of money equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount, if any, which he has earned during said period;

(c) Post, immediately, and keep posted for a period of at least thirty (30) consecutive days from the date of posting, notices in conspicuous places throughout the plant stating that the respondent will cease and desist in the manner set forth in 1 (a) and (b), and that it will take the affirmative action set forth in 2 (a) and (b), of this order;

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