

In the Matter of YATES-AMERICAN MACHINE COMPANY and AMALGAMATED ASSOCIATION OF IRON, STEEL & TIN WORKERS OF NORTH AMERICA, LODGE 1787

Case No. C-351.—Decided June 2, 1938

*Woodworking Machinery Manufacturing Industry—Interference, Restraint, and Coercion:* antiunion statements; discrediting union—*Company-Dominated Union:* sponsorship and interference with formation and administration; discrimination in favor of, in endorsement; support; soliciting membership in, on company time and property, by foremen and others; employer ordered to refuse to recognize, as agency for collective bargaining—*Discrimination:* discharge; charges of, not sustained.

*Mr. Robert R. Rissman* and *Mr. Morris L. Forer*, for the Board.

*Mr. W. H. Arnold*, of Beloit, Wis., for the respondent.

*Mr. Harry A. Sellery, Jr.*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1787, herein called the Amalgamated, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twelfth Region (Milwaukee, Wisconsin), duly issued and served its complaint dated November 1, 1937, against Yates-American Machine Company, Beloit, Wisconsin, herein called the respondent, alleging that the respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8<sup>1</sup> (1), (2), and (3), and Section 2 (6) and (7), of the National Labor Relations Act, 49 Stat. 449, herein called the Act. In respect to the unfair labor practices, the complaint alleged in substance (1) that the respondent coerced, intimidated, and threatened the employees at

<sup>1</sup>At the hearing it appeared that, by typographical error, paragraph 9 of the complaint alleged "unfair labor practices within the meaning of Section 7, subsections (1), (2) and (3) of the Act." Without objection, the Trial Examiner granted a motion to correct paragraph 9 to read "Section 8" instead of "Section 7."

its Beloit, Wisconsin, plant to prevent them from becoming and remaining members of the Amalgamated, thereby discouraging membership in the Amalgamated; (2) that the respondent encouraged, sponsored, dominated, and interfered with the formation and administration of a labor organization known as Yates-American Employees Association, herein called the Association; and (3) that the respondent about June 24, 1937, for the purpose of discouraging membership in the Amalgamated and other concerted activities of the employees at the Beloit plant, discharged and has since refused to reinstate Arthur A. Kennison, because he had engaged in activities with other employees at that plant for their mutual aid and protection and collective bargaining.

On November 5, 1937, the respondent duly filed its written answer generally denying the allegations of the complaint. The answer affirmatively alleged that about June 23, 1937, Kennison absented himself from work without notice, contrary to long-established rule and express notice that further infraction of the rule would result in his discharge; that the respondent inquired for him at his home and urged him to return to work; and that he never returned to work thereafter and did not seek reinstatement, other than by filing a complaint with the Wisconsin Labor Relations Board, herein called the Wisconsin Board, alleging unwarranted discharge.

Pursuant to the notice of hearing, which was duly served, a hearing was held in Beloit, Wisconsin, on November 11 and 12, 1937, before Leo J. Kriz, 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. 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 the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On December 17, 1937, 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 (2), and Section 2 (6) and (7), of the Act, and recommended that the respondent cease and desist from these violations. He also found that the respondent had not engaged in unfair labor practices, within the meaning of Section 8 (3), of the Act, and recommended that the allegations of the complaint to that effect be dismissed. Exceptions to the Intermediate Report were thereafter filed by the Amalgamated, and the parties were offered an

opportunity to apply for oral argument or permission to file briefs, but no party so applied.

The Board has reviewed the exceptions to the Intermediate Report, and finds them without merit.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

Yates-American Machine Company, a Delaware corporation, has its principal office and place of business in Beloit, Wisconsin. It has warehouses in Atlanta, Georgia, and San Francisco, California, and offices in Chicago, Illinois, and New York City.

The only property involved in this case is the Beloit plant, which consists of a group of buildings containing offices, a foundry, a pattern shop, and a machine shop, and other structures for use in connection with its operations. At that plant the respondent is engaged in the manufacture and sale of woodworking machinery, motors, tools, and parts for such machinery, and industrial and automotive radiators. The respondent claims to be the largest manufacturer of woodworking machinery in the United States.

The principal raw materials used by the respondent are coal, pig and scrap iron, lumber, and ingredients for brass and aluminum castings, bearings, belts, and chains. It also purchases fabricated and manufactured parts and appliances for incorporation in its finished products. Approximately 90 per cent of the materials used in the respondent's products come from outside Wisconsin. Production at that plant is based upon specific orders, and no inventory of finished products is created. Alvin Haas, vice president and general manager, described the respondent's operations as "a glorified shop job." The respondent has 67 registered patents and one trade-mark.

The respondent advertises its products in trade journals and by direct mail and sales solicitation. For the fiscal year ending June 30, 1937, approximately 85 per cent of the respondent's sales were made to purchasers outside Wisconsin.

As of October 20, 1937, it had 542 production, 15 maintenance, 22 supervisory, and 93 clerical employees at the Beloit plant.

#### II. THE ORGANIZATIONS INVOLVED

Yates-American Employees Association was a labor organization established in April 1937, admitting to membership the respondent's production employees.

Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1787, is a labor organization affiliated with the Committee for Industrial Organization, herein called the C. I. O. It admits to membership some of the respondent's production employees.

### III. THE UNFAIR LABOR PRACTICES

#### *A. Domination of and interference with the Association*

Haas testified that he has complete charge of the respondent's Beloit plant, including labor policy and relations. He is assisted in the execution of its labor policy and relations by Roy D. Hanson, personnel director and assistant plant manager, whose duties include the hiring of new employees and supervision of production at that plant.

Haas testified that during the month of April 1937 he had observed a diminution in production at the plant. He attributed this diminution to the employees' preoccupation with labor organizational activities during working hours at the plant. He believed their interest had been stimulated by several mass meetings in Beloit conducted by the C. I. O. He therefore instructed Hanson to invite a group of the senior employees to a meeting on April 19, 1937, at 8 p. m. in the respondent's offices to consider the problem of organization of the employees. Although the estimates of different witnesses varied, there was general agreement that between about 40 and 60 men appeared at the meeting. The employees present included Hanson, Rudolph Jensen, plant superintendent, and several other supervisory employees.

Haas opened the meeting by stating that it had been called because of union activity throughout the plant. He then read extracts from the Wisconsin Labor Relations Act,<sup>2</sup> herein called the Wisconsin Act, including the sections of that statute relating to company unions. He remarked that he had formerly been a member of an outside labor organization and had never received benefits from his membership; consequently, he did not have a high opinion of any such organization.

He stated that if the employees joined an outside labor organization the dues would be about \$2 or \$3 per month, with extra assessments from time to time. He was of the opinion that the money collected in dues would leave Beloit, primarily to be used to maintain a national organization. He estimated that if Beloit were unionized, the total sum of money which would so leave Beloit would total approximately \$100,000 per year. He also discussed the rivalry between the American Federation of Labor and the C. I. O. He stated

<sup>2</sup> Wis Stat. 1937 Chap. 111

that he believed that the respondent's employees should remain in an independent and unaffiliated labor organization until the "friction" between those two national labor organizations had been adjusted, before considering the question of affiliation with either of them.

He went on to express his belief that an independent union could be financed by the employees with dues of about \$1 or \$2 per month, including social gatherings from time to time. With such a plan: Haas stated, "We can have a good time together."

After Haas had finished his discussion of the Act and the Wisconsin Act and his comments on the merits of various forms of labor organization, he called for discussion by the employees. No employee advanced any proposal. When asked for his suggestions, Haas declined to answer, on the ground that "any advice, and so forth, on the part of the management, would cause it to be immediately considered a company union." He then stated that he was withdrawing from the meeting in order to permit a free discussion among the employees, and did so. Hanson estimated that he was present at the meeting only for about 15 or 20 minutes at its beginning. Jensen and other supervisory officials remained for the discussion. The record does not disclose, however, the extent of their participation in the general discussion which followed Haas' withdrawal.

At the hearing Haas defended his statements at this meeting by testifying that all his comments were made with reference to the employees' rights under the Act and the Wisconsin Act. He said that his remarks had been misinterpreted if they had been presumed to indicate the respondent's preference for a company-dominated union. It is plain from the events which followed this meeting, however, that the respondent's employees decided to follow the respondent's expressed preferences as to the form of labor organization.

After this meeting at least four other meetings of the employees were held in April and May 1937 at Moose Hall and Lincoln Junior High School in Beloit to discuss and complete the formation of the Association. On April 25, 1937, prior to one of these meetings, Hanson, following instructions, brought four employees to Haas' office. At the hearing Hanson explained that he was instructed to bring these four employees because it appeared that they were dissatisfied with shop conditions and the respondent wanted to ascertain what were their grievances.

At this meeting, Haas again urged that the employees form an inside union. He referred again to the C. I. O. dues, which he predicted would be higher than those of an inside local union. He said that if an inside union were formed the respondent could deal "agreeably" with its employees without danger of a strike. He added that if anyone charged that the respondent had interfered

with such a union, the allegations could be taken up with the Board or the Wisconsin Board. He denounced the C. I. O. officials as "communistic" and "labor agitators," and expressed his opinion that the Act was "practically put over by labor agitators." He also asked some questions concerning the employees' meetings and the formation of the Association.

On May 11, 1937, four employees went to Madison, Wisconsin, to complain to the Wisconsin Board of the respondent's activity in promoting the Association. At a conference of Haas and counsel for the respondent with the chairman of the Wisconsin Board, the chairman characterized the Association as a "borderline company union." At his suggestion, Haas prepared a notice which was circulated among the respondent's supervisory employees. This notice instructed them to "refrain from influencing, or having any connection with, the creation or management of any union of the employees . . . or from any participation in the affairs of such a union . . . that might be interpreted to be, a violation of any of the provisions of the Labor Relations Act of the State of Wisconsin, or that might be interpreted as an attempt on the part of the company to suggest, influence or participate in the formation, management or maintenance of such an organization."

After the distribution of this notice foremen continued to make statements indicating a preference for a local inside union. Despite the circulation of this notice some of the foremen actively interested themselves in securing members for the Association. Other foremen, without reprimanding the participants, observed the solicitation of membership in the Association by various employees on company time and property.

Later in May five or seven representatives of the Association met with Haas in the office of counsel for the respondent. The Association requested recognition and asked for a wage increase and better working and sanitary conditions. Haas informed the representatives that before the respondent could recognize the Association, the latter must first be listed by the Wisconsin Board, in accordance with the provisions of the Wisconsin Act. Thereafter, about May 21, 1937, four officers of the Association went to Madison, Wisconsin, and applied for such a listing. The chairman of the Wisconsin Board informed them that the Association's application could not be acted upon for about 10 days.

Fayette Merriman, secretary of the Association, testified that on May 28, 1937, the Association dissolved, owing to certain misunderstandings concerning work on Saturdays. Although the Association does not appear ever to have been formally organized, during its existence it was an active labor organization. Application cards

designating the Association as the collective bargaining agency were circulated among the employees and their signatures were secured on such cards; dues were collected; officers were elected; application was made to the Wisconsin Board for listing as a labor organization; and the Association requested recognition by the respondent, and sought wage increases and improved working and sanitary conditions for the respondent's employees. After the dissolution of the Association, the organizational activities of the respondent's employees were divided between labor organizations affiliated with the American Federation of Labor and the C. I. O.

At a meeting with Haas of a committee composed of three employees affiliated with the C. I. O. union, sometime before Labor Day in September 1937, Haas said that a shop committee should be called in and then he would bargain with the employees without an outside representative. One of the committee testified that at this conference Haas criticized the employees who had joined this labor organization and called them "a bunch of damn kids," and "weak-minded."

Upon the basis of the foregoing facts, we find that the respondent on and after April 19, 1937, dominated the formation of the Association and thereafter contributed support to it. We further find that, by such acts, the respondent 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 or other mutual aid or protection.

#### *B. The alleged discharge of Arthur Kennison*

The respondent's employment records show that Arthur A. Kennison, an engine lathe operator, was first employed by the respondent on May 2, 1922. He voluntarily quit his job on five different occasions during the period from 1922 to 1935 before his last term of employment, which began on January 28, 1936. He explained that he usually quit his job because he did not get a raise. The records show that Kennison was absent 32 working days during 1936; they also show that up to and including June 22, he was absent 21 working days during 1937. At the hearing, Kennison conceded that the respondent's records are correct statements of his employment by the respondent.

Kennison was one of the group of four employees who complained on May 11, 1937, to the Wisconsin Board concerning the respondent's promotion and domination of the Association. The names of the four employees were subsequently discovered by Haas during his

conference with the Wisconsin Board. On the return trip from Madison, some liquor was purchased and the group went to a cabin near Beloit, at a place known as the "Jungles." The other members of the group left Kennison there about 8 p. m. and returned to Beloit. Kennison testified that he left the cabin about 11 p. m. and returned to his home that night. He did not return to work, however, until May 14, 1937.

Kennison was again absent from work for the period from May 24 to June 2, 1937, inclusive. Thereafter he worked regularly up to and including June 22, 1937.

Thomas F. Patten, Kennison's foreman, testified that about 8 or 9 years before, when Kennison was absent, Kennison told him that his absence was due to stomach ulcers. Thereafter for a long time when Kennison was absent from work Patten had assumed that his absence was due to this malady. Patten knew of no employee who had been absent for sickness who had been laid off. He stated, however, that other employees had been laid off for repeated absences from work.

About a year before, when Kennison was absent from work and had failed to notify the respondent of the reason for his absence, Patten had gone to inquire at Kennison's home. Kennison's family told Patten that he was away from home and that they did not know where he was. Patten stated that Kennison had not been discharged, laid off, or reprimanded as a result of this visit.

Rudolph Jensen, the respondent's superintendent, testified that about a month prior to June 23, 1937, he had told Kennison that the respondent wished to be notified when he was absent. Jensen said that shortly thereafter Kennison telephoned him, stated that he was sick, and would not be in. According to his testimony, Jensen told Kennison that his absence was "all right," and that he was glad that Kennison had called; after Kennison returned to work Jensen thanked him for calling, told him that he should do so in the future, and said, "the machine cannot stand idle." Jensen estimated that when Kennison's machine was idle the cost to the respondent was approximately \$10 per day. He stated that in June 1937 the respondent was behind its schedule in filling its orders and was working both day and night shifts.

On June 23, 1937, Kennison did not report for work, and Patten asked Hanson to investigate Kennison's absence. Hanson went to Kennison's home and asked to speak to Kennison. His family said that he was not home, and that they did not know where he was. Hanson left word that the respondent wanted him to report back to work. Kennison received the message when he returned home that evening, but he has never reported back for work or sought rein-

statement. His explanation is that Huff, a fellow employee who worked near the time clock, reported to him that his card had been taken from the card rack, and that he therefore assumed that he had been discharged, because he believed that when an employee's card was thus removed, the employee had been discharged.

About the time of Hanson's visit to Kennison's home, Patten, after consulting with Jensen, removed Kennison's time card from the employees' card rack, and made out a release card for him. Hanson stated that a release card is a form filled out by foremen to indicate that the status of an employee not at work should be ascertained. He explained that when an employee's card has been removed from the card rack, the employee cannot return to work until he has come to the employment office and asked for his card. He testified that a card may be removed from the rack for a variety of reasons, whenever the employment office wishes to see the employee, and that it is not conclusive evidence that the employee has been discharged. Hanson conceded that when an employee's card is missing from the card rack the employees think that "they are all done," because some of them are. He added, however, that only a small percentage of employees whose cards are removed from the card rack are discharged.

According to Jensen's testimony, Kennison was a good and rapid worker, but his irregular attendance at work made him an undesirable employee.

Upon cross-examination, Kennison testified that he did not recall any conversation in May with Jensen regarding his continued absences, nor being told that further absences would result in discharge. Kennison recalled, however, that during his absence from May 24 to June 2, 1937, inclusive, he had telephoned Jensen that he could not report for work because of illness. His explanation for not notifying the respondent of his absence on June 23, 1937, is that he had not been doing so, and, accordingly, thought it would be unnecessary. Nevertheless, he admitted that during his last absence prior to June 23, 1937, he had notified the respondent that he could not report. His conduct is inconsistent with his explanation, which appears inadequate under the circumstances.

Kennison testified that during his recent absences he had been under the care of a doctor for "arthritis of the chest." He stated that he did not consult a doctor during his absence on May 11, 12, and 13, 1937. On the stand, Kennison stated that he had certificates from his doctor showing that he was sick on May 9 and June 2, 1937. These certificates were not asked for nor produced at the hearing. It should be noted that May 9, 1937, was a Sunday; and

June 2, 1937, was the last day of Kennison's 10-day absence which began on May 24, 1937.

Kennison testified that he has earned no money since that date, that he has not sought reinstatement, and that he would accept it, if it was offered. Haas testified that the respondent had decided to discharge Kennison if he did not have an adequate excuse for his absence on June 23, 1937, but that since Kennison had never reported he had not been discharged.

Kennison's indifferent attitude regarding retention of his job is incomprehensible. Although he testified that he wanted his job back, he never reported to work, even when requested by the respondent to do so. Further, we think it significant that none of the other employees who complained to the Wisconsin Board were subsequently discharged, although one of them, Wilson Olds, was treasurer of the C. I. O. union, and his organizational activities in its behalf were well known to the respondent. Kennison was not an officer in the C. I. O. organization.

We find that the evidence does not sustain the allegation that the respondent discriminated against Kennison in regard to his hire and tenure of employment, and we will order that part of the complaint dismissed.

#### IV. THE 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.

#### THE REMEDY

Although the Association, according to the testimony of its secretary, was dissolved on May 28, 1937, the record is devoid of information concerning the circumstances under which any such dissolution occurred. Under these circumstances, we cannot determine whether the Association is, in fact, dissolved or merely has suspended activities for the time being. If it is in the latter category, it is subject to the possibility of revival by the respondent and further activity at any future time when that course of action might appear desirable to the respondent. Under our remedial power, therefore, we shall order the respondent henceforth to refuse to give the Association any recognition as a collective bargaining agency, if it should ever return to an active existence under its present form and name, or any other.

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. Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1787, is a labor organization, within the meaning of Section 2 (5), of the Act.

2. Yates-American Employees Association was a labor organization, within the meaning of Section 2 (5), of the Act.

3. The respondent, by dominating and interfering with the formation and administration of Yates-American Employees Association, and by contributing support to it, has engaged in unfair labor practices, within the meaning of Section 8 (2), 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, and assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes 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.

6. The respondent has not engaged in unfair labor practices in respect to Arthur A. Kennison, within the meaning of Section 8 (3), of the Act.

#### ORDER

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10 (c) of the Act, the National Labor Relations Board hereby orders that the respondent, Yates-American Machine Company, Beloit, Wisconsin, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Yates-American Employees Association, or with the formation and administration of any other labor organization of its employees, or from contributing support to the said Association or to any other labor organization of its employees;

(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 purposes 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) Refuse to recognize Yates-American Employees Association as a representative of any of its employees for the purposes of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(b) Post immediately upon all bulletin boards throughout the Beloit, Wisconsin, plant, and maintain for a period of at least thirty (30) consecutive days, notices stating: (1) that Yates-American Machine Company will cease and desist as aforesaid; and (2) that the respondent refuses to recognize Yates-American Employees Association as the representative of any of its employees for the purposes of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

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

And it is further ordered that the allegations in the complaint that the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3), be, and they hereby are, dismissed.