

In the Matter of ABRASIVE COMPANY and STEEL WORKERS ORGANIZING
COMMITTEE

Case No. C-479.—Decided June 14, 1938

Abrasive and Grinding Tool Manufacturing Industry—Settlement: stipulation providing for reinstatement and back pay, and withdrawal of recognition of company-dominated union—*Order:* entered on stipulation—*Discrimination:* complaint dismissed without prejudice as to two employees.

Mr. Geoffrey J. Cunruff, for the Board.

Mr. George H. Detweiler and *Mr. Charles W. Sweeney*, of Philadelphia, Pa., for the respondent.

Mr. M. H. Goldstein, of Philadelphia, Pa., for the S. W. O. C.

Mr. Herbert Mayers, and *Mr. Edwin S. Malmed*, of Philadelphia, Pa., for the Independent.

Mr. Langdon West, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Charges and amended charges having been filed by Steel Workers Organizing Committee, herein called the S. W. O. C., the National Labor Relations Board, herein called the Board, by Stanley W. Root, Regional Director for the Fourth Region (Philadelphia, Pennsylvania), on February 21, 1938, issued and duly served its complaint and accompanying notice of hearing against Abrasive Company, Philadelphia, Pennsylvania, 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), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The respondent duly filed its answer to the complaint in which it admitted that it is engaged in interstate commerce but denied that it had engaged in the alleged unfair labor practices.

Thereafter the Regional Director granted the motion to intervene made by the Independent Abrasive Union, herein called the Independent.

Pursuant to notice, a hearing was held from March 14 to March 22, 1938, at Philadelphia, Pennsylvania, before Herbert A. Lien, the Trial Examiner duly designated by the Board. The Board, the respondent, the S. W. O. C., and the Independent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. On March 17, 1938, the Trial Examiner granted the motion made by counsel for the Board to amend the complaint so as to allege the discriminatory discharge of two additional employees. The ruling is hereby affirmed. On the same day copies of the amended complaint were duly served upon the parties. On March 21, 1938, the respondent filed its answer to the amended complaint denying the allegations of unfair labor practices made therein. During the hearing counsel for the Board and for the respondent entered into a stipulation concerning the respondent's business and operations. This stipulation was admitted to the record without objection from any party to the proceeding. During the course of the hearing, the Trial Examiner made several rulings, in addition to those mentioned above, 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 March 22, 1938, the hearing was recessed, pending the approval by the Board of a stipulation agreed upon by counsel for the Board, the respondent, and the S. W. O. C., respectively. This stipulation provided for an order to be entered in the case by the Board.

On March 23, 1938, the Board, pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that the proceeding be transferred to the Board and continued before it.

On March 24, 1938, the above-mentioned stipulation was signed by counsel for the Board, the respondent, and the S. W. O. C., respectively. It is hereby approved by the Board, admitted and made part of the record. As this stipulation made no provision for the disposition of the cases of George Timle and Gustav Haller, the allegations of the complaint with respect to them will be dismissed without prejudice.

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 Pennsylvania corporation, having its plant and principal place of business in Philadelphia, Pennsylvania. The

respondent is engaged in the manufacture of grinding wheels and polishing grain. The principal raw materials used in the production of these products are abrasives, clays, and other ceramic materials, resins, and shellac. Approximately 90 per cent of these raw materials are shipped by rail and water into the State of Pennsylvania from other States and foreign countries.

During the year 1936, 80 per cent of the respondent's finished products, valued at \$1,644,565, were shipped to points outside the State of Pennsylvania and to foreign countries. During normal seasons, the respondent employs between 350 and 400 workers.

We find that the respondent's operations at its Philadelphia, Pennsylvania, plant constitute a continuous flow of trade, traffic, and commerce among the several States and with foreign countries.

II. THE BASIS OF SETTLEMENT

The above-mentioned stipulation provides as follows:

Upon consideration of the testimony so far taken in this case, and by stipulation of the parties to this proceeding, it is agreed that the National Labor Relations Board may find facts and enter order as follows:

I. The Respondent shall cease and desist—

1. From in any manner, either by dismissal, lay-off, propaganda or threats, 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 purposes of collective bargaining or other mutual aid or protection as guaranteed under Section 7 of the Act.

2. From in any manner dominating or interfering with the administration of the Independent Abrasive Union, or with the formation or administration of any other labor organization of its employees; from contributing financial aid or other support to the said Independent Abrasive Union or any other labor organization, from recognizing, bargaining collectively or dealing in any manner with the Independent Abrasive Union or any group or committee purporting to represent the said Independent Abrasive Union; or from forming or maintaining any group or designating any individuals to act as the representatives of the employees for the purpose of collective bargaining respecting any of the terms or conditions of employment.

II. The respondent shall take the following affirmative action to effectuate the policies or purposes of the National Labor Relations Act.

1. That the respondent will withdraw all recognition from the Independent Abrasive Union as the representative of its employees or any of them for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

2. That the respondent will immediately upon the issuance of an order by the National Labor Relations Board, post notices in accordance with the terms of this stipulation, in conspicuous places about its plant or plants stating that the Independent Abrasive Union is disestablished as the representative of its employees or any of them, for the purpose of collective bargaining, and that the respondent will not extend any recognition to such organization; the said notices to remain posted for at least thirty consecutive days from the date of posting.

3. That it will inform immediately upon the handing down by the National Labor Relations Board of its order aforesaid, in writing, the officers and representatives of the Independent Abrasive Union, that the said respondent, pursuant to the said order of the National Labor Relations Board, will not in any manner thereafter deal with or recognize said Independent Abrasive Union.

4. That it will immediately upon the issuance of the order of the National Labor Relations Board, contemplated in this stipulation, inform all its officers and agents, including superintendents, foremen and other supervisory employees, that they shall not in any manner approach employees concerning, or discuss with the employees the question of their labor affiliation, or discriminate against or threaten employees in any manner because of their membership in any labor organization in general, or the Amalgamated Association of Iron, Steel and Tin Workers of North America in particular.

5. Reinstate immediately upon the execution of this stipulation Henry Carroll and Charles Lancaster to their former positions, without prejudice to any rights and privileges previously enjoyed by them.

6. By way of making whole Charles Lancaster, George Jack, Joseph McDonald and Richard Entwistle for any losses of pay they or any of them have suffered by reason of any lay-offs, to pay them and each of them, immediately upon the execution of this stipulation, a sum of money equal to two days pay at the rate each respectively earned at the time of their latest employment by the respondent.

7. (a) By way of making whole Howard Vandegrift for any loss of pay he may have suffered by reason of any lay-off, to

pay him immediately upon the execution of this stipulation the sum of Thirty-Six Dollars.

(b) Offer Howard Vandegrift unconditional reinstatement without discrimination to his former position in the respondent's shaving department, without loss or derogation of any rights or privileges appertaining to said position, before offering to employ or employing any other person in said position.

8. (a) All employees upon the payroll of the respondent or in the employ of the respondent on June 2, 1937, who have since been laid off, and who are not now actually engaged in work for the respondent, shall be offered unconditional reinstatement, without discrimination, to their former positions without loss or derogation of any rights or privileges appertaining to said positions or employees, before any other persons are employed by the respondent, for such positions. If any employee refuses, or is not available for, his former position, upon notification to him that the position is open, the respondent will, after seven days have elapsed from date of said notification, fill the position from among such of its former employees as are capable of filling it.

(b) Said offer of reinstatement, and reinstatement shall be made to said employees in the order of seniority in the department in which they worked June 2, 1937; said seniority to be calculated on the basis of the total time spent actually working for the respondent by each of the said employees during the period of ten years immediately preceding the signing of this stipulation.

(c) When the work available for the present employees of any division or department of the respondent's plant exceeds four days per week per man, the respondent shall offer employment to the persons on its pay roll of June 2, 1937, in accordance with sub-paragraphs (a) and (b) of this section.

(d) Respondent shall within fourteen days from the execution of this stipulation prepare and furnish copies to the Regional Director of the Fourth Region of the National Labor Relations Board, and to counsel for the respective parties, a list of its employees contemplated in sub-paragraphs (a) and (b) of this section, showing their total time of employment by the respondent and their seniority as provided in sub-paragraph (b) hereof.

III. It is further stipulated that respondent will notify the National Labor Relations Board of compliance with the order of the National Labor Relations Board contemplated in the foregoing stipulation, within forty days from the issuance of the said order.

IV. It is further stipulated that the testimony so far taken, also this stipulation, may and shall be made part of the record in this case, and it is further agreed that this stipulation, upon execution by the respective parties, shall be forwarded to the Chief Trial Examiner of the National Labor Relations Board, at Washington, D. C., to be made part of the aforesaid record.

V. It is further stipulated by and between the respective parties, that in the event an order of the National Labor Relations Board is entered upon this stipulation, and it becomes necessary, in order to enforce the terms and conditions of said order, to file a petition for the enforcement of same in the United States Circuit Court of Appeals for the appropriate Circuit by the National Labor Relations Board, that the respondent consents and agrees that a decree of said Court be entered upon the order of said Board issued as aforesaid.

ORDER

Upon the basis of the above findings of fact and stipulation and upon the entire record in the proceeding, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Abrasive Company, Philadelphia, Pennsylvania, and its officers, agents, successors, and assigns, shall:

I. Cease and desist from:

1. In any manner, either by dismissal, lay-off, propaganda, or threats, 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 purposes of collective bargaining or other mutual aid or protection as guaranteed under Section 7 of the Act;

2. In any manner dominating or interfering with the administration of the Independent Abrasive Union, or with the formation or administration of any other labor organization of its employees; from contributing financial aid or other support to the said Independent Abrasive Union or any other labor organization, from recognizing, bargaining collectively or dealing in any manner with the Independent Abrasive Union or any group or committee purporting to represent the said Independent Abrasive Union; or from forming or maintaining any group or designating any individuals to act as the representatives of the employees for the purpose of collective bargaining concerning any of the terms or conditions of employment.

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

1. Withdraw all recognition from the Independent Abrasive Union as the representative of its employees or any of them for the pur-

pose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

2. Immediately post notices in conspicuous places about its plant or plants stating that the Independent Abrasive Union is disestablished as the representative of its employees or any of them, for the purpose of collective bargaining, and that the respondent will not extend any recognition to such organization; the said notices to remain posted for at least thirty (30) consecutive days from the date of posting;

3. Inform immediately, in writing, the officers and representatives of the Independent Abrasive Union that the respondent will not in any manner deal with or recognize the said Independent Abrasive Union;

4. Immediately inform all its officers and agents, including superintendents, foremen, and other supervisory employees that they shall not in any manner approach employees concerning, or discuss with employees the question of their labor affiliation, or discriminate against or threaten employees in any manner because of their membership in any labor organization in general, or the Amalgamated Association of Iron, Steel, and Tin Workers of North America in particular;

5. Reinstate immediately Henry Carroll and Charles Lancaster to their former positions, without prejudice to any rights and privileges previously enjoyed by them;

6. By way of making whole Charles Lancaster, George Jack, Joseph McDonald, and Richard Entwhistle for any losses of pay they or any of them have suffered by reason of any lay-offs, immediately pay them and each of them a sum of money equal to 2 days' pay at the rate each respectively earned at the time of his latest employment by the respondent;

7. (a) By way of making whole Howard Vandergrift for any loss of pay he may have suffered by reason of any lay-off, immediately pay him the sum of \$36 dollars;

(b) Offer Howard Vandergrift unconditional reinstatement without discrimination to his former position in the respondent's shaving department, without loss or derogation of any rights or privileges appertaining to said position, before offering to employ or employing any other person in said position;

8. (a) Offer to all employees upon the pay roll of the respondent or in the employ of the respondent on June 2, 1937, who have since been laid off, and who are not now actually engaged in work for the respondent, unconditional reinstatement, without discrimination, to their former positions without loss or derogation of any rights or privileges appertaining to said position or employees, be-

fore any other persons are employed by the respondent, for such positions. If any employee refuses, or is not available for, his former position, upon notification to him that the position is open and after 7 days have elapsed from date of said notification, fill the position from among such of its former employees as are capable of filling it;

(b) Make said offer of reinstatement to, and reinstate said employees in the order of seniority in the department in which they worked June 2, 1937; said seniority to be calculated on the basis of the total time spent actually working for the respondent by each of the said employees during the period of 10 years immediately preceding March 24, 1938;

(c) When the work available for the present employees of any division or department of the respondent's plant exceeds 4 days per week per man, offer employment to the persons on its pay roll of June 2, 1937, in accordance with subparagraphs (a) and (b) of this section;

9. Notify the Regional Director for the Fourth Region within forty (40) days from the date of this order what steps the respondent has taken to comply herewith.

And it is further ordered that the complaint, in so far as it pertains to the discharges of George Tindle and Gustav Haller, be, and it hereby is, dismissed without prejudice.