

IN THE MATTER OF THE ELECTRIC AUTO-LITE COMPANY, BAY MANUFACTURING DIVISION *and* INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA, LOCAL NO. 526

*Case No. C-389.—Decided June 27, 1938*

*Automobile Parts Manufacturing Industry—Interference, Restraint, and Coercion:* expressed opposition to “outside” labor organization—*Company-Dominated Union:* domination of and interference with formation and administration; support; soliciting membership in, by supervisors; disestablished, as agency for collective bargaining—*Discrimination:* discharge; complaint dismissed, as to—*Contract:* executed by employer and organization found to have been company-dominated, void and of no effect.

*Mr. Earl R. Cross*, for the Board.

*Mr. James P. Falvey*, of Toledo, Ohio, for the respondent.

*Mr. Otto J. Manary*, of Bay City, Mich., for The Bay Federation.

*Mr. Leonard B. Netzorg*, of Detroit, Mich., for the United.

*Miss Carol Agger*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by the International Union, United Automobile Workers of America, Local No. 526, herein called the United, the National Labor Relations Board, herein called the Board, by the Regional Director for the Seventh Region (Detroit, Michigan) issued a complaint, dated November 4, 1937, against The Electric Auto-Lite Company, Bay Manufacturing Division, 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. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and upon the Union.

The complaint alleged in substance that the respondent, by discharging Joseph Madziar, discriminated in regard to his tenure of employment and discouraged membership in the Union; that the respondent dominated, interfered with, and contributed support to a

labor organization of its employees, known as The Bay Federation, herein called the Federation; and that the respondent, by these acts and conduct and by expressing opposition to the United and by engendering fear of loss of employment because of membership in the United, interfered with, restrained, and coerced its employees in the exercise of their right to self-organization and to engage in concerted activities for their mutual aid and protection. On November 17, 1937, the respondent filed an answer admitting certain allegations concerning the nature of the respondent's business, denying that it had engaged in or was engaging in the alleged unfair labor practices, and setting forth affirmatively that Joseph Madziar was discharged because his work was unsatisfactory.

Pursuant to an amended notice, a hearing on the complaint was held in Bay City, Michigan, on November 18, 19, 20, and 22, 1937, before Leo J. Kriz, the Trial Examiner duly designated by the Board. At the beginning of the hearing, the Federation filed a petition for leave to intervene in the proceedings which was granted by the Trial Examiner. The ruling of the Trial Examiner is hereby affirmed. The Board, the respondent, and the Federation 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 upon the issues was afforded all parties. At the hearing, the Trial Examiner, on the respondent's motion, dismissed the allegations of the complaint setting forth the discriminatory discharge of Joseph Madziar. During the course of the hearing the Trial Examiner made various other 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 February 3, 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 (2) and Section 2 (6) and (7) of the Act, and that the respondent had not committed unfair labor practices within the meaning of Section 8 (3) of the Act, and recommending that the respondent cease and desist from interfering with its employees in the right to self-organization and from dominating, interfering with, or supporting The Bay Federation and, affirmatively, that the respondent withdraw all recognition from The Bay Federation and disestablish it as a representative of the respondent's employees for purposes of collective bargaining. He recommended further that the allegations of the complaint stating that the respondent had committed unfair labor practices within the meaning of Section 8 (3) of the Act be dismissed. On February 7,

1938, and on February 14, 1938, respectively, the Federation and the respondent filed Exceptions to the Intermediate Report.

Upon notice duly served upon the respondent, the Federation, and the United, a hearing for the purpose of presenting oral argument on the Exceptions to the Intermediate Report and on the record was held before the Board at Washington, D. C., on May 26, 1938. The respondent and the United were represented by counsel and participated in the oral argument. The Federation did not appear at the oral argument.

The Board has fully considered the Exceptions to the Intermediate Report and finds them to be without merit.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The respondent, Electric Auto-Lite Company, Bay Manufacturing Division, is an Ohio Corporation with its main place of business in Bay City, Michigan. It is engaged in the production, assembly, sale, and distribution of various automobile parts. For the year ending October 31, 1937, the respondent's sales amounted to approximately \$4,910,118.04, and its total purchases amounted to approximately \$2,643,237.60. About 75 per cent of the materials purchased by the respondent are received from States other than Michigan and about 40 per cent of the respondent's finished products are sold to customers outside the State of Michigan. The Bay Manufacturing Division employs from 700 to 1,000 persons, exclusive of supervisory and clerical employees and salesmen.

#### II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile Workers of America, Local No. 526, is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership all employees in respondent's plant, except supervisory and clerical employees and employees engaged in plant protection work.

The Bay Federation, a corporation licensed under the laws of Michigan, is a labor organization unaffiliated with any other labor organization. Its membership is limited to the respondent's employees.

#### III. THE UNFAIR LABOR PRACTICES

##### *A. Interference with, domination, and support of The Bay Federation*

The respondent first started its manufacturing operations in Bay City in the early fall of 1936. There was no labor organization

among the respondent's employees until January 1937 when an employees' representation plan under the name of Bay Cooperative Works Council, herein called the Works Council, was organized by a number of employees who had come to the Bay City plant from the respondent's Toledo plant where a similar organization had been in existence. These employees, under the leadership of Ed Kugelman, who subsequently became the president of the Works Council, formed an organizing committee and drew up a constitution. Thereafter the management permitted the Works Council to hold a series of meetings in the plant to explain the purposes of the Works Council to the respondent's employees.

The constitution, which was drawn up by the committee and adopted by the employees, set up a plan of employee representation in which the employees of each department elected representatives to the Executive Committee, which committee also included the officers of the Works Council. There was no specific provision for instruction of the committeemen by the employees represented by them or by the general membership. The Executive Committee was to hold regular meetings with representatives of the management, the two groups making up the Joint Council. The constitution provided that the Joint Council should discuss and decide questions relating to rates of pay, shop rules, hours of labor, working conditions, safety, plant sanitation, and employee welfare and recreation. The decisions upon questions affecting the management were to be made by a two-thirds majority and the management representatives were to have an aggregate vote equal to that of the Executive Committee. The constitution itself could be amended only by a similar vote of the Joint Council. The constitution further provided that the management should give such assistance as was requested in the election of Executive Committee members; that the management should provide a meeting place for the Joint Council and its committees; and that employees serving upon the Joint Council, its committees, or as officers of the Works Council, should receive their regular average pay for the time spent in such work. It is not denied by the respondent or the Federation that the Works Council was dominated and supported by the respondent, and we so find.

The Works Council was not particularly active until the United began its organizational activity among the employees in the plant. The respondent was opposed to outside unions and at one or two of the meetings of the Joint Council, Clark Adams, the respondent's general manager, informed the employees' representatives that he did not want to have an outside union come into the plant. Kugelman, the president of the Works Council, admitted that he was aware of the respondent's attitude toward outside unions. The Works

Council was also opposed to outside organizations and in the April issue of its publication, "Progress," took occasion to point out that the Works Council could solve the employees' problems in a more satisfactory manner than a "professional" organization and without levying the "high tribute" levied by such organizations upon their members.

Late in April 1937, as a result of the Decisions of the United States Supreme Court sustaining the constitutionality of the Act, Adams notified the Works Council that he could no longer deal with it. Thereupon the Works Council decided that a change in the constitution of the organization was necessary. The question of changing the constitution first came before the Executive Committee of the Works Council early in May 1937. Kugelman consulted an attorney concerning the necessity of specific changes, although neither Kugelman nor the Executive Committee had obtained authority from the membership to engage an attorney or to draft a new constitution. While it was testified that the Executive Committee had held several meetings regarding the new constitution, the testimony of the members of the Executive Committee showed that they had little understanding of the action taken. It is quite clear that Kugelman handled the matter largely by himself.

On May 10, 1937, the Works Council called a mass meeting of all of the employees in the plant. The meeting, which was announced by handbills distributed at the gates of the plant, was fixed for 8 o'clock in the evening, which was during the working hours of the second shift. On the day of the meeting, the respondent's general manager posted notices in the plant stating that the factory would close at 7 o'clock that evening, since a large number of employees had requested leave to attend the meeting. The reason given for this action was the impossibility of operating the plant in the absence of so many employees. One Casey, who was at that time the foreman of the sweepers and plant protection employees, acted as doorkeeper at the meeting.

Kugelman, who presided over the meeting, informed the employees that it was necessary to form a new organization differing only "slightly" from the Works Council. He said that the Act made this necessary because the management had too much control over the Works Council. Kugelman then distributed printed copies of the constitution for an organization called The Bay Federation. The meeting voted to dissolve the Works Council, to form a new organization named The Bay Federation, and to adopt the proposed constitution. Kugelman suggested that the Works Council officers serve as officers for the Federation until the holding of elections of new

officers. This course was adopted by the meeting and the election was subsequently held.

The Federation constitution, as adopted at the May 10th meeting, was almost identical with the Works Council constitution except for the deletion of those provisions relating to the manner of amending the constitution and to the assistance to be given by the respondent in providing meeting places, and in paying committeemen and officers. The employees' representation plan and the method of carrying on the organization's business and settling grievances remained the same. Some of the Works Council officers were elected as officers of the Federation and Kugelman became a member of the important Shop Committee. The Federation took over and continued to publish the Works Council's publication, "Progress." The July issue of "Progress," published by the Federation, gave credit to the Federation for obtaining two pay raises granted in February and April 1937. Since the Federation was not organized until May 10, 1937, it is plain that the officials of the Federation themselves did not make a distinction between the two organizations. A prior edition of "Progress," published by the Works Council, had also claimed credit for obtaining one of these raises. Like the Works Council, the Federation was opposed to an outside union and urged that it could take care of the needs of the employees better than "selfish, untrained" leaders "without the payment of high tribute." At one meeting of the Federation, attacks were made on the United and one of the United's members was expelled from the meeting, which was open to all employees, because he refused to answer questions about the United.

The manner in which the Federation's organization was accomplished; its utilization of the Works Council officers; its close similarity to the Works Council in its plan of representation, in its constitution, and in its policies; and the fact that the officers of the Federation did not regard the two organizations as distinct entities indicate that the Federation was not a new organization, or a real transformation of the Works Council, but clearly a continuation of the Works Council under a new name, and we so find.

Although by drafting a new constitution the Federation attempted to divest itself of any formal appearance of company domination and support, the evidence reveals that it did not in fact free itself of such domination and support. From late in April until late in June 1937, a series of meetings were held in the various departments of the plant. The employees were paid for the time spent at the meetings. The respondent's plant superintendent, Smith, spoke at these meetings and after telling the employees that they were free to join any union they desired, warned them that an outside union

would get them into trouble and pointed out that an inside union could negotiate grievances better than an outside union. At some of the meetings Smith stated that when he was unable to run the plant "without having to have an outside organization" come in and tell him how to run it he would "probably be ready to quit." Smith testified that he only told the employees that they could join any union they desired. A number of witnesses testified, however, that Smith showed hostility to outside unions in his talks and we are satisfied that substantially those statements were made at least at some of the meetings.

The respondent held a number of these meetings after the formation of the Federation. There is some conflict in the testimony as to the part played by Federation officials at these meetings. The respondent denied that the Federation officials took any part in the meetings other than as observers. However, Lee Guindon, who was active in the Federation, testified that Smith, at the conclusion of his talks, referred the employees to the Shop Committee of the Federation if they had any grievances. Kugelman testified that when Smith finished his talks, the "Bay Federation did the speaking."

We feel that the evidence clearly establishes that at the conclusion of Smith's talks, Federation officials, with the consent of the respondent, took over the meetings and addressed the employees upon the benefits of an organization such as the Federation and urged them to refer any grievances they might have to the Federation Shop Committee.

Membership was solicited by Federation members during working hours in the plant, apparently without objection by the respondent, until June when the respondent ordered that there should be no solicitation in the plant. In addition Winn, a supervisor, told one employee that he "had better" join the Federation and inquired of another employee whether he did not think it was about time he joined. The respondent contended that Winn was not a foreman and that his actions cannot, therefore, be attributed to it. However, it was admitted by Smith, the plant superintendent, that Winn held a supervisory position with certain powers of direction over the employees and that the employees regarded him as their immediate superior. In the absence of the foreman, Winn was in charge of the department.

On August 5, 1937, the Federation incorporated. It contends that by reason of such incorporation it became a new entity and that the foregoing incidents have no relation to it. No change other than the assumption of the corporate form appears to have taken place when the Federation was incorporated. The officers, constitution, and

method of operation apparently remained the same. It is plain that the mere fact of incorporation cannot wipe out the taint of the respondent's domination, interference, and support.

We find that the respondent has dominated and interfered with the formation and administration of the Federation and has contributed support to it, within the meaning of Section 8 (2) of the Act. We further find that by reason of the conduct described above, the respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act.

*B. The respondent's contract with The Bay Federation*

On September 20, 1937, the respondent entered into a contract with The Bay Federation, on behalf of the Federation's membership, governing hours and working conditions. Since we have found that the Federation was dominated and supported by the respondent, any such contract executed by the respondent and the Federation is void and of no effect.

*C. The alleged discrimination in regard to hire and tenure of employment*

The complaint alleged that the respondent in discharging Joseph Madziar discriminated in regard to his tenure of employment, thereby discouraging membership in the United. The respondent contended that Madziar was discharged because his work was unsatisfactory. The evidence shows that Madziar was not a member of the United at the time of his discharge, that he did not join the United until after he had been discharged, and that his production was low, causing dissatisfaction upon the part of the piece-rate employees performing operations subsequent to Madziar's. During the course of the hearing, the Trial Examiner granted a motion by the respondent to dismiss the allegations of the complaint setting forth the discriminatory discharge of Madziar. We agree with the Trial Examiner and his ruling is hereby affirmed.

We find that the respondent, in discharging Madziar, did not discriminate in regard to hire and tenure of employment within the meaning of Section 8 (3) of the Act.

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.

Upon the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. International Union, United Automobile Workers of America, Local No. 526, and The Bay Federation, a corporation, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. The respondent, by dominating and interfering with The Bay Federation and contributing support to it, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the 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.

5. The respondent, in discharging Joseph Madziar, has not engaged in unfair labor practices within the meaning of Section 8 (3) 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, Electric Auto-Lite Company, Bay Manufacturing Division, Bay City, Michigan, and its officers, agents, successors and assigns, shall:

1. Cease and desist:

(a) From in any manner dominating or interfering with the administration of The Bay Federation, or with the formation or administration of any other labor organization of its employees, and from contributing support to The Bay Federation, or any other labor organization of its employees;

(b) From in any other manner interfering with, restraining, or coercing its employees in the exercise of the 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) Withdraw all recognition from The Bay Federation, as a representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and completely disestablish The Bay Federation, as such representative;

(b) Post immediately notices to its employees in conspicuous places throughout the Bay Manufacturing Division in Bay City, Michigan, stating (1) that the respondent will cease and desist in the manner provided in paragraphs 1 (a) and (b) of this order; (2) that the respondent withdraws and will refrain from all recognition of The Bay Federation, as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment, and that the respondent completely disestablishes it as such representative; and (3) that the contract executed with The Bay Federation is void and of no effect;

(c) Maintain such notices for a period of at least thirty (30) consecutive days from the date of the posting;

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

It is further ordered that the allegations of the complaint concerning the alleged discriminatory discharge of Joseph Madziar be, and they hereby are, dismissed.