

In the Matter of MINNEAPOLIS-MOLINE POWER IMPLEMENT COMPANY  
and INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL NO. 382

*Case No. C-691.—Decided August 1, 1938*

*Farm Implement, Machinery, Structural Steel, and Industrial Engine and Parts Manufacturing Industry—Interference, Restraint, or Coercion: charges of, not sustained—Discrimination: charges of, not sustained.*

*Mr. Thurlow Smoot, for the Board.*

*Cobb, Hoke, Benson, Krause & Faegre, by Mr. Paul Christopher-son and Mr. Donald L. Robertson, of Minneapolis, Minn., for the respondent.*

*Mr. Ralph L. Helstein, of Minneapolis, Minn., for the United.*

*Miss Ann Landy, of counsel to the Board.*

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by International Association of Machinists, Local No. 382, herein called the Machinists, the National Labor Relations Board, herein called the Board, by the Regional Director for the Eighteenth Region (Minneapolis, Minnesota), issued its complaint dated March 5, 1938, against Minneapolis-Moline Power Implement Company, Minneapolis, Minnesota, 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, were duly served upon the respondent and the Machinists.

The complaint in substance alleged that the respondent discriminated in regard to the hire and tenure of employment of Herman D. Gilliam to discourage membership in the Machinists, thereby interfering with, restraining, and coercing its employees in the exercise of their rights as guaranteed in Section 7 of the Act. On March 2, 1938, the respondent filed an answer to the complaint, denying the alleged unfair labor practices.

Pursuant to notice a hearing was held at Minneapolis, Minnesota, on March 24, 25, and 26, 1938, before Charles E. Persons, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. At the opening of the hearing, United Electrical Radio and Machine Workers of America, Local No. 1140, herein called the United, appeared by counsel and made a motion for leave to intervene. During the hearing the Trial Examiner granted the motion, and defined the scope of the intervention as extending "only so far as this organization had rights which might be prejudiced during the course of the proceedings." Thereafter the United participated in the hearing. At the same time the Trial Examiner denied a motion to intervene filed on behalf of the Shop Committee at the Minneapolis and Hopkins plants of the respondent. The Trial Examiner's rulings are hereby affirmed. 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 various rulings 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. At the close of the Board's case and again at the close of the entire case, the Trial Examiner denied motions by the respondent to dismiss the complaint on the ground that the evidence failed to sustain the charges of unfair labor practices alleged in the complaint. In view of the Board's findings below, the Trial Examiner's rulings are hereby reversed.

Thereafter, the Trial Examiner duly filed an Intermediate Report, copies of which were served on all parties on May 24, 1938, 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 fully reinstate Gilliam with back pay.

The United filed exceptions to the Intermediate Report. The Board has fully considered these exceptions and, in so far as they are directed at the results reached by the Trial Examiner in his Intermediate Report, finds them to be warranted. 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 Delaware corporation engaged in the manufacture and sale of farm implements and machinery, structural steel, industrial engines, and parts. It has manufacturing plants at Minneapolis, Minnesota, where the alleged unfair labor practice was

committed, at Hopkins, Minnesota, and at Moline, Illinois. The principal raw materials used by the respondent at all its plants are steel castings, forgings, lumber, and scrap iron. A considerable portion of the raw materials used at the Minneapolis plant is obtained from States other than Minnesota and approximately 85 per cent of the finished product is shipped outside that State. The respondent's sales for 1937 totaled \$16,535,508. The respondent conceded the interstate character of its business.

## II. THE LABOR ORGANIZATIONS INVOLVED

International Association of Machinists, Local No. 382, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the respondent at its Minneapolis plant.

The United Electrical Radio and Machine Workers of America, Local No. 1140, is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership employees of the respondent at its Minneapolis plant.

## III. THE UNFAIR LABOR PRACTICES

### A. *The allegedly discriminatory refusal to reinstate Herman D. Gilliam*

The Machinists began organizing the employees at the respondent's Minneapolis plant in the spring of 1934. From that time until 1937 it continued to be the dominant labor organization in the plant. In August 1937 a majority of employees severed their affiliation with Machinists and joined the United.<sup>1</sup> The respondent had never accorded the Machinists recognition by name, but collective bargaining agreements were made with a group of employees acting as a committee representing the respondent's employees; and this committee was in turn entirely controlled by the Machinists. The agreement in existence at the time the transfer in affiliation occurred was not affected by the change in affiliation, except that after August 1937 the control over the committee shifted to the United.

In June 1937 a list of seniority rules was adopted by the respondent and the committee. Rule 5 set forth the requirements for obtaining a leave of absence without loss of seniority rights. It provided:

Where the requirements of service will permit, employees on request, will be granted leave of absence, with the privilege of

<sup>1</sup> On December 22, 1937, under the Board's supervision a consent election was held in the plant. The United won the election by an overwhelming majority. Pursuant to the provisions of the consent election agreement the Regional Director certified the United as the exclusive representative of the employees at the Minneapolis plant.

renewal, all told not to exceed one year, without losing their seniority rights.

Leave of absence must be mutually agreed to, and record made thereof by Employment Department and Department Committees.

Herman D. Gilliam has been employed by the respondent for 14 years. He was one of the leaders in the organization of the Machinists, and he remained steadfast in his support of that organization even after the shift to the United. On August 27, 1937, he asked Herbert Larson, foundry superintendent, for a leave of absence, which was granted for a period of 90 days. He left without consulting his department committee.

Upon the expiration of his leave of absence, Gilliam notified Larson that he was ready to return to work. Larson informed him that he could return to work on December 13, 1937. When the committee heard that Gilliam was to be reinstated without loss of his seniority rights, it protested to Edwin L. Hoffman, the respondent's general superintendent. The committee claimed that Gilliam, by going on leave without obtaining the consent of his department committee, forfeited his seniority rights and could be reemployed only as a new man. Hoffman disagreed with the committee's interpretation of Rule 5, whereupon it appealed to W. C. MacFarlane, president and general manager of the respondent. MacFarlane, after reading the rule, concurred with the committee's construction of it and so informed Gilliam. There is no evidence showing bad faith on the part of the respondent in making this interpretation. Gilliam testified at the hearing that he did not doubt MacFarlane's sincerity in coming to this conclusion.

A meeting was held on December 13, 1937, for the purpose of settling the dispute. The respondent expressed its willingness to waive the rule in this instance, if the committee would agree, but the committee refused.

The Machinists claims that the respondent refused to reinstate Gilliam as an old employee because of his membership and activities in behalf of the Machinists. Gilliam contends that Rule 5 requires merely the mutual agreement of the particular employee requesting leave of absence and the management, that the Department Committee is concerned only with the "record made thereof", and that its approval of the leave of absence is not a requisite.

His claim that the second paragraph of the Rule was inserted merely to prevent employees from going on leave of absence without the respondent's consent has no merit in view of the first paragraph, which expressly provides that leave of absence will be granted by the respondent upon request and only when the requirements of serv-

ice will permit. Consideration of the language and purpose of the rule which deals with seniority rights, a matter of prime importance to all employees, clearly supports the interpretation placed upon it by both the committee and the management. There is no showing that the rule had received any construction prior to the Gilliam incident, or that its terms had ever been waived in the case of any employee. The evidence is clear that the respondent refused to reinstate Gilliam without loss of his seniority rights not because of his continued affiliation with the Machinists, but because it desired to abide by its agreement with the committee.

MacFarlane advised Gilliam to apply for employment at the respondent's Hopkins plant which had a shorter waiting list than the Minneapolis plant. Gilliam was placed on the pay roll of the Hopkins plant on February 7, 1938, and was still employed there at the time of the hearing.

We find that the respondent has not discriminated in regard to the hire and tenure of employment of Herman D. Gilliam for the purpose of discouraging membership in a labor organization.

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

#### CONCLUSIONS OF LAW

1. The operations of the respondent occur in commerce, within the meaning of Section 2 (7) of the National Labor Relations Act.

2. International Association of Machinists, Local No. 382, is a labor organization, within the meaning of Section 2 (5) of the National Labor Relations Act.

3. The respondent by refusing to reinstate Herman D. Gilliam at its Minneapolis plant without loss of his seniority rights did not discriminate in regard to hire and tenure of employment to discourage membership in a labor organization, within the meaning of Section 8 (3) of the National Labor Relations Act.

4. The respondent has not interfered with, restrained, or coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, within the meaning of Section 8 (1) of the National Labor Relations Act.

#### ORDER

Upon the basis of the foregoing 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 complaint against the Minneapolis-Moline Power Implement Company be, and it hereby is, dismissed.