

In the Matter of EUGENE DIETZGEN COMPANY and WILLIAM RUDERMAN, HARRY LAWSON, SAM KELLNER, ARTHUR LANNON, CONSTANTINO PUGLIESE

Case No. C-768.—Decided August 11, 1938

Surveying Instruments and Drafting Equipment Industry—Settlement: stipulation providing for reinstatement and back pay—*Order:* entered on stipulation—*Discrimination:* discharges, not sustained as to one employee.

Mr. Will Maslow, for the Board.

Mr. Henry Braverman, of New York City, for the respondent.

Mr. James A. Cobey, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by William Ruderman, Harry Lawson, Sam Kellner, Arthur Lannon, and Constantino Pugliese, the National Labor Relations Board, herein called the Board, by Elinore M. Herrick, Regional Director for the Second Region (New York City), issued its complaint dated December 20, 1937, against Eugene Dietzgen and Company, Inc.,¹ New York City, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices 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 William Ruderman, Harry Lawson, Sam Kellner, Arthur Lannon, and Constantino Pugliese.

The complaint alleged in substance (1) that the respondent discriminated in regard to the hire and tenure of employment of William Ruderman, Harry Lawson, Sam Kellner, Arthur Lannon, and Constantino Pugliese, thereby discouraging membership in a labor

¹ It appears from the first numbered paragraph of the stipulation set forth infra that this is the correct name of the respondent. The complaint incorrectly stated the name of the respondent as Eugene Dietzgen Company.

organization, and (2) that by these and other acts the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. The respondent filed an answer, dated December 27, 1937, denying the alleged unfair labor practices and setting forth affirmatively that the persons named in the complaint were discharged for cause.

Pursuant to a notice and an amended notice of hearing, copies of which were duly served upon the parties, a hearing was held at New York City on January 4 and 5, 1938, before Walter B. Wilbur, 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 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 the rulings of the Trial Examiner and finds that no prejudicial errors were made. The rulings are hereby affirmed.

After the close of the hearing, the respondent filed a brief. On June 10, 1938, the Trial Examiner filed his Intermediate Report, copies of which were duly served upon the parties, finding (1) that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act, by discriminating in regard to the hire and tenure of employment of William Ruderman, Sam Kellner, Arthur Lannon, and Constantino Pugliese, thereby discouraging membership in a labor organization, and (2) that the respondent had not discriminated in regard to the hire and tenure of employment of Harry Lawson within the meaning of Section 8 (3) of the Act. He recommended that the respondent cease and desist from its unfair labor practices and, affirmatively, offer reinstatement with back pay to William Ruderman, Sam Kellner, Arthur Lannon, and Constantino Pugliese.

On July 8, 1938, the respondent, William Ruderman, Sam Kellner, Arthur Lannon, Constantino Pugliese, and the Regional Director executed and signed the following stipulation:

1. The correct corporate title of the respondent is Eugene Dietzgen and Company, Inc.
2. The respondent is engaged in the manufacture and sale of surveying instruments, drafting boards, sensitized paper and allied products. It operates a factory at Chicago, Illinois, and at New York City, and maintains sales offices in Chicago, New York City, San Francisco, New Orleans, Washington, D. C., Los Angeles, Milwaukee and Philadelphia. At its New York plant the respondent manufactures blue print and other

sensitized paper, some of the raw material being purchased from sources outside New York State. Raw material used in this product alone has an aggregate value of \$200,000 to \$250,000. Some of the raw materials used by the respondent at its New York plant are imported from points outside the State of New York, including France and Germany, and 60% of all the company's manufactured products are shipped from its New York plant to customers located outside the State of New York.

3. The Eugene Dietzgen & Company, Inc. at its plant located at 218 East 23rd Street, New York, New York, shall cease and desist:

(a) From interfering with, restraining or coercing, its employees in the exercise of the right to self-organization, to form, and 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) From dominating or interfering with the formation or administration of any labor organization, and from contributing support of any kind to any labor organization.

4. That Eugene Dietzgen & Company, Inc. will take the following affirmative action in order to effectuate the policies of the National Labor Relations Act:

(a) Offer to Arthur Lannon, Constantino Pugliese, and each of them, immediate and full reinstatement respectively, to their former positions without prejudice to their seniority or other rights and privileges previously enjoyed, but at the presently existing wage.

(b) For the purpose of making whole the persons named in paragraph 4 (a) above, and each of them, for any losses of pay they have suffered by reason of their discharge, and for the purpose of making whole the following two employees, William Ruderman and Sam Kellner, pay to the Regional Director of the Second Region, for distribution to said four employees the sum of Seventeen Hundred (\$1700) Dollars; this payment to be distributed in the following manner: William Ruderman, Arthur Lannon and Constantino Pugliese are to be paid the sum of Five Hundred (\$500) Dollars each; Sam Kellner to be paid the sum of Two Hundred (\$200) Dollars; this payment to be made by Eugene Dietzgen & Company, Inc. is in full settlement for all back pay due to all of the above named employees.

(c) William Ruderman does not desire to be reemployed by the Eugene Dietzgen & Company, Inc.

(d) Sam Kellner is at present employed elsewhere and does not desire reinstatement.

(e) That part of the complaint referring to Harry Lawson is hereby dismissed.

(f) Post notices in conspicuous places throughout its 218 East 23rd Street plant, in New York, New York, stating:

(1) That the respondent will cease and desist as provided above.

(2) That such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

5. An order based on the terms of this agreement may be made by the National Labor Relations Board.

6. A consent decree embodying the substance of the above order of the Board, may be entered by the Circuit Court of Appeals of the appropriate Circuit; upon application by the Board without notice to any of the parties.

7. This stipulation is submitted subject to the approval of the National Labor Relations Board, Washington, D. C.

On July 26, 1938, the Board, acting pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, approved the stipulation and ordered that it be made a part of the record in the case, and further ordered the proceeding transferred to and continued before it for the purpose of entry of a decision and order by it pursuant to the provisions of the above stipulation.

Upon the basis of the stipulation and the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Eugene Dietzgen and Company, Inc., is a Delaware corporation engaged in the manufacture and sale of surveying instruments, drafting boards, sensitized paper and allied products. It has its principal office and a factory at Chicago, Illinois. It also operates a paper coating plant in New York City. Sales offices are maintained in each of the cities mentioned above and also in Philadelphia, Pennsylvania; Washington, D. C.; Milwaukee, Wisconsin; New Orleans, Louisiana; Los Angeles and San Francisco, California. This proceeding involves only the respondent's plant in New York City.

The respondent manufactures blue-print and other sensitized paper at its plant in New York City. The principal raw materials used by the respondent are raw paper and chemicals, aggregating in value from \$200,000 to \$250,000 annually. Most of these raw materials are shipped to the respondent from points outside the State of New York,

including France and Germany. Sixty per cent of its finished products are shipped from the plant to customers outside the State of New York.

We find that the operations of the respondent constitute a continuous flow of trade, traffic, and commerce among the several States and with foreign countries.

ORDER

On the basis of the above findings of fact and the above stipulation, and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Eugene Dietzgen and Company, Inc., New York City, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, and 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) Dominating or interfering with the formation or administration of any labor organization, and from contributing support of any kind to any labor organization.

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

(a) Offer to Arthur Lannon, Constantino Pugliese, and each of them, immediate and full reinstatement, respectively, to their former positions without prejudice to their seniority or other rights and privileges previously enjoyed, but at the presently existing wage;

(b) Make whole the persons named in paragraph 2 (a) above, and each of them, for any losses of pay they have suffered by reason of their discharge, and make whole the following two employees, William Ruderman and Sam Kellner, by payment to the Regional Director for the Second Region, for distribution to said four employees, the sum of Seventeen Hundred (\$1,700) Dollars; this payment to be distributed in the following manner: William Ruderman, Arthur Lannon and Constantino Pugliese are to be paid the sum of Five Hundred (\$500) Dollars each; Sam Kellner to be paid the sum of Two Hundred (\$200) Dollars;

(c) Post immediately in conspicuous places throughout its 218 East 23rd Street plant, in New York City, and maintain for a period of at least thirty (30) days from the date of posting, notices to its

employees stating that the respondent will cease and desist as provided above;

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

And it is further ordered that the complaint, in so far as it alleges the discriminatory discharge of Harry Lawson be, and it hereby is, dismissed.