

In the Matter of PUSEY, MAYNES & BREISH COMPANY and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL No. 195

*Case No. C-28.—Decided April 8, 1936*

*Meat Packing Industry—Interference, Restraint or Coercion:* expressed opposition to labor organization—*Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. Gerhard P. Van Arkel* for the Board.

*Mr. Patrick J. Friel*, of Philadelphia, Pa., for respondent.

*Mr. Louis F. McCabe*, of Philadelphia, Pa., for Local No. 195.

*Mary Lemon Schleifer*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On December 2, 1935, Local No. 195, Amalgamated Meat Cutters and Butcher Workmen of North America, hereinafter referred to as Local No. 195, filed a charge with the Regional Director for the Fourth Region against Pusey, Maynes & Breish Company, Philadelphia, Pennsylvania, hereinafter referred to as the respondent, charging the respondent with violations of the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On December 27, 1935, a complaint and notice of hearing were issued by the Regional Director for the Fourth Region, copies of which were served upon the respondent and upon Local No. 195. The complaint alleged the respondent had committed unfair labor practices as prohibited by Section 8, subdivisions (1) and (3) of the Act by the discharge of John Carsello, Marco Carsello and Silverio Carsello on November 2, 1935, because they joined and assisted Local No. 195 and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection. The respondent filed an answer to the complaint in which it asked that the complaint be dismissed because the Act is unconstitutional, but no specific ground of unconstitutionality was stated. At the conclusion of the hearing, counsel for the respondent renewed the motion to dismiss on the ground that the Act violates due process, and on the further ground that the allegations of the

complaint had not been sustained. The Trial Examiner made no rulings on these motions. Both motions are now denied. The rulings of the Trial Examiner in regard to the admission of evidence are hereby affirmed.

The answer of the respondent admitted that the business of the respondent constitutes a continuous flow of trade, traffic and commerce among the several States, and the discharge of the persons named in the complaint. The answer stated that the discharge of these persons occurred "for the following reasons inter alia: (a) the services performed by the Complainants were unsatisfactory and they were discharged for inefficiency; (b) the Complainants indulged in Communistic activities, distributed communistic and seditious literature, inciting discontent and seriously impairing the efficiency and discipline of the business operations."

Pursuant to the notice of hearing, a hearing was held on January 13, 1936 at Philadelphia, Pennsylvania before A. Howard Myers, duly designated to act as Trial Examiner, at which hearing full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded both parties.

By order of the National Labor Relations Board, dated January 9, 1936, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 35 of National Labor Relations Board Rules and Regulations—Series 1.

Upon the entire record now before it, including the transcript of the hearing, exhibits introduced and pleadings filed, the National Labor Relations Board makes the following:

#### FINDINGS OF FACT

1. The respondent is and has been since 1920 a corporation existing under and by virtue of the laws of the State of Pennsylvania, having its principal office and place of business in Philadelphia, Pennsylvania, hereinafter referred to as the Philadelphia plant. It is engaged in the purchasing and slaughtering for sale of lambs, calves and sheep. The respondent employs between 20 and 25 persons in its Philadelphia plant.

2. The lambs, calves and sheep purchased for slaughter and sale by the respondent are raised entirely outside the State of Pennsylvania. Approximately 25 to 50% of this livestock is purchased by the respondent from commission men within the State of Pennsylvania, who purchase and transport such livestock from outside the State of Pennsylvania. The balance of 50 to 75% of the livestock is purchased directly by the respondent from producers outside the State of Pennsylvania.

3. The meats prepared for sale by the respondent are sold by 3 salesmen employed by the respondent to solicit business within the City of Philadelphia and by means of telephone and telegraphic orders received by the respondent in its Philadelphia plant. Sales are made to purchasers in Pennsylvania, New Jersey, Delaware, New York and Florida. Purchasers from the respondent include the Atlantic & Pacific Tea Co. and the American Stores Co. About 10% of the meats prepared by the respondent are sold to purchasers outside the State of Pennsylvania. Deliveries to purchasers are made either by means of trucks owned and operated by the respondent or by means of a contract carrier. The respondent's trucks make deliveries in certain parts of New Jersey as well as in the State of Pennsylvania.

4. All of the aforesaid constitutes a continuous flow of trade, traffic and commerce among the several States.

5. Local No. 195 is a labor organization which, since about November 1, 1935, has been a local of Amalgamated Meat Cutters and Butcher Workmen of North America, affiliated with the American Federation of Labor. At the time of the events discussed hereafter, this labor organization was known as Local 101, United Meat Cutters, hereinafter referred to as Local 101.

6. John Carsello and his two sons, Marco and Silverio Carsello, all employed by the respondent, became members of Local 101 on October 22, 1935. On November 2, 1935 Harrison J. Pusey, President of the respondent, sent word to John Carsello, who was then at work, to report to the office. Pusey told Carsello that it was necessary for him to lay off John Carsello and his two sons. In response to Carsello's request for the reason for the lay-offs Pusey said: "Well, I have to economize." Carsello then asked why, if it was necessary to lay off some one, he selected three persons from one family. Pusey gave no reason for the selection, but made the further statement that John Carsello was "no good down there any more." Carsello said he could not understand such a statement, since he had rendered satisfactory services to the respondent for twenty-three years. Pusey then said that liver was being stolen, but admitted he did not believe John Carsello was stealing it. Carsello, being unsatisfied with these explanations, insisted upon being given a satisfactory reason for the lay-off of himself and his two sons. Pusey then replied: "I'm going to tell you. What is this new union going down there . . .?" He then said he believed John Carsello had started to organize the men in the respondent's plant and added: "I don't want no union in here."

John Carsello notified his two sons that they had been laid off, and neither of the sons talked to any of the management of the respondent at that time.

7. At the request of John Carsello a committee from United Meat Cutters which included Natalo Masi, business agent of Local 101 and of Local No. 195, and Morris Goldberg, had two interviews with the respondent shortly after the Carsellos were laid off. At the first meeting Pusey stated he had no contract with any union and did not recognize any union. At first he would not discuss the case of the Carsellos with the committee, but upon the threat of being boycotted, he finally stated that John Carsello was honest and a good butcher. He also admitted that John Carsello's union affiliation was one of the reasons he was laid off. Pusey asked the committee to give him a week to discuss the matter with his associates, which request the committee granted. In the second interview, about one week later, Mr. Maynes, whose position with the respondent was not determined at the hearing, acted as spokesman for the respondent, stated in effect that he did not want any union organization in the respondent's plant, that John Carsello was not working for the interests of the company, and that he would not reinstate the Carsellos under any circumstances.

8. John Carsello, a butcher, had worked steadily for the respondent since 1911 or 1912. He began working at a salary of \$14.00 a week, which was gradually increased to \$40.00. About two years before his discharge his salary was decreased to \$30.00 a week, all other employees of the respondent receiving a salary cut at the same time. At the time he was laid off John Carsello was receiving \$30.73 a week. Carsello had been made foreman of the butchers employed by the respondent about 1930 and his two sons worked as butchers under his supervision. As foreman he had no authority to hire or discharge employees.

John Carsello testified that in all his years of service with the respondent his work had never been criticised, and that he had been reprimanded only once or twice, both times concerning his being late in reporting for work in the morning. He also testified that while it had been the policy of the respondent to lay off the other butchers in rotation during slack periods, he had never before been laid off.

Marco Costello began working for the respondent in 1929 for \$20.00 a week. He was subsequently raised to \$25.00, then cut to \$22.00 but prior to the time he was laid off had again been increased to \$25.00 a week. The respondent had never made any complaint about Marco Carsello's work and he had worked for the respondent steadily since 1929, except for the seasonal periods of lay-offs in which all butchers except John Carsello participated. About two weeks after the lay-off of November 2, 1935, Marco Carsello returned to the plant and asked Pusey to give him a recommendation in order that he might secure other employment. In response to Marco Car-

sello's question as to whether the respondent had any complaint about his work, Pusey replied: "No, no; I like you, Marco, you are a good boy, but you are going in with the wrong company." Pusey agreed to give him a recommendation.

Silverio Carsello had been employed by the respondent for about three years. He had never been reprimanded about his work and except for the customary seasonal lay-offs had worked steadily. At the time he was laid off he was receiving \$20.00 a week, having been cut from \$25.00 to \$20.00 at the time all other employees of the respondent received a cut.

9. It is obvious from the record that the Carsellos were discharged and not laid off. It is also obvious, in the light of the work records of the three Carsellos, that the reason for the discharge and the refusal to reemploy was their joining Local 101 and a belief on the part of the respondent that John Carsello was attempting to organize the employees of the respondent. This conclusion is substantiated by the conversation of Pusey with John Carsello at the time of the discharge; by the conversations of Pusey and Maynes with the committee from United Meat Cutters; by the statement of Pusey to Marco Carsello upon the occasion of his return to the plant to secure a recommendation; and lastly, by the respondent's answer to the complaint in this case. The allegations of the respondent in the answer that the Carsellos indulged in communistic activities and distributed communistic and seditious literature are not relevant. In any event no evidence in support of these allegations was offered. The allegation that the Carsellos incited discontent and thereby impaired efficiency and discipline was likewise not supported by any evidence.

The evidence does show that John Carsello, about two weeks before his discharge and on a Saturday afternoon when he was not working, visited two other slaughter houses in the vicinity for the purpose of distributing literature concerning the organization. No evidence was offered by the respondent to show that any literature was distributed in the respondent's plant. John Carsello testified he had never engaged in any union activities during working hours. Silverio Carsello testified that he had never engaged in any union activities during working hours, had never distributed any literature, had never attempted in or out of working hours to organize workers in any other company, and had never seen any union literature in the respondent's plant. Marco Carsello testified he had never engaged in any union activities during working hours and had never at any time attempted to organize the employees of the respondent or of any other company.

10. At the time of the hearing none of the Carsellos had received any income from other work since the time they were discharged

by the respondent, except Silverio Carsello, who had earned \$4.00 to \$5.00 a week as a musician. Since Silverio Carsello earned the same amount in a similar way prior to the time he was discharged, and since employment as a butcher would not preclude such extra work, the respondent is not entitled to deduct this sum from the amount which the respondent is hereinafter ordered to pay Silverio Carsello.

11. By the discharge and refusal to reemploy John, Marco and Silverio Carsello, and each of them, the respondent has discriminated in regard to hire and tenure of employment and thereby discouraged membership in a labor organization.

12. By the discharge of and refusal to reemploy John, Marco and Silverio Carsello, and each of them, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

13. The aforesaid acts of the respondent tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding the Board finds and concludes as a matter of law:

1. Local 101, United Meat Cutters, was, and Local No. 195, Amalgamated Meat Cutters and Butcher Workmen of North America, now is, a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The respondent, by the discharge of and refusal to reemploy John, Marco and Silverio Carsello, and each of them, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) 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, subdivision (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act.

#### ORDER

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Pusey, Maynes & Breish Company:

1. Cease and desist:

(a) From in any 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 purpose of collective bargaining, and other mutual aid and protection;

(b) From discriminating in regard to hire or tenure of employment and thereby discouraging membership in any labor organization.

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

(a) Offer to John, Marco and Silverio Carsello, and each of them, reinstatement to their former positions without prejudice to any rights and privileges previously enjoyed;

(b) Make whole John, Marco and Silverio Carsello for the loss they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum of money equal to that which they would normally have earned as wages during the period from the time they were discharged to the date of such offer of reinstatement, computed at the weekly wage received at the time of discharge, as set forth in paragraph 8 of the findings of fact, less the amount which each, respectively, may have earned subsequent to the time of discharge and up to the time of the offer of reinstatement, except that any money earned by Silverio Carsello as a musician during said period shall not be deducted unless such money was earned by him during the hours he would have worked for the respondent had he not been discharged.