

IN the Matter of GENERAL INDUSTRIES COMPANY, A CORPORATION *and*
HOBART FLENNER, ARTHUR BARBKNECHT, WILLIAM COX AND JOHN
ALBERTS

Case No. C-30.—Decided April 30, 1936

Phonograph and Parts Industry—Interference, Restraint or Coercion: surveillance of organizational activities and meetings—Discrimination: discharge—Reinstatement Ordered—Back Pay: awarded.

Mr. Harry L. Lodish for the Board.

Mr. King Fauver, of Elyria, Ohio, for respondent.

Mr. Isaiah S. Dorfman, of counsel to the Board.

DECISION

STATEMENT OF CASE

On October 30, 1935, Hobart Flenner, Arthur Barbknecht, William Cox and John Alberts, hereinafter called the discharged men, filed with the Regional Director for the Eighth Region a charge that the General Industries Co., of Elyria, Ohio, had engaged in and was engaging in unfair labor practices contrary to the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act. On December 30, 1935, the National Labor Relations Board, by its agent, the said Regional Director, issued its complaint against the General Industries Co., the respondent herein, alleging that the respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act. In respect to the unfair labor practices, the complaint as amended at the hearing on January 13, 1936, alleged, in substance, that the respondent on October 16, 1935, discharged Hobart Flenner, Arthur Barbknecht and William Cox, and on October 17, 1935, discharged John Alberts, all four of whom were employed by the respondent at its plant in Elyria, Ohio, as plastic moulders, and has since that date refused to reinstate them, for the reason that they had assisted a labor organization known as the American Federation of Labor.

The complaint and accompanying notice of hearing were duly served on the respondent and the discharged men. On January 6, 1936, the respondent filed a motion to dismiss the complaint on the ground that the above metioned sections of the Act, if applied to the

respondent's business, are in contravention of the 5th, 9th, and 10th amendments to the Constitution of the United States. On the same day the respondent filed an answer and without waiving its claim that the Act as applied to it is unconstitutional, alleged that its manufacturing operations are not commerce and do not affect commerce within the meaning of the Act; admitted that it did dismiss the discharged men; and denied each and every other allegation in the complaint. On January 13th and 14th, 1936, a hearing was held at Cleveland, Ohio before Walter Wilbur, duly designated by the Board as Trial Examiner. The respondent was represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to the parties.

During the hearing the respondent moved to dismiss the complaint for lack of jurisdiction, and on the constitutional grounds stated in its motion to dismiss. At the conclusion of the testimony in support of the complaint, the respondent again moved to dismiss on the ground that the Board lacked jurisdiction, and on the further ground that the allegations in the complaint had not been proven. The Trial Examiner denied each of the motions to dismiss. The rulings are hereby affirmed.

On January 11, 1936, the Board, acting pursuant to Article II, Section 35, of National Labor Relations Board Rules and Regulations—Series 1, directed that the proceeding be transferred to and continued before it. A brief was filed on behalf of the respondent on February 15, 1936.

Upon the evidence adduced at the hearing and from the entire record now before it, including the transcript of the hearing, all the documentary evidence received, and the respondent's brief, the Board makes the following:

FINDINGS OF FACT

THE RESPONDENT AND THE NATURE OF ITS BUSINESS

1. The respondent, the General Industries Co., an Ohio corporation, is both an operating and a holding company. It operates a plant in Elyria, Ohio, for the manufacture, sale and distribution of phonographs and electric motors, record changers, fishing reels, bakelite compounds and synthetic resin products. It employs about 700 persons, 120 of whom are moulders working in three shifts. It owns the entire stock of the General Phonograph Manufacturing Company, Putnam, Connecticut, a company which manufactures phonograph needles, textile pins and ice picks. In turn 99⅓ per cent of the respondent's common stock is owned by a third company, the General Phonograph Company of Putnam, Connecticut.

2. The manufacture of synthetic resin products constitutes about 50 per cent of the respondent's operations. Various resins and metals are used in the manufacturing process; the resins being principally bakelite, tenite, durez and plaskon, and the metals mainly brass, copper and steel. The resins arrive at the respondent's plant in powdered form. At the plant the powder is compressed into "pills" of various sizes, then sent to the moulding department where the pills are pressed into requisite shapes in steam dies operated by moulders. The castings thus made are transmitted to other departments of the plant for preliminary inspection, drilling, edging, milling, buffing, polishing, and final inspection.

3. The bakelite, tenite, durez and plaskon are purchased by the respondent, f. o. b. the sellers plant, from New Jersey, Tennessee, New York and Ohio, respectively. The record does not disclose where the brass, copper, steel and other metals are purchased.

For the year 1935 total purchases of the respondent amounted to approximately \$582,418, of which 55.47 per cent was from states other than Ohio and 46.53 per cent from Ohio. A siding of the New York Central Railroad enters the respondent's yards and the greater part of the respondent's purchases are delivered by means of this railroad.

4. Sales of the respondent for the year 1935 totaled approximately \$1,407,539.90 of which 34.13 per cent went to customers in Ohio, and 65.87 per cent to customers in New York, Pennsylvania, Connecticut, Michigan and Illinois, by rail and truck, f. o. b. the respondent's plant.

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

THE UNFAIR LABOR PRACTICES

6. In November 1934, Local No. 15 of the Mechanics Educational Society of America, a labor organization, hereinafter called the M. E. S. A. was organized among the employees of the respondent, including the moulders.

On March 12, 1935, after a strike vote was taken among the members of the M. E. S. A., and upon the intervention of a Commissioner of Conciliation of the United States Department of Labor, the respondent entered into a written agreement for a period of 6 months with the M. E. S. A. A committee consisting of 5 employees of the plant was selected to represent the employees in their dealings with the respondent.

For some reason, not entirely clear from the record, the M. E. S. A. gradually ceased to function as the representative of the employees. This condition became so patent that the management, in order to retain its contact with the employees, posted suggestion

boxes thruout the plant. The moulders especially lost interest in the M. E. S. A., most of them severing their relationship with it in April and May, 1935. One employee explained that one could complain to the M. E. S. A. committee, "but it wasn't any good. They were working for the company more than for the Union."

7. Late in September, 1935 a movement was inaugurated to organize among the employees of the respondent, a federal union to be affiliated with the American Federation of Labor. The first open meeting for purposes of organization was held on Sunday, October 13, 1935. John Alberts, Hobart Flenner and William Cox walked into the meeting hall together. At that time Orlo William Marsh, superintendent of the plant, George T. Waller, foreman in the moulding department, 3rd shift, Mr. Wolf, the employment manager, and Mr. Monroe, the paymaster, were standing on the sidewalk near the hall and saw Alberts, Flenner and Cox enter the hall. Monroe and Wolf each had a pad of paper in his hands and appeared to be writing. The following morning Monroe reported to Allan W. Fritsche, the general manager of the plant, that he thought that he (Fritsche) "would be glad to know that only 14 attended the meeting." Under these circumstances it is impossible for us to believe, as the respondent urges, that the four members of the supervisory staff merely happened to be in front of the hall at the time of the meeting.

A number of the respondent's employees found their way to the hall, but failed to enter. There is good reason to suppose that the presence of the managerial array in full view of the entrance to the hall discouraged these employees from attending the meeting. Because so few employees of the respondent attended, (estimates vary between 6 and 14), no formal meeting was held and no formal organization attempted.

8. Three days later, on October 16th, the respondent discharged Hobart Flenner, William Cox and Arthur Barbknecht, and on October 17th discharged John Alberts. Flenner, Barbknecht and Alberts, who were employed as plastic moulders in Department 51 of the respondent's plant, 3rd shift, were discharged allegedly for "horse-play" during working hours. Cox, who was also employed as a plastic moulder in the same department, but on the 2nd shift, was discharged allegedly for inefficiency.

9. Without doubt, various pranks had been indulged in at one time or another over a period of about two years before the discharges by almost all of the twelve moulders employed on one floor of the 3rd shift, which operated from 11:30 P. M. to 7:30 A. M. This tended to increase the aggregate of defective work and to retard production. From July to October, 1935, this condition became more pronounced, due in part to neglect of duty by a member of the supervisory staff of the plant.

10. At one point in his testimony, George T. Waller, foreman of the 3rd shift, and who was in front of the meeting hall on October 13th, stated that the reason he singled out Flenner, Barbknecht and Alberts for discharge was that "most of these troubles existed right around the area where those men were working". However, it appears that while Flenner and Barbknecht worked within 15 or 20 feet of each other, Alberts was stationed three quarters of the way to the other end of the room.

At another point in his testimony, Waller stated that he had based his selection of these men on the ground that about two weeks before their discharge he saw them talking together, and he therefore suspected them of plotting pranks. Subsequently, in answer to the leading question put by counsel for the respondent, "Was there trouble after that, or not," he replied, "During the night." On cross-examination he then stated that there was "trouble" every night.

11. While all three men admitted playing pranks on other moulders in retaliation for pranks played upon them, each testified that he did not participate in any pranks during October, 1935. Waller admitted that he did not at any time know the identity of the guilty persons.

12. The record indicates that Barbknecht was a poor moulder, and in addition thereto had been admonished several times for being under the influence of liquor while on duty. He did not attend the meeting of October 13th, nor was his interest in the American Federation of Labor union called to the attention of the respondent in any other way at that time. He asserts that the respondent was aware of his desire to join such a union because in the summer of 1934 the general manager and the plant superintendent were in the immediate vicinity of the meeting hall and saw him there on two occasions when attempts had been made to organize an American Federation of Labor union. Without more, we do not believe that the evidence sustains the allegation in the complaint that he was discharged because he assisted a labor organization. The complaint as to Arthur Barbknecht will therefore be dismissed.

13. The discharge of Flenner and Alberts is in a different category. The respondent did not complain of their workmanship. They took an active part in organizational activities, first on behalf of the M. E. S. A. and later in an effort to establish the federal union to be affiliated with the American Federation of Labor. Both were seen attending the meeting of October 13th by members of the respondent's supervisory staff, and were discharged within three and four days thereafter respectively. We believe that the respondent has turned to the "horseplay" and the "pranks" merely to give itself a convenient pretext to rid itself of two workers who were zealous in their efforts to organize its employees.

14. William Cox was employed by the respondent as a plastic moulder on the second shift for about 2½ years. He had been a shop steward for the M. E. S. A. until he severed his affiliation with it in May, 1935. He attended a meeting of those interested in forming the federal union on October 6, 1935, and subsequently, as above related, was seen attending the meeting of October 13th. Three days thereafter he was discharged allegedly for inefficiency. We conclude on the basis of all the evidence before us that Cox was not one of the better moulders employed by the respondent, but that other moulders of similar ability and capacity were at the time of the hearing still retained in the employ of the respondent; and that but for his participation in the attempt to organize the federal union, he would not have been discharged.

15. We find that the respondent discharged and refused to reinstate Hobart Flenner, John Alberts and William Cox for the reason that they assisted a labor organization, known as the American Federation of Labor, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

16. The respondent has discriminated against Flenner, Alberts and Cox with respect to hire and tenure of employment for the purpose of discouraging participation in the formation of and membership in a proposed labor organization, and by such acts, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights of self-organization guaranteed in Section 7 of the Act.

17. We find that 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 the Board makes the following conclusions of law:

1. By its discharge of Hobart Flenner, John Alberts, and William Cox, and each of them, and by its refusal to reinstate them, and each of them, for the reason that they and each of them assisted in an attempt to form a labor organization, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by said acts did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

2. By its discharge of the persons aforesaid and by its refusal to reinstate them, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said persons and

each of them, and did thereby discourage and is thereby discouraging the formation of and membership in a labor organization, and by all of said acts and each of them did engage in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

3. 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

On the basis of the findings 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, the General Industries Co., and its officers and agents shall:

1. Cease and desist from in any manner interfering with, restraining or coercing their 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 in Section 7 of the National Labor Relations Act;

2. Cease and desist from discouraging its employees from forming or joining any labor organization, by discrimination in regard to hire or tenure of employment or any term or condition of employment.

3. Take the following affirmative action, which the Board finds will effectuate the policies of the Act;

(a) Offer to Hobart Flenner, John Alberts and William Cox immediate and full reinstatement to the respective positions formerly held by them, without prejudice to their seniority or other rights and privileges previously enjoyed by them;

(b) Make whole said employees for any loss they may have suffered by reason of their discharge, by the payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the time he was discharged to the date of such offer of reinstatement, computed at the average weekly wage at the time of discharge as set forth in Appendix A, attached hereto and made a part hereof, less the amount which each, respectively, has earned subsequent to the time of discharge and up to the time of said offer of reinstatement.

4. Post immediately notices to its employees in conspicuous places in its plant stating (a) that the respondent will not discharge or in any manner discriminate against employees for participating in the formation of or for becoming members in a labor organization affiliated with the American Federation of Labor, or any other labor

organization; and (b) that such notices shall remain posted for a period of at least thirty (30) consecutive days from the date of posting.

APPENDIX A

| Name | Average weekly wage ¹ | Wages earned from date discharged to Jan 14, 1936 |
|---------------------|----------------------------------|---|
| Hobart Flenner..... | \$19 51 | \$100 00 |
| John Alberts..... | 17 56 | 15 53 |
| Wilham Cox..... | 18 68 | 73 54 |

¹ Computed on the basis of wages received by each of the three discharged men for a period of 15 weeks next preceding the week of their discharge.