

IN the Matter of ANSIN SHOE MANUFACTURING COMPANY and SHOE
WORKERS' PROTECTIVE UNION, LOCAL No. 80

Case No. C-26.—Decided June 12, 1936

Shoe Industry—Interference, Restraint or Coercion: by citizens committee; denial of right of employees to be represented by non-employees—*Condition of Employment:* join company-dominated union—*Company-Dominated Union:* domination and interference with formation and administration; financial or other support; initiation and sponsorship; discrimination in favor of, in: check-off, employment, benefits and privileges; disestablished as agency for collective bargaining.

Mr. Ralph H. Cahouet for the Board.

Mr. Saul A. Seder, of Worcester, Mass., for respondent.

Mr. Marc J. Robinson, of Boston, Mass., for the Union.

Mr. Louis L. Jaffe, of counsel to the Board.

DECISION

STATEMENT OF CASE

On December 11, 1935, Local No. 80, hereinafter referred to as the Union, of the Shoe Workers' Protective Union, hereinafter referred to as the International, filed with the Regional Director for the First Region, a charge that the Ansin Shoe Manufacturing Company, of Athol, Massachusetts, hereinafter referred to as respondent, had engaged in and was engaging in unfair labor practices contrary to the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On the same day the Board issued a complaint against respondent. The complaint was signed by the Regional Director for the First Region, and alleged that respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (2) and Section 2, subdivisions (6) and (7) of the Act.

In respect to the unfair labor practices, the complaint alleged in substance that respondent had dominated and interfered with the administration of a labor organization of its employees known as the "Progressive Shoe Workers' Union", and had contributed financial and other support thereto. The complaint as amended subsequent to the hearing charged respondent also with dominating and interfering with the formation of the "Progressive Shoe Workers' Union."

The complaint and accompanying notice of hearing were served on the parties in accordance with Article V of National Labor Relations Board, Rules and Regulations—Series 1. On December 30 and 31, 1935 and January 16 and 17, 1936, a hearing was held at Worcester, Massachusetts, before Trial Examiners designated by the Board. Counsel for respondent appeared specially to object to the jurisdiction of the Board on the grounds that the Act is “unconstitutional and in violation of the rights granted to the citizens of the United States as provided in the Constitution and its amendments thereto;” counsel announced that he reserved “the right, . . . in the event that the Act is declared constitutional by the United States Supreme Court, to submit such evidence as we have with respect to the charges made as alleged in the complaint.” Counsel then withdrew formally from the hearing but remained at hand in the hearing room and was heard occasionally to interpose objections to certain questions for which purpose he would request permission to reenter the hearing *ad hoc* and again withdraw. These objections were passed upon by the Trial Examiner. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties.

By order of the Board dated January 11, 1936, the proceeding was transferred to and continued before the Board in accordance with Article V, Section 35 of said Rules and Regulations—Series 1.

Upon the entire record in the case, including the pleadings, the stenographic transcript of the hearing, and the documentary and other evidence received at the hearing, the Board makes the following:

FINDINGS OF FACT

I. THE COMPANY

Respondent, the Ansin Shoe Manufacturing Company, is a Massachusetts corporation, engaged in the sale and manufacture of ladies' shoes, having its factory and principal place of business at Athol, Massachusetts. Respondent employs approximately 500 persons. Respondent purchases about 25% of its raw materials in states other than Massachusetts. The principal material requirement is leather. Though Boston is the market center for the sale and purchase of leather, so that respondent may make its purchases there, practically all of the raw hides, tanned and distributed from Massachusetts, are imported into Massachusetts from other States and from foreign countries. Respondent ships 85% of its finished product to other States. Some of this product, consisting of parts of shoes, it ships to manufacturers all over the United States for further processing by them.

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

II. LABOR RELATIONS OF RESPONDENT

Respondent's business is conducted in conjunction with the Anwelt Shoe Manufacturing Company, which is a respondent in a case before us known as C-27 in which the Union here in question has charged the Anwelt Company with having discharged certain Union men because of their organizational activity. Respondent and the Anwelt Company occupy the same factory building and have the same manager, Sidney Ansin, who is treasurer of respondent. Until the rise of the Progressive Shoe Workers' Union in the Ansin Plant, both companies dealt with the combined employees of the Ansin and Anwelt Companies as a single group. The labor relations of the two companies were in part governed by a single contract between the companies on one hand and the workers on the other. This agreement had been negotiated under the auspices of the State Board of Arbitration of Massachusetts. It was to expire on December 31, 1935, and was in operation for about two years. Though the Union was not formally a party to this agreement, a provision in it for the settlement of disputes designates a certain "executive board" as the representative of the workers for that purpose; the only existing executive board in these factories was the executive board of the Union.

The contract provided that the Code hours under the National Industrial Recovery Act should prevail. After the National Industrial Recovery Act was declared invalid by the Supreme Court of the United States, a question arose whether under the terms of the agreement the Code hours were still in effect. On August 27, 1935, Leo Bergeron,¹ shop chairman, and an active Union member, approached Sidney Ansin, the treasurer and general manager, to discuss the hour question. Ansin refused to discuss the question. He ordered Bergeron out of the office. The following day, a Wednesday, Ansin called the cutters together and gave his interpretation of the agreement. Bergeron objected to it. "This is none of your business", said Ansin, "I want you to get out of this factory; I don't want you to come back in again. I am firing you." Bergeron left. By Friday practically all of the workers had walked out as a protest against Bergeron's discharge. On September 7, 1935, Sidney Ansin, a committee of workers, and officers of the International met with the State Board of Conciliation and Arbitration. That Board recommended a return to work. All of the workers including Bergeron

¹ Bergeron is among those whose discharge by the Anwelt Company has given rise to the case against it.

returned. On September 25 the State Board acting as arbitrator heard the hour question, and on September 28 decided that the Code hours should prevail.

On September 30, a committee of shop stewards and David Carey, an organizer for the International, attempted to take up with Ansin other outstanding questions. Ansin refused to meet the committee. The employees refused to work unless such a meeting took place. Ansin acceded and in the course of the meeting all current issues were resolved.

On October 10 Ansin discharged four Anwelt employees, among them Bergeron, the shop chairman. Ansin refused to arbitrate the question of these discharges. He told Carey, the organizer, that "he wouldn't deal with the Union or any other group, that he would close up his business first . . . I am going to run this business to suit myself and I will not have any interference whatsoever." The Chairman of the State Board of Arbitration asked Ansin to arbitrate. Again he refused.

III. THE UNFAIR LABOR PRACTICES

Shortly afterward the Ansin and Anwelt Companies announced that they were going to leave Athol. Prominent citizens organized a banquet at which Ansin, upon invitation, spoke. A Citizens' Committee was formed. This committee addressed a letter to Charles McAdams, clerk of the Union, and requested that "a committee of workers from the Ansin and Anwelt Factories be appointed" to meet with the Citizens' Committee. The following day, the Reverend Barker, chairman of the Citizens' Committee, asked McAdams which workers had been chosen to meet with the Committee. McAdams named, among others, David Carey, the organizer. The Reverend Barker stated that they would refuse to sit with the union committee if Carey were on it. An employee of Anwelt was selected in place of Carey. A group of non-union employees also was called to the meeting, and finally, Sidney Ansin, who knew that invitations had been extended to the union and non-union groups. During the period of the meetings and negotiations considered below the Reverend Barker called upon Ansin a number of times. Ansin reports the purpose of his calls as follows: "He wanted to know if the directors (of the two companies) would continue to stay in business there, if he could definitely determine from the workers that we (the companies) were going to be permitted to work harmoniously and continue operations there without having legal agreements unjustly broken."

At a meeting in which all committees and Ansin were present, a Mr. Pregent of Keene, New Hampshire, read and explained an

agreement in force in that city between a shoe factory and its employees, who were organized on a one-plant basis. Ansin said that with few minor changes, the agreement would be satisfactory to him. At a meeting the following day Ansin read the Keene agreement with substantial variations proposed by him. He had added a provision for collecting dues for the union—whatever union it was to be—by shop stewards in the factory. To this there was objection: dues, it was said, should be collected by a business agent of the union. Ansin said that the dues collector must be responsible; that if his workers were forced to pay dues he wanted to know who was taking them, and what they were going to be used for. He suggested instead a check-off by the companies. During this conversation, in which Ansin participated, there was an assumption that a new union would be formed. A question arose as to the choice of business agent. Ansin insisted that the business agent must be a resident of Athol. He would not tolerate Carey or Nolan, the president of the International. These “outsiders” were “interferers.” “Our relations with our employees”, Ansin testified at the hearing, “were always very harmonious. We never had any trouble in the life of our two-year contract that amounted to anything, and all differences were adjusted until August of this year, when Mr. Nolan came to Athol and told the workers that by having 51 per cent of those workers he could have a closed shop.” McAdams was suggested as a business agent. Ansin approved the suggestion. McAdams, himself, made no comment.

Ansin testified at the hearing that whether the companies stayed in Athol depended upon “the success of the plan”, which was discussed at these meetings. Ansin at this time offered \$1,000 to start a hospitalization and welfare fund for the employees. This fund, too, depended upon the assurance to the companies that they could get along without “interference.” Similarly, Ansin stated that he would take back the four discharged Anwelt workers, if the agreement were accepted.

The Citizens’ Committee called a mass meeting of Anwelt and Ansin workers on Tuesday, November 11. At this meeting printed ballots appeared. There were two sets of ballots. One carried the names of candidates for officers of a new organization. Among these candidates was McAdams for business agent. McAdams had not given anyone authority to use his name in this manner. He was told that the Committee and the shop workers had picked him and that this was agreeable to Mr. Ansin. He insisted that these ballots be destroyed. The second set of ballots carried the question of choice between the existing Union and a new organization.

The Reverend Barker presided. He told the workers that Ansin would contribute a sum of money to start off the new organization. At the beginning of the meeting about 400 were present—there were about 1,000 employees in both factories, though at this time the Ansin plant was idle. The question of choosing between organizations was put to a vote. By this time only about 250 persons remained in the meeting. Of these a majority voted for a new organization. The vote was loosely conducted, without a check-list or identification of voters. Someone suggested that a Mr. Austin, an employee, take the chair, which he did. Meanwhile, Mr. Tyler, a member of the Citizens' Committee, telephoned to Ansin with respect to a question which had arisen concerning the proposed agreement. A disagreement arose between Ansin and Tyler and at the suggestion of the Citizen's Committee, the meeting was adjourned to the following Friday. During the entire meeting the Citizens' Committee was present, though its members, after the vote in favor of the new organization, had announced that "they had done their duty" and that they would retire from the hall and leave the workers to carry on their business. Mr. Ansin's secretary was also present taking notes; an employee noted her presence; upon request she withdrew.

A second meeting was held on the following Friday. About 250 persons were present. Austin continued as chairman. He read the proposed agreement. It contained a provision permitting a 50 hour work week. McAdams objected that the State law forbade more than 48 hours work for women. After more of the agreement had been read, Ferris, an Anwelt employee, protested that the agreement was "nothing more or less than a company union" and he moved that "the thing be torn up and discarded." The motion was carried by a large vote. The following Tuesday McAdams and Ferris² were laid off and have not yet been reemployed.

Some days after the Friday meeting, a mass meeting was held of Ansin workers alone. At this meeting about 100 persons were present. The Reverend Barker opened the meeting. "You people are suffering the consequences of the trouble in the Anwelt Department." He suggested the formation of an independent organization of Ansin workers. After 25 or more workers left the hall, the remainder agreed to form a new organization, the "Progressive Shoe Workers' Union." Officers were then nominated and elected from the floor. The Reverend Barker and one Barnes, an Ansin employee, approached Ansin and asked him if the new union might meet in the factory. Previously Ansin had refused to allow the use of his factory, but he now permitted it and two meetings of the new

² These two men are among those whose lay-off has given rise to the case against the Anwelt Company.

organization were held in the factory. Respondent and the Progressive signed an agreement. Article I read: "The purposes of our organization will be to promote a better understanding between the employer and the employees of the Ansin Shoe Manufacturing Company." Respondent checks-off the Progressive dues—10¢ per week—from the wages of employee-members. The pay envelope has a printed item noting the deduction. The agreement contains a provision for a "union shop": after two weeks employment it is compulsory for the employee to become a member of the Progressive union. The new union takes as members only employees of the Ansin Company. The Progressive union is a labor organization.

The charge against respondent is that it dominated and interfered with the formation and dominates and interferes with the administration of the Progressive union and contributes financial and other support to it. Sidney Ansin, testifying at the hearing, sought consistently to give the impression that respondent was purely passive in all the events described above; it did not call the meetings, write the by-laws, or propose the form of the new organization. It did not, in other words, actively take a part in initiating or forming the specific organization here attacked.

We do not so narrowly interpret Section 8, subdivision (2) of the Act, as to require this direct and immediate link between the employer and the outlawed organization. This section does not stand alone; its meaning is derived not solely from its words but from related Sections and from the purposes of the Act. This Section makes specific one of the ways in which an employer can interfere with the broad right of the employees under Section 7 to bargain collectively through representatives of "their own choosing", and is to be construed so as to further the intention of Section 7. Its object is to protect the rights of employees from being hamstrung by an organization which has grown up in response to the will and the purposes of the employer, an organization which would not be, in the sense of Section 7, an organization of the employees' choice. The workers may be aware of their employer's antipathy to union organization and seek to propitiate him by acceptable conduct. This may be unavoidable. But the employer can be prevented from engaging in overt activity calculated to produce that result. If labor organizations are to be truly representative of the employees' interest, as was the intention of Congress as embodied in this Act, the words "dominate and interfere with the formation of any labor organization" must be broadly interpreted to cover any conduct upon the part of an employer which is intended to bring into being, even indirectly, some organization which he considers favorable to his interests.

Of such conduct by respondent the record is full. When the president of the International announced, as Sidney Ansin says, that the Union would seek a closed shop, respondent countered with a threat to leave town. It is quite possible that Ansin did not arrange the intervention of the Citizens' Committee; that may have been quite unnecessary. Ansin had laid down an ultimatum: if we are to stay here, see to it that our labor relations are satisfactory. Thus advised of their danger, the employees and even more the business interests of the community, whose primary interest was to keep the factories in town on any terms, might well be expected to seek an acceptable solution. But Ansin's intervention did not stop at this point. He participated in the meetings between the Committee and his employees: meetings which were in essence labor organization meetings. His alleged role at these meetings was that merely of negotiator of the labor contract. This position is disingenuous. Though Ansin may have made very few suggestions as to the form which the organization was to take, his positive insistence that the business agent of the new organization be a resident of Athol revealed his demand that the new organization must not be a national organization; and the Committee's statement to McAdams that Carey, the outside organizer, must not be on the Union delegation showed at the very least that the Committee comprehended Ansin's views and that the whole problem of these meetings was to find a labor organization acceptable to Ansin. Ansin's vague offer of \$1,000 for hospitalization, which in the speech of the Reverend Barker to the mass meeting became an offer of funds to the new Union—an offer which up to the time of the hearing had never been fulfilled in any form—was both a further pressure, and an attempt to give all of this pressure a benevolent aspect.

The "lay-off" of McAdams and Ferris after they had thwarted the organization of the combined Ansin-Anwelt workers was a pointed reminder of what the employees were expected to do. Thereupon 75 out of 500 Ansin workers formed, under the Reverend Barker's auspices, the new union. With this newly formed organization, Ansin signed an agreement embodying the "union-shop", an arrangement almost as drastic as the "closed shop", the suggestion of which by Nolan had caused Ansin to announce that the companies would leave Athol.

Thus has Ansin's original ultimatum borne fruit. Cautiously and discreetly reinforced from time to time by a suggestion, a show of power easily understood—yet combined always with the forms of aloofness and disinterestedness—it has brought forth a union restricted in membership to respondent's employees, and by the "union shop" clause, has ousted the old Union and its membership from

the plant. This outcome does not flow from that free choice which our Act is designed to foster and protect. It is the result of fear deliberately provoked and a sufficient suggestion as to how the displeasure might be appeased. We find that respondent has dominated and interfered with the formation of the Progressive Shoe Workers' Union.

We find that respondent, by such Acts, interfered with, restrained, and coerced, and continues to interfere with, restrain, and coerce its employees in the exercise of the rights to self-organization, to form, join, and 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 and protection.

The experience in respondent's plant and in other plants is that the denial of the employees' rights leads to strikes and stoppages. We find that the aforesaid acts of respondent tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Progressive union represents the will and the purpose of respondent, not of its employees. This is true though we do not find that respondent is at the moment interfering with its administration. But, this union, as we said *In the Matter of the Wheeling Steel Corporation*, "will, if permitted to continue as representatives, provide the respondent with a device by which its power may now be made effective unobtrusively, almost without further action on its part. Even though he would not have freely chosen the (union) as an initial proposition, the employee once having chosen, may by force of a timorous habit, be held firmly to his choice. The employee must be released from these unlawful compulsions." Consequently respondent must affirmatively withdraw recognition from the Progressive union as an organization for the purpose of collective bargaining upon behalf of its employees.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law:

1. Progressive Shoe Workers' Union is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.
2. By its domination and interference with the formation of Progressive Shoe Workers' Union, respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2).
3. By interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, respond-

ent 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

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 respondent, Ansin Shoe Manufacturing Company, and its officers and agents, shall:

1. Cease and desist from in any manner interfering with, restraining or coercing its 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 purpose 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 dominating or interfering with the formation or administration of any labor organization of its employees or contributing financial or other support thereto.

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

(a) Withdraw all recognition from the Progressive Shoe Workers' Union, as representative of its employees, for the purpose of dealing with respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(b) Post notices in conspicuous places on each floor of the factory, stating (1) that the Progressive Shoe Workers' Union is so disestablished, and that respondent will refrain from any recognition thereof, and stating (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.