

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

*Case No. C-27.—Decided June 12, 1936*

*Shoe Industry—Interference, Restraint or Coercion:* by citizens' committee; denial of right of employees to be represented by non-employees—*Discrimination:* discharge; non-reinstatement following temporary lay-off—*Reinstatement Ordered—Back Pay:* awarded.

*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 November 25, 1935, Local No. 80, hereinafter called the Union, of Shoe Workers' Protective Union, hereinafter called the International, filed with the Regional Director for the First Region a charge that Anwelt Shoe Manufacturing Company of Athol, Massachusetts, had engaged in unfair labor practices prohibited by the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On December 11, 1935, the Board issued a complaint against Anwelt Shoe Manufacturing Company, hereinafter referred to as respondent, the complaint being signed by the Regional Director for the First Region and alleging that respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2) and (3), and Section 2, subdivisions (6) and (7) of the Act. In respect to the unfair labor practices, the complaint alleged in substance:

1. That respondent had discharged Leo Bergeron, John Webber, Sam Sahagian and Robert Peterson and had laid off for indefinite periods Charles McAdams and George Ferris for the reason that they had joined and assisted the Union, and in order to discourage membership in the Union.

2. 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 and accompanying notice of hearing were duly served 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 Anwelt Shoe Manufacturing Company, is a Massachusetts corporation, engaged in the manufacture of men's shoes, having its factory and principal place of business at Athol, Massachusetts. Respondent employs approximately 400 persons. It purchases most of its materials within the State. However, the principal material is leather, and though Boston is the chief market in the United States for dealings in leather practically all of the hides are imported into Massachusetts from other States and from foreign countries. Respondent ships 85% of its finished product to other States.

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

## II. THE DISCHARGES OF OCTOBER 10

Respondent's business is conducted in conjunction with the Ansin Shoe Manufacturing Company, which is a respondent in a case before us known as C-26 in which the Union here in question has charged the Ansin Company with having dominated and interfered with the formation and administration of an organization of its employees, the Progressive Shoe Workers Union. Respondent and the Ansin Company occupy the same factory building and there is sometimes an interchange of operations between the two. Until the rise of the Progressive Shoe Workers Union in the Ansin plant, both companies dealt with the combined employees of the Ansin and Anvelt 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, one of the complainants here, shop chairman, and an active Union member, approached Sidney Ansin, the manager of respondent, 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 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 until he would meet. Ansin acceded and in the course of the meeting all current issues were resolved.

On October 10 respondent discharged the four employees here in question, 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 DRIVE FOR A NEW UNION AND THE LAY-OFFS OF NOVEMBER 19

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 nonunion employees also was called to the meeting, and finally, Sidney Ansin. During the period before and after these meetings, Ansin testified "the Citizens' Committee continued to function, continued to be in touch with me and we continued to see what could be done to assure ourselves and our directors that the business could be conducted without unnecessary interference;" by "interference" Ansin meant, as he testified, the activity of "officials or members of a labor<sup>1</sup> organization who do not actually work in (the) factory."

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

<sup>1</sup> The word, "later", appearing in the transcript is obviously a mistake of transcription.

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. McAdams was suggested as a business agent. Ansin approved the suggestion. McAdams, himself, made no comment. Ansin at this time offered \$1,000 to start a hospitalization and welfare fund for the employees, if the companies were enabled to stay in Athol. He stated that he would take back the four discharged 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 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 Citizens' 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, George Ferris, an employee of respondent, 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 Ferris 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 organization were held in the factory. The Ansin Company 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 complaint charges that respondent has dominated and interfered with the administration of a labor organization of its employees. We believe that respondent did attempt but failed to bring about an organization of its employees,<sup>2</sup> but since the charge

<sup>2</sup> In the companion case against the Ansin Company (C-26, decided June 12, 1936) we found that the Ansin Company dominated and interfered with the formation of the Progressive Shoe Workers' Union, a labor organization of its employees.

was not made we need not set forth the analysis on which we base this conclusion in any greater detail than has already been done. The charge of dominating and interfering with the administration of a labor organization will be dismissed.

#### IV. THE UNFAIR LABOR PRACTICES

##### A. *The discharges on October 10*

The employees of respondent work on a piece time basis. The supply of work is not constant. When no work is at hand, the foreman customarily lets the men off with orders to return at a certain time. On the morning of October 10 the men were let off and told to return in an hour. Bergeron, Peterson, Sagahian, Webber, the four men discharged, and a fifth, Pence, met at the Leonard Hotel, at which Webber lived. They had a glass of beer together. The men decided that they did not wish to return to the factory until one o'clock. Bergeron telephoned to the foreman. The foreman was reluctant to grant permission but it was Bergeron's impression that after persuasion he did. They returned at one o'clock. The foreman said, "You guys don't want to work. Take the afternoon off." They replied, "O. K.", except Pence who stayed in and got work. The four men returned at seven the next morning, a Friday. The foreman said, "You fellows don't want to work, so take the day off." Bergeron asked if they should come in Monday and was told that they should. On Monday they were given their pay and discharged. In his testimony Sidney Ansin claimed that these men were discharged because they had stayed away from work without permission and were drunk when they returned.

The men deny both of these charges, but even if they are true, we do not believe that they account for the discharges. When the men returned on Thursday afternoon they were told to return to work the following day, which they did. It is not claimed that they were drunk the following morning. Furthermore, Pence, one of them, was put to work. Sidney Ansin testified that such was his friendship for Bergeron that a number of times he had helped him out of difficulties and had reemployed him after he had left respondent's employ. It must be pointed out that because the work was paid on a piece basis and furthermore was slack, the offenses charged by Ansin against Bergeron and his companions were not serious. Granting Ansin his professed solicitude and personal interest in Bergeron's welfare, it is difficult to believe that he would discharge him for such comparatively trivial reasons.

On the other hand, the discharge becomes completely understandable in the light of Bergeron's union and organizational activity.

Bergeron was the shop chairman for the Ansin-Anwelt workers. When in August he protested against Sidney Ansin's interpretation of the hour provision in the contract, Ansin discharged him on the spot. When Ansin paid Bergeron off he said, "Leo, why don't you get out of town? You have got all your money now. Why don't you get out of town and save yourself a lot of trouble? . . . If you don't get out of town I am going to make more trouble." After the first discharge respondent ripped out the machines worked by Bergeron and Webber and shipped them away. Bergeron and Carey protested but were told nothing could be done. The two men were offered jobs at hand cutting, which paid far less. After ten or twelve days Bergeron was taken back but only after a strike. These events, of course, marked Bergeron as the symbol of Union strength.

The other three men, Peterson, Webber, and Sahagian, were Union members. Peterson was a steward—representative for presenting grievances—of the cutting department, Webber was on a committee which protested Bergeron's first discharge before the State Board of Arbitration. These men, apparently, were neither more nor less prominent than some other Union men but they had the misfortune to take part with Bergeron in the events which served as the pretext for his discharge. Ansin had determined that he would break the influence of the Union or leave town; for this purpose there is no more effective weapon than the discharge of a few men, among them a prominent leader.

The subsequent conduct of Sidney Ansin makes it clear that these discharges were simply part of his struggle with the Union. He was asked to arbitrate the discharges. He refused. He stated that "he intended to run his business to suit himself and that he wouldn't deal with the union or any other group." In the meetings with the Citizens' Committee he said, "I haven't got anything against the cutters (referring to the four men). Any time they want a letter of recommendation of the highest kind, as faithful workers and good shoe cutters." He said then that he would put them back to work if the agreement under consideration was signed.

We conclude that respondent has discriminated and continues to discriminate in regard to the hire of Leo Bergeron, Robert Peterson, John Webber, and Sam Sahagian in order to discourage membership in the Union.

#### *B. The lay-offs on November 19*

On November 19, Charles McAdams and George Ferris were laid off and have not since been called back to work. Sidney Ansin testified that these men were laid off because of lack of work, in

the case of Ferris, specifically, because his machine had been moved out. It does not appear from Ansin's testimony that anyone else was laid off. Ansin's reasons are vague and unconvincing and do not overcome the strong inferences of discriminatory action which arise from the circumstances surrounding the lay-offs. Everyone including Ansin recognized McAdams as the leader not only of the Union, but of the Ansin-Anwelt employees generally. Ansin and the Citizens' Committee had sought by flattery and persuasion to induce him to lead the movement away from the Union and become leader of the new union. During the meetings of the Citizens' Committee McAdams apparently held back. He neither refused nor accepted the proffered place. At the first mass meeting he insisted that ballots bearing his name as business agent of a new union be destroyed. Still he held back and let the question of a new union go to a vote. At the second mass meeting on Friday, November 15, McAdams began the movement which led to rejection, at least by the Anwelt workers, of the proposed agreement and of the new organization. McAdams first raised the point that a new chairman should be elected to replace Austin, chairman of the previous meeting. He then objected to a clause in the proposed agreement. Finally Ferris claimed that the agreement was "nothing more or less than a company union." He moved that it be "torn up and discarded." The motion was carried. The following Tuesday McAdams and Ferris were laid off. Nothing could be better calculated to show respondent's displeasure at the breakdown of the plans for a new organization and we believe that that calculation was the basis for these lay-offs.

We find that Charles McAdams and George Ferris have been and are being discriminated against in regard to hire and tenure of employment to discourage membership in the Protective and encourage membership in the Progressive union.

Respondent, by discharging and laying off its employees as found above, has interfered with, restrained, and coerced 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.

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.

## 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. Shoe Workers' Protective Union and Progressive Shoe Workers Union are each labor organizations, within the meaning of Section 2, subdivision (5) of the Act.

2. Respondent, by discriminating in regard to the hire and tenure of employment of Leo Bergeron, Robert Peterson, John Webber, Sam Sahagian, Charles McAdams, and George Ferris, 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. 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

On 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 respondent, Anwelt Shoe Manufacturing Company, and its officers and agents shall:

1. Cease and desist:

(a) From discouraging membership in the Shoe Workers' Protective Union, or any other labor organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining or assisting the Shoe Workers' Protective Union or any other labor organization of its employees;

(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment for joining the Shoe Workers' Protective Union or any other labor organization of its employees; and

(c) From in any other 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. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Leo Bergeron, Robert Peterson, John Webber, Sam Sahagian, Charles McAdams, and George Ferris immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said Leo Bergeron, Robert Peterson, John Webber, Sam Sahagian, Charles McAdams, and George Ferris for any loss of pay they have suffered by reason of its discharge, lay-off, or unlawful failure to reinstate Leo Bergeron, Robert Peterson, John Webber, Sam Sahagian, Charles McAdams, and George Ferris by paying to each, respectively, a sum of money equal to that which each would have earned as wages during the period from the date of the unlawful discharge or lay-off, to the date of such offer of reinstatement, less the amount each earned during such period, except that there shall not be deducted from that sum amounts earned by such an employee at occupations in which he had simultaneously and regularly engaged while employed by respondent and in which he continued to engage after the unlawful discharge or lay-off.

(c) Post immediately notices to its employees in conspicuous places on each floor of its factory, stating (1) that respondent will cease and desist in the manner aforesaid and stating (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

The charge that respondent violated Section 8, subdivision (2) of the Act in the manner described in the complaint is herewith dismissed.