

In the Matter of THE SEAGRAVE CORPORATION and UNITED
AUTOMOBILE WORKERS OF AMERICA

Case No. C-189.—Decided January 21, 1938

Fire-Fighting Equipment Manufacturing Industry—Blacklist—Discrimination: charges of not sustained, complaint dismissed.

Mr. George Rose, for the Board.

Mr. Ralph G. Martin and *Mr. Robert T. E. Gibbs*, of Columbus, Ohio, for the respondent.

Mr. Richard E. Reisinger, of Columbus, Ohio, for the Union.

Mr. Joseph B. Robison, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On April 9, 1937, United Automobile Workers of America, herein called the Union, filed a charge with the Regional Director for the Ninth Region (Cincinnati, Ohio) alleging that The Seagrave Corporation,¹ Columbus, Ohio, herein called the respondent, had engaged and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On May 24, 1937, the National Labor Relations Board, herein called the Board, by the Regional Director for the Ninth Region, duly issued and served upon the parties a complaint and notice of hearing. The complaint alleged 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 in that it had discharged and refused to reinstate two of its employees, Avery Dennis and Lawrence Lewis, for the reason that they were members of the Union and had engaged in concerted activities with other employees for the purposes of collective bargaining.

On May 28, 1937, the respondent filed an answer to the complaint in which it admitted the allegations concerning interstate commerce, but denied the allegations concerning the alleged discriminatory dis-

¹The name of the respondent was given in the charge as "Seagraves Corporation."

charges of Dennis and Lewis. The answer affirmatively alleged that Dennis was discharged because he was incompetent and that Lewis was laid off because the work for which he had been employed had been completed.

Pursuant to the notice, a hearing was held at Columbus, Ohio, on June 1, 1937, before Benjamin J. Holly, 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 produce evidence bearing upon the issues was afforded all parties. No oral argument was made at the close of the hearing, although opportunity to do so was granted.

On June 16, 1937, the Trial Examiner duly filed his Intermediate Report in which he found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) of the Act, by its discharge of and refusal to reinstate Avery Dennis and Lawrence Lewis. The Trial Examiner recommended that the respondent cease and desist from its unfair labor practices and, in addition, offer reinstatement with back pay to Avery Dennis and Lawrence Lewis. Thereafter the respondent filed exceptions to the Intermediate Report, taking exceptions to the rulings of the Trial Examiner during the course of the hearing, as well as to the findings and conclusions of the Intermediate Report. The respondent filed with its exceptions a brief in support thereof.

Pursuant to notice, a hearing was held before the Board in Washington, D. C., on July 8, 1937, for the purpose of oral argument. The respondent and the Union were represented by counsel.

The Board has reviewed the rulings of the Trial Examiner on objections to the introduction of evidence made during the course of the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the exceptions to the Intermediate Report and the brief filed in support thereof. As indicated below, the exceptions to the conclusions and recommendations of the Trial Examiner are sustained.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Seagrave Corporation is a Michigan corporation engaged in the manufacture of motor fire-fighting apparatus in Columbus, Ohio. Its sole manufacturing plant, at Columbus, Ohio, employs about 265 men. The trucks, which are produced at the rate of about four a

week, are built according to the specifications of the cities for which they are ordered. The respondent services its trucks after shipment. Sales offices are maintained from coast to coast, at such cities as San Francisco and Los Angeles, California, Chicago, Illinois, New York City, Boston, Massachusetts and Dallas, Texas. The respondent advertises widely, and its salesmen travel throughout the country. The total volume of sales in 1936 amounted to \$1,300,000 in value. The allegations in the complaint that the respondent causes both its raw materials and its products to move through states other than Ohio were admitted by the respondent in its answer. Moreover, Mr. Spain, the president of the respondent, stated at the hearing that the respondent was engaged in interstate commerce, and testified fully with regard to the facts constituting such commerce.

The respondent uses a wide variety of raw materials which are procured in all of the 48 states. Among the cities that have bought its products are Chicago, Illinois, Boston, Massachusetts, Seattle, Washington, and New York City.

II. THE UNION

United Automobile Workers of America is a labor organization, affiliated with the Committee for Industrial Organization.

III. THE ALLEGED DISCRIMINATORY DISCHARGES

On October 19, 1936, a strike commenced at D. L. Auld Company, herein called Auld, which is situated in the same town as the respondent, Columbus, Ohio. At that time Lawrence Lewis and Avery Dennis were working for Auld and both were among those who responded to the Union's strike call. Dennis was a member of the Union, and chairman of an organizing committee. Lewis joined the Union after the strike was called. On November 12, Auld reopened its plant. This reopening was accompanied by a great deal of disorder and received considerable newspaper publicity. Lewis was arrested for disorderly conduct, and was fined after pleading guilty. His name appeared in this connection in the newspaper reports.² Despite a settlement between the Union and Auld on December 10, Lewis and Dennis were never recalled to work.

Counsel for the respondent stated at the hearing that "everybody in Columbus knows" there was a strike at Auld, and that the respondent knew at all times material that Lewis and Dennis were involved therein. Both of the men are still members of the Union.

Lewis was hired on March 5, 1937, in the plating, polishing, and buffing department of the respondent's plant. The foreman of this

² Board's Exhibit No. 9.

department, Charles Wright, has complete charge of hiring and discharging the men under him. A few hours after Lewis started to work on March 5, Wright, in consultation with Lewis, filled out his employment card. Wright explained at the hearing that it is the respondent's usual practice to wait a few hours before having a new employee's card filled out, to see whether he can do the work assigned to him. There is a blank on this card where the name of the man's last employer should appear, as well as the names of other previous employers. On Lewis' card, the name of Auld is not given, despite the fact that Wright knew that Lewis had been employed at Auld. The evidence in explanation of this omission is conflicting. Lewis testified that Wright said it would be best not to put the name of Auld on the card because then it wouldn't "go through the office." He told Lewis to mention some other place at which he had worked and Lewis mentioned a concern in Connersville, Indiana. This concern is in fact the only one which was noted by Wright on the employment card. Wright testified that he did not fill in the name of Auld because he understood that Connersville was where Lewis had learned his trade and that it was also the last place at which Lewis worked. He insisted that Lewis must have given him to understand that Auld was not his most recent employer, since the name did not appear on the card.

On Lewis' recommendation, Dennis was hired on March 29, as a buffer. At the time that Lewis recommended his friend, he told Wright that Dennis had been involved in the Auld strike. Wright filled out Dennis' employment card, and wrote down Auld as his last place of employment.

After Dennis was hired on March 29, the situation in the plating, polishing, and buffing department was as follows: Foreman Wright and one other man did the plating; Lewis and four others named Boles, Miller, Brantner, and Collins were polishing; Dennis and one other man named Baker were buffing; and one employee named Vance was available for both polishing and buffing.

On March 30, the day after he was hired, Dennis was discharged. The testimony with regard to the surrounding circumstances is conflicting. Dennis testified that he had advance warning of his discharge through the fact that during the afternoon Wright received a message which caused him to become "a different man." At the end of the day, Wright told Dennis he would have to lay him off, although his work was satisfactory. Dennis said, "Well, you don't have to explain" and left. Wright, on the other hand, testified that he discharged Dennis because he could not do the work assigned to him, and when he handed Dennis his check, he told him this and Dennis agreed.

Lewis was dismissed on March 31. The testimony as to the occurrences on this day is also conflicting. Lewis stated that Wright told him he had to lay him off because there was a "list of names" in the office and that his name was on it. According to Lewis, Wright said his work was satisfactory and that if he left town for a while, he could get his job back. He offered to give Lewis a recommendation, but when Lewis sent a friend for it a few days later, Wright refused it. Lewis also stated that Wright told him that the Metal Trades Association was connected with the reason for his dismissal. Wright testified that when he told Lewis that he was being laid off, Lewis at once said that it was because of certain people "up there"; and that he then advised him, if he thought that was so, to leave town. He denied all knowledge of a "list" of any kind in the office, and said that Lewis could still have his recommendation.

The respondent's explanation of Lewis' discharge is that he was taken on because of a temporary emergency caused by an order placed by New York City and that he was laid off because the work on that order let up. This was later amplified by explaining that if Dennis had been able to do his work both he and Lewis would have been kept on a month or six weeks longer than they were; but that when Dennis left, the number of polishers and buffers was out of proportion, and Lewis, who had been hired most recently, was laid off. There was evidence for the respondent that work must be buffed as soon as it is polished, and that the New York order was a large one, for ten extra size "aerial trucks" which had been delayed by labor trouble in another plant and which had consequently come through to the respondent's plant in a rush, causing a need for extra help in each department of the respondent in turn. The pressure in Wright's department lessened a few weeks after the discharges and no man has been taken on in that department since March 31. Wright, Collins, Brantner, and Jorgensen, foreman of the blacksmith shop, all testified to the pressure caused by the New York job. It was denied only by Lewis.

One man, Charles Collins, had been taken on as a polisher after March 5, when Lewis was hired. However, Collins had worked in the respondent's blacksmith shop, from January 14 to March 8, 1937. There is some evidence to the contrary, that Collins was not employed during January and February, but the respondent's records on this point are quite clear.

The respondent's explanation of Dennis' discharge is that he may have been considered a good buffer at Auld's or elsewhere, but he could not handle the work at the respondent's plant. The evidence on this is extensive but not wholly convincing. Wright found it necessary to stand over Dennis several times during the two days he

worked to show him how to handle the work. It is agreed that Dennis dropped a few of the pieces he was handling. There is some testimony by the respondent's witnesses that Dennis let a few pieces fly, thereby creating a substantial hazard. However, the respondent conceded that any buffer starting a new job needs some instruction as to the best way to handle new pieces, and that even experienced buffers drop pieces occasionally. Brantner, who worked next to Dennis, stated that the latter only dropped about six pieces during the two days he was at the plant and that experienced buffers may drop one to two pieces a day. All of the respondent's witnesses said also that Dennis was slow, but, except in response to clearly leading questions, could not satisfactorily explain why they thought so. Moreover the evidence indicates that it would be difficult for them to judge Dennis' speed in view of the varying nature of the pieces which were being buffed. Collins, testifying for the respondent, said that Dennis' work had been considered satisfactory at Auld, but that the work done for that company was lighter than that done at the respondent's plant. Dennis, however, testified that he had handled large pieces at Auld; and both Lewis and Dennis stated that they heard no complaints about the latter's work for the respondent.

The record in this case does not convince us that the discharge of either Dennis or Lewis was discriminatory. There is credible evidence that the dismissal of Lewis was a lay-off and there is no question that in the event of a lay-off Lewis was the natural one to go.

While there was reason to believe that Dennis' alleged incompetence was more imaginary than real, we see no reason in this fact alone for finding that the Act was violated. If there were evidence in the record that the respondent intended to interfere with its employees' right of self-organization there would be reason to doubt that the respondent believed, at the time Dennis was discharged, that he was incompetent. In the absence of such evidence, however, there is reason to believe that the respondent did in fact conclude that Dennis could not perform his work satisfactorily, even though the record indicates strongly that this conclusion was erroneous. Tending to show an intention to discriminate is the testimony of Lewis and Dennis as to Wright's statements to them indicating that they were being laid off because of their activity in the Auld strike. This evidence is directly contradicted by the testimony of Wright. What additional evidence the record affords is not sufficient to persuade us that the respondent's acts were motivated by any bias against the Union. There is little or no evidence of any anti-union activity by the respondent in its plant.

We find that the respondent has not discriminated in regard to the hire and tenure of employment of Lawrence Lewis and Avery Dennis

because of membership in a labor organization, and thereby discouraged membership in a labor organization.

We find that the respondent has not interfered with, restrained, or coerced its employees in the exercise of the right of 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 and other mutual aid and protection.

On the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. The operations of the respondent, the Seagrave Corporation, occur in commerce, within the meaning of Section 2 (6) of the Act.

2. United Automobile Workers of America is a labor organization, within the meaning of Section 2 (5) of the Act.

3. The respondent has not discriminated in regard to the hire and tenure of employment of Lawrence Lewis or Avery Dennis because of their membership in a labor organization and thereby discouraged membership in a labor organization, within the meaning of Section 8 (3) of the Act.

4. The respondent has not interfered with, restrained, or coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, within the meaning of Section 8 (1) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the complaint against The Seagrave Corporation be, and it hereby is, dismissed.