RELEASE H.D.
COPIES PLEASE

FORM NLRB 5026
(4-80)

UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

TO : Gerald Kobell, Regional Director
Region 6

DATE. JUN 30 1986

FROM Harold J. Datz, Associate General Counsel
Division of Advice

SUBJECT: Seneca Motors, Inc.
Case 6-CA-18976

506-2000
506-4033-1000

The case was submitted for advice as to whether the employees' concerted refusal to sign an employee handbook is protected activity under Section 7 of the Act.

FACTS

There are approximately 22 employees at the car dealership and repair shop operated by this Employer. None of the employees have ever been represented by a labor organization at this facility and there is no ongoing organizing campaign. On February 14,1986, 1/ Service Manager Hansen distributed copies of an employee handbook to all employees under his supervision, including employees Hoover, Alden and Gregory. Employee Zacherl did not receive a handbook, but read another employee's copy while at work. Hansen told each employee to read the handbook, sign the last page and return it to the Employer, keeping the rest of the handbook. The last page reads: "I have read and understand the policies and rules of conduct explained within the handbook. If I leave Seneca Motors, Inc. for any reason, I will return this handbook in good condition," followed by a line for the employee's signature and date.

After Hoover, Alden and Zacherl discussed certain parts of the handbook, the other employees asked Hoover to arrange a meeting with Hansen to discuss several handbook provisions that they did not understand. When Hoover made this request, Hansen replied that he would see what he could do. When Hansen subsequently approached the employees to inquire whether they had signed the handbook, the employees indicated that they wanted to discuss the handbook before they would sign it. Hansen refused these requests. On February 25 or 26, Hansen approached the employees during their morning break, told them that he was tired of "taking heat" because they had not signed the handbook, and that they must sign it by Friday (February 28) "or else." When Hoover asked whether "or else" meant they would be fired, Hansen said yes. On February 28, Hansen asked Hoover, Alden, Zacherl

---

1/ All events occurred in 1986.

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

and Gregory if they had signed the handbook. They replied no, and further responded that they did not intend to sign it. Hansen told them that they were fired, and when the employees asked whether Hansen meant they were laid-off or they were fired, Hansen stated that they were fired. The Employer subsequently unsuccessfully contested the employees' applications for unemployment compensation benefits on the grounds that the employees had been insubordinate. 2/

ACTION

Complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(1) by discharging the employees because they engaged in protected, concerted activity.

In Bird Engineering, 3/ the Board held that an employer did not violate Section 8(a)(1) by discharging six employees who had clocked out and had left the employer's premises for the period scheduled for lunchtime in order to protest the employer's new work policy that prohibited employees from leaving the premises during working hours, including lunch breaks. The Board found that the employees had not engaged in a protected work stoppage by leaving the premises at lunchtime because by choosing not to strike but still refusing to obey the new rule, the employees had engaged in an unprotected attempt to set their own terms and conditions of employment. Thus, under Bird, supra, employees are not free both to avoid involvement in a labor dispute, such as a strike, and to decide for themselves which work rules to follow.

However, not every refusal to follow an employer's directive is unprotected, and in the instant case, the employees' refusal to sign the employee handbook is protected under the Act. Here, the employees were required to sign a statement in the handbook that they understood the policies contained therein, when in fact they did not understand those policies and the Employer had consistently refused to explain them. By obtaining statements from the employees that they understood the handbook provisions, the Employer would have been free to rely on those

---

2/ The Unemployment Compensation Referee awarded benefits, finding that, inasmuch as signing the handbook would have constituted an admission that the employees understood its provisions when in fact they did not, and the Employer had refused the employees' requests to discuss the handbook, the employees had not been discharged for cause.

3/ 270 NLRB 1415 (1984).

policies to justify adverse action, including discharges, in future proceedings such as unemployment compensation hearings. 4/ Moreover, the signing of admissions cannot be considered a normal work task which the employees have refused to undertake. Thus, the instant case is distinguishable from Bird, where the employees refused to obey a lawful work rule regarding normal working conditions. Here, the employees did not refuse to obey lawful work rules or attempt to set their own working conditions as the employees did in Bird, supra. Nor have these employees violated any of the substantive policies set forth in the handbook. The Employer remains free to discipline the employees for violations of the rules. Finally, the Employer preempted the employees' right to strike by telling them that they must either sign the handbook or be fired, whereas in Bird, the employees did not face such coercion and were free to strike. Thus, the employees' refusal to sign after being so informed was protected.

Accordingly, complaint should issue, absent settlement.

H. J. D.

4/ Because the employer expressly stated to the employees that they were being fired, rather than merely laid off, the employees reasonably could have assumed that the Employer would contest unemployment benefit claims on the basis that the employees had been discharged "for cause." In fact, the Employer did so contest the grant of benefits at a subsequent unemployment compensation hearing.