Charles Meyers & Company *and* Helma Anna. Case 14–CA–5777

May 20, 1971

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND KENNEDY

On January 26, 1971, Trial Examiner Frederick U. Reel issued his Decision in the above-entitled proceeding, finding that Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a brief in support thereof. The Respondent filed a brief in opposition to General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its power in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Trial Examiner and hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

FREDERICK U. REEL, Trial Examiner: This proceeding, heard at St. Louis, Missouri, on December 14 and 15, 1970,[1] pursuant to a charge filed the preceding September 1, and a complaint issued October 27, presents primarily the question whether Respondent, herein called the Company, violated Section 8(a)(1) and (3) of the Act when on August 14 it discharged the Charging Party while she was engaged, in her capacity as a union representative, in a discussion with the plant superintendent. Upon the entire record, including my observation of the witnesses, and after due consideration of the briefs filed by General Counsel and by the Company, I make the following.

[1] All dates herein refer to the year 1970 unless otherwise stated

FINDINGS OF FACT

I THE BUSINESS OF THE COMPANY AND THE LABOR ORGANIZATION INVOLVED

The Company, an Illinois corporation engaged at Belleville, Illinois, in the manufacture of pants, annually ships products valued in excess of $50,000 to points outside the State, and is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The United Garment Workers of America, AFL–CIO, Local 298, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II THE ALLEGED UNFAIR LABOR PRACTICES

The Company and the Union had a collective-bargaining agreement which provided, *inter alia,* for grievances to be presented through union committeemen. Helma Anna, who had been in the Company's employ since 1957, served as a union committeewoman and had frequent occasion to present grievances to Richard Fox, the plant superintendent. Mrs. Anna's conduct on these occasions would border on the aggressive. She frequently raised her voice to the point where her conversations with Fox, during working hours, would cause other employees in the area to drop their work and listen to the altercation. In March the Company gave her a written warning that continuation of her insolent and insubordinate conduct could result in her discharge. She had also received a number of oral warnings, and her union associates had cautioned her to be more circumspect.

The episode which resulted in the termination of her employment originated with Company's discharge in May of employee Evelyn Selader. This discharge was the subject of an unfair labor practice charge, which eventuated in a settlement agreement pursuant to which Selader was reinstated on July 20. Early in August Fox heard that a rumor was circulating that the Company had not given Selader full reinstatement but was treating her as a new employee. According to Selader, Fox, on August 14, accused her of starting this rumor and called her a liar when she denied it. Fox on the witness stand denied that he called Selader a liar, but at the very least I am satisfied that she so construed his remarks Selader promptly complained to her committeewoman, Anna, who promptly arranged for a meeting at Fox's desk on the sewing floor.

The meeting was attended by Anna, Selader, and Fox, and also by Ruth Benson, another union committeewoman, and by Marie Mank, Fox's assistant. After some discussion of the rumor, Fox said (according to both Anna and Selader) that Selader should not talk to anyone in the plant during working hours. (Fox and his assistant both testified that Fox merely told Selader it would be advisable if both he and she said nothing further about the rumor, but I am ready to assume that Anna and Selader understood him to utter a more sweeping prohibition.) At this point Selader, Benson, and Mank returned to their work stations. Anna, however, remained at Fox's desk where she became increasingly loud and vituperative. In a tone of voice which carried a considerable distance and which led employees in the area to stop work, she told Fox that she had her rights, that Selader could talk to her whenever Selader wanted to, that Fox should have his mouth bashed in, that it was high time someone stepped on him (or on his toes), and that she was going to do it. Her tirade concluded with her repeatedly daring Fox to discharge her, which he eventually did

As stated in *N.L.R.B.* v. *Thor Power Tool Co.,* 351 F.2d 584, 587 (C.A. 7, 1965):

> As other cases have made clear, flagrant conduct of an employee, even though occurring in the course of section 7 activity, may justify disciplinary action by the employer. On the other hand, not every impropriety committed during such activity places the employee beyond the protective shield of the act. The employee's right to engage in concerted activity may permit some leeway for impulsive behavior, which must be balanced against the employer's right to maintain order and respect.

The facts in this case show the balance tipping in favor of the Company. The testimony of disinterested persons, including officers of the Union and the other union committeewoman (who was called as a witness by General Counsel), leaves no room for doubt but that Anna, on this occasion as well as on previous occasions, had carried out her duties as union committeewoman in a fashion which unnecessarily disrupted operations at the plant. Even assuming that Fox had unwarrantedly called Selader a liar, and even assuming that he had unwarrantedly limited her freedom to converse in the plant, Anna's conduct in protesting these actions and her taunting of Fox with a repeated demand that he fire her exceeded the limits of statutory protection. See *Calmos Combining Co.*, 184 NLRB No 107. Moreover, Anna had previously been warned by Fox and cautioned by her union associates about her tendency to engage in such conduct, so that the culminating episode cannot be styled a mere "moment of animal exuberance." *Thor, supra,* 148 NLRB 1379, 1386, quoting the familiar *Meadowmoor* language.

The complaint as to Anna must therefore be dismissed. A similar fate befalls the allegation that the Company violated Section 8(a) (1) by prohibiting an employee from talking to a union committeewoman The most the evidence shows in that respect (and even this is sharply controverted) is that Selader was told not to talk to "anyone." This prohibition would, of course, necessarily include union people, but the sense of the prohibiton (if indeed it was made) is unrelated to any Section 7 right.

Conclusion of Law

The Company has not engaged in the unfair labor practices alleged in the complaint

Upon the foregoing findings of fact, conclusion of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER

The complaint is dismissed in its entirety.