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INFORMATION

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
LEGAL SECTION
APO 500

O.D. 8
DEC 19 1950

30 November 1950

MEMORANDUM

L-500

SUBJECT: Yamada Copper Company

TO: Chief, Labor Division, ESS

1. Attached herewith is a copy of the Japanese Supreme Court decision in the Yamada Copper Company case.

2. A review of this decision in addition to conferences with members of the Liaison Section of the Supreme Court discloses no conclusions as indicated in the Nippon Times article concerning this case. In other words, the Supreme Court did not say that production control might be legal if management resorted to a slow down.

3. a. The history of this case indicates that in the court of first instance, the Osaka District Court, the decision was in favor of the employees. This court held that production control was legal because management had resorted to a slow down. As it was explained, the court believed that if management had large stock piles of finished goods which could be disposed of during a strike, the company, by a slow down, would be suffering no loss by the strike thus the strikers could institute production control to prevent excessive loss on their part.

b. Management appealed to the higher court which reversed the District Court's decision and held that from the facts there was no sabotage of production by management and therefore, production control by the employees was illegal. The employees then instituted a JOKOKU appeal to the Supreme Court; which appeal was dismissed by the court.

c. The employees in their statement of reasons for a JOKOKU appeal again stressed legal justification for production control by employees because of the sabotage of production by the management. In reply to this contention, the court, in its judgment, stated that whereas the higher court was the final court to determine the facts in the case, and it had determined that there was no sabotage of production by management, this point was not subject to review by the Supreme Court.

1 Incl
a/i

/s/ J. W. Canney
John Canney
Legal Section

DEC 21 1950

6-1088

← II
L-500

24 May 1950

SUBJECT: Violation of Labor Standards Law and Regulations of Labor Safety and Sanitation.
TO : Chief,
Chugoku Civil Affairs Region
FROM : Chief, Shimane Labor Standards Supervision Office

With the confirmation of the verdict passed by the Matsue District Court on 22 May to HAYASHIDA Yoshio, ^{and two others} representing the Minshu Kogyo Shipbuilding Yard at Matsue City, I hereby have the pleasure of sending you a copy of the decision.

Court Decision

The Accused: The Minshu Kogyo Shipbuilding Yard Company at 553, Mitesenba-cho, Matsue City, Shimane Prefecture represented by HAYASHIDA Yoshio, director of the Company HAYASHIDA Yoshio, director of the said company OTA B Bunji, director of the company MATSUYAMA Toshio, director of the company.

After due deliberation on the case of violation of Labor Standards Law in which they were involved, this court passess the following sentences to them:

The Minshu Kogyo Shipbuilding Yard Co.a fine of ¥5,000
HAYASHIDA Yoshioa fine of ¥5,000
OTA Bunji and MATSUYAMA Toshio.....a fine of ¥3,000

OTA and MATSUYAMA shall be placed on probation for two years from the date of confirmation of this judgement and the costs for lawsuit shall be borne by the accused on joint responsibility.

Charges:

The Minshu Kogyo Shipbuilding Yard Comapny had its head office and factory at 553, Mitesenba-cho, Matsue city, Shimane Prefecture and was carrying on the constraction and repair of wooden ships.

HAYASHIDA Yoshio was conducting, as the president, all business of the company. He failed to -

1. Provide a wood working circular saw with a riving knife or with device to pervent kick-backs until around 10 April 1949. (violation of Article 79 of the Regulation of Labor Safety and Sanitation.)

L-343

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2. Carry out the physical examination for all permanent workers engaged in his company during the whole period of 1948. (Violation of Art. 49 of the Regulation of Labor Safety and Sanitation)
 3. Enter in wage ledger for HIKITA and three other workers the days and hours for which they actually worked from Sept. 1948 up to Jan. 1949. (Violation of Article 108 of the Labor Standards Law) and
 4. Employed HIKIDA Toshie, a woman worker on holidays (20 and 22 Feb. 1948 (violation of Article 61 of the Labor Standards Law).

OTA Banji, who was, as a director, conducting business concerning general affairs and accounting of the company neglected to -

1. Report to the competent labor standards supervision office on TSUDA Mozaburo's injury which was caused while operating a circular saw at the factory and required him about 50 days of medical treatment (violation of Article 55 of the Labor Standards Law).
2. Carry out the physical examination for all permanent employees engaged in the company during the whole period of 1949 (violation of Article 49 of the Regulation of Labor Safety and Sanitation)
3. Enter in wage ledger for HIKITA and three other workers the days and hours for which they actually worked from September 1948 up to Jan. 1949 (violation of Article 108 of the Labor Standards Law). and
4. Employed HIKIDA Toshie, a woman worker on holidays (20 and 22 Feb. 1949) (violation of Article 61 of the Labor Standards Law).

MATSUYAMA Toshio, who was, as director, conducting business connected with materials and wood-cutting at the factory, neglected to provide a wood working circular saw with a device to prevent kickbacks (violation of Art. 79 of the Regulation of Labor Safety and Sanitation).

H¹/31 May 1950

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS
Economic and Scientific Section
Labor Division

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L-500

Brief of opinion rendered by Associate Justice Jackson, U. S. Supreme Court, concerning constitutionality of federal legislation requiring affidavit as to membership in Communist Party. The U. S. Supreme Court upheld the constitutionality of the legislation. (Prepared by Legal Section, GHQ, SCAP)

(1)
American Communications Association, CIO et al
vs
Charles T DOUDS, National Labor Relations Board

(2)
United Steel Workers of America et al
vs
National Labor Relations Board

1. These cases presented for decision the constitutionality of par 9(H) (Non Communist affidavit provision) of the Labor Management Relations Act of 1947.

2. While the court determined such paragraph to be constitutional this brief merely presents the opinion of Mr. Justice Jackson concerning Communism.

"To state controlling criteria definitively is both important and difficult, because those Communist Party activities visible to the public closely resemble those of any other party. Parties, whether in office or out, are often irresponsible in their use and abuse of freedoms of speech and press. They all make scapegoats of unpopular persons or classes and make promises of dubious sincerity or feasibility in order to win votes. All parties, when in opposition, strive to discredit and embarrass the Government of the day by spreading exaggerations and untruths and by inciting prejudiced or unreasoning discontent, not hesitating to injure the Nation's prestige among the family of nations. The Communist Party, at least outwardly, only exaggerates these well-worn political techniques and many persons are thus led to think of it as just another more radical political party. If it were nothing but that, I think this legislation would be unconstitutional. There are, however, contradictions between what meets the eye and what is covertly done, which, in my view of the issues, provide a rational basis upon which Congress reasonably could have concluded that the Communist Party is something different in fact from any other substantial party we have known, and hence may constitutionally be treated as something different in law.

I

From information before its several Committees and from facts of general knowledge, Congress could rationally conclude that, behind its political party facade, the Communist Party is a conspiratorial and revolutionary junta, organized to reach ends and to use methods which are incompatible with our constitutional system. A rough and compressed grouping of this data would permit Congress to draw these important conclusions as to its distinguishing characteristics.

1. The goal of the Communist Party is to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate. It seeks not merely a change of administration, or of Congress, or reform legislation within the constitutional framework. Its program is not merely to socialize property more rapidly and extensively than the other parties are doing. While the difference between other parties in these matters is largely as to pace, the Communist Party's difference is one of direction.

The Communist program only begins with seizure of government, which then becomes a means to impose upon society an organization on principles fundamentally opposed to those presupposed by our Constitution. It purposes forcibly to recast our whole social and political structure after the Muscovite model of

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police-state dictatorship. It rejects the entire religious and cultural heritage of Western civilization, as well as the American economic and political systems. This Communist movement is a belated counter-revolution to the American Revolution designed to undo the Declaration of Independence, the Constitution, and our Bill of Rights, and overturn our system of free, representative self-government.

Goals so extreme and offensive to American tradition and aspiration obviously could not be attained or approached through order or with tranquility. If, by their better organization and discipline, they were successful, more candid Communists admit that it would be to an accompaniment of violence, but at the same time they disclaim responsibility by blaming the violence upon those who engage in resistance or reprisal. It matters little by whom the first blow would be struck; no one can doubt that an era of violence and oppression, confiscations and liquidations would be concurrent with a regime of Communism.

Such goals set up a cleavage among us too fundamental to be composed by democratic processes. Our constitutional scheme of elections will not settle issues between large groups when the price of losing is to suffer extinction. When dissensions cut too deeply, men will fight, even hopelessly, before they will submit. And this is the kind of struggle projected by the Communist Party and inherent in its program.

2. The Communist Party alone among American parties past or present is dominated and controlled by a foreign government. It is a satrap party which, to the threat of civil disorder, adds the threat of betrayal into alien hands.

The chain of command from the Kremlin to the American party is stoutly denied and usually invisible, but it was unmistakably disclosed by the American Communist Party somersaulting in synchronism with shifts in the Kremlin's foreign policy. Before Munich, Soviet policy was anti-German -- "anti-fascist" -- and the Communists in this country were likewise. However, when Stalin concluded a nonaggression pact with Hitler and Nazi Germany and the Soviet Union became partners in the war, the Communists here did everything within their power to retard and embarrass the United States' policy of rendering aid short of war to victims of aggression by that evil partnership. When those partners again fell out and Russian policy once more became anti-German, the Communists in this country made an abrupt and fierce reversal and were unconscionable in their demands that American soldiers, whose equipment they had delayed and sabotaged, be sacrificed in a premature second front to spare Russia. American Communists, like Communists elsewhere in the world, placed Moscow's demand above every patriotic interest.

By lineage and composition the Communist Party will remain peculiarly susceptible to this alien control. The entire apparatus of Communism -- its grievances, program, propaganda and vocabulary -- were evolved for Eastern and Central Europe, whose social and political conditions bear no semblance to our own. However gifted may have been the Communist Party's founders and leaders -- Marx, Engels, Lenin and Stalin -- not one of them ever lived in America, experienced our conditions, or imbibed the spirit of our institutions. The Communist Party is not native to this country and its beginnings here were not an effort of Americans to answer American problems. Nor is it the response to a quest by American political leaders for lessons from European experiences. As a consequence, the leaders of the American Communist Party have been otherwise insignificant personalities, without personal political followings or aptitudes for our political methods, adapted by training only to boring their way into the labor movement, minority groups and coteries of naive and confused liberals, whose organizations they have captured and discredited and among whom they lie in wait for further orders.

The Old World may be rich in lessons which our statesmen could consult with advantage. But it is one thing to learn from or support, a foreign power because that policy serves American interests, and another thing to support American policies because they will serve foreign interests. In each country where the

Communists have seized control, they have so denationalized its foreign policy as to make it a satellite and vassal of the Soviet Union and enforced a domestic policy in complete conformity with the Soviet pattern, tolerating no deviation in deference to any people's separate history, tradition or national interests.

3. Violent and undemocratic means are the calculated and indispensable methods to attain the Communist Party's goal. It would be incredible naivete to expect the American branch of this movement to forego the only methods by which a Communist Party has anywhere come into power. In not one of the countries it now dominates was the Communist Party chosen by a free or contestible election; in not one can it be evicted by any election. The international police state has crept over Eastern Europe by deception, coercion, coup d'etat, terrorism and assassination. Not only has it overpowered its critics and opponents; it has usually liquidated them. The American Communist Party has copied the organizational structure and its leaders have been schooled in the same technique and from the same tutors.

The American Communists have imported the totalitarian organization's disciplines and techniques, notwithstanding the fact that this country offers them and other discontented elements a way to peaceful revolution by ballot. If they can persuade enough citizens, they may not only name new officials and inaugurate new policies, but, by amendment of the Constitution, they can abolish the Bill of Rights and set up an absolute government by legal methods. They are given liberties of speech, press and assembly to enable them to present to the people their proposals and propaganda for peaceful and lawful changes, however extreme. But instead of resting their case upon persuasion and any appeal inherent in their ideas and principles, the Communist Party adopts the techniques of a secret cabal -- false names, forged passports, code messages, clandestine meetings. To these it adds occasional terroristic and threatening methods, such as picketing courts and juries, political strikes and sabotage.

This cabalism and terrorism is understandable in the light of what they want to accomplish and what they have to overcome. The Communist program does not presently, nor in foreseeable future elections, commend itself to enough American voters to be a substantial political force. Unless the Communist Party can obtain some powerful leverage on the population, it is doomed to remain a negligible factor in the United States. Hence, conspiracy, violence, intimidation and the coup d'etat are all that keep hope alive in the Communist breast.

4. The Communist Party has sought to gain this leverage and hold on the American population by acquiring control of the labor movement. All political parties have wooed labor and its leaders. But what other parties seek is principally the vote of labor. The Communist Party, on the other hand, is not primarily interested in labor's vote, for it does not expect to win by votes. It strives for control of labor's coercive power -- the strike, the sit-down, the slow-down, sabotage, or other means of producing industrial paralysis. Congress has legalized the strike as labor's weapon for improving its own lot. But where Communists have labor control, the strike can be and sometimes is perverted to a party weapon. In 1940 and 1941, undisclosed Communists used their labor offices to sabotage this Nation's effort to rebuild its own defenses. Disguised as leaders of free American labor, they were in truth secret partisans of Stalin, who, in partnership with Hitler, was overrunning Europe, sending honest labor leaders to concentration camps, and reducing labor to slavery in every land either of them was able to occupy. No other important political party in our history has attempted to use the strike to nullify a foreign or a domestic policy adopted by those chosen under our representative system.

This labor leverage, however, usually can be obtained only by concealing the Communist tie from the union membership. Whatever grievances American workmen may have with American employers, they are too intelligent and informed to seek a remedy through a Communist Party which defends Soviet conscription of labor, forced labor camps and the police state. Hence the resort to concealment, and hence the resentment of laws to compel disclosure of Communist Party ties. The

membership is not likely to entrust its bargaining power, its records, and its treasury to such hands. When it does, the union finds itself a more or less helpless captive of the Communist Party. Its officers cease to be interested in correcting grievances but seek to worsen and exploit them; they care less for winning strikes than that they be long, bitter and disruptive. They always follow the Communist Party line, without even knowing its source or its objectives. The most promising course of the Communist Party has been the undercover capture of the coercive power of strategic labor unions as a leverage to magnify its power over the American people.

5. Every member of the Communist Party is an agent to execute the Communist program. What constitutes a party? Major political parties in the United States have never been closely knit or secret organizations. Anyone who usually votes the party ticket is reckoned a member, although he has not applied for or been admitted to membership, pays no dues, has taken no pledge, and is free to vote, speak and act as he wills. Followers are held together by rather casual acceptance of general principles, the influence of leaders, and sometimes by the cohesive power of patronage. Membership in the party carries with it little assurance that the member understands or believes in its principles and none at all that he will take orders from its leaders. One may quarrel with the party and bolt its candidates and return again as much a member as those who were regular. And it is often a source of grief to those who have labored long in the vineyard that late arrivals are taken into the party councils from other parties without scrutiny. Of course, when party organization is of this character, there is little ground for inference that all members are committed to party plans or that they are agents for their execution.

Membership in the Communist Party is totally different. The Party is a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed. They are provided with cards or credentials, usually issued under false names so that the identification can only be made by offices of the Party who hold the code. Moreover, each pledges unconditional obedience to party authority. Adherents are known by secret or code names. They constitute "cells" in the factory, the office, the political society, or the labor union. For any deviation from the party line they are purged and excluded.

Inferences from membership in such an organization are justifiably different from those to be drawn from membership in the usual type of political party. Individuals who assume such obligations are chargeable, on ordinary conspiracy principles, with responsibility for and participation in all that makes up the Party's program. The conspiracy principle has traditionally been employed to protect society against all "ganging up" or concerted action in violation of its laws. No term passes that this Court does not sustain convictions based on that doctrine for violations of the antitrust laws or other statutes. However, there has recently entered the dialectic of politics a cliché used to condemn application of the conspiracy principle to Communists. "Guilt by association" is an epithet frequently used and little explained, except that it is generally accompanied by another slogan, "guilt is personal." Of course it is; but personal guilt may be incurred by joining a conspiracy. That act of association makes one responsible for the acts of other committed in pursuance of the association. It is wholly a question of the sufficiency of evidence of association to imply conspiracy. There is certainly sufficient evidence that all members owe allegiance to every detail of the Communist Party program and have assumed a duty actively to help execute it, so that Congress could, on familiar conspiracy principles, charge each member with responsibility for the goals and means of the Party.

Such then is the background which Congress could reasonably find as a basis for exerting its constitutional powers, and which the judiciary cannot disregard in testing them. On this hypothesis we may revert to consideration of the contention of unconstitutionality of this oath insofar as it requires disclosure of Communist Party membership or affiliation."