In the Matter of MAY DEPARTMENT STORES COMPANY DOING BUSINESS AS FAMOUS-BARR COMPANY *and* ST. LOUIS JOINT COUNCIL, UNITED RETAIL, WHOLESALE & DEPARTMENT STORE EMPLOYEES OF AMERICA, CIO

Case No. 14–C–872.—Decided December 17, 1943

DECISION

AND

ORDER

On October 28, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist from the unfair labor practices found and take certain affirmative action, as set out in the copy of the Intermediate Report attached hereto. Thereafter the respondent filed exceptions to the Intermediate Report and a supporting brief. No request for oral argument before the Board at Washington, D. C., was made by any of the parties. The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's brief and exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, May Department Stores Company, doing business as Famous-Barr Company, St. Louis, Missouri, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with St. Louis Joint Council, United Retail & Department Store Employees of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all its employees at its St. Louis store engaged in the busheling room, second floor, department 280, and in the busheling room, basement, department 281, including regular extra employees in these

departments, but excluding the two foremen and all other employees of the respondent;

(b) In any other manner interfering with, restraining, or coercing 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 or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with St. Louis Joint Council, United Retail & Department Store Employees of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all its employees at its St. Louis store engaged in the busheling room, second floor, department 280, and in the busheling room, basement, department 281, including regular extra employees in these departments, but excluding the two foremen and all other employees of the respondent, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places at its St. Louis, Missouri, store, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Fourteenth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Mr. Charles K. Hackler, for the Board

Lewis, Rice, Tucker, Allen & Chubb, by *Mr. Milton H. Tucker* and *Mr. Robert T. Burch*, of St. Louis, Mo., for the respondent.

Mr. Emanuel Boggs, of St. Louis, Mo., for the Union.

STATEMENT OF THE CASE

Upon an amended charge duly filed by St. Louis Joint Council, United Retail, Wholesale & Department Store Employees of America, CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fourteenth Region (St. Louis, Missouri), issued its complaint dated September 23, 1943, against May Department Stores Company, doing business as Famous-Barr Company, herein called the respondent, alleging

that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing were duly served upon the respondent and the Union.

Concerning the unfair labor practices, the complaint alleged in substance: (1) that on June 16, 1943, the Board in its Decision and Direction of Election in Case No. R-5331,[1] found that all employees of the respondent at its St. Louis store engaged in the busheling room, second floor, department 280, and in the busheling room, basement, department 281, including regular extra employees but excluding the two foremen and all other employees of the respondent, constituted a unit appropriate for collective bargaining; (2) that on July 12, 1943, the Board in its Certification of Representatives in the same case, certified the Union as the exclusive representative of all employees in the said unit for the purposes of collective bargaining, and that the Union is still such representative; (3) that on and after July 8, 1943, although requested to bargain collectively by the Union, the respondent has refused to do so; and (4) that by the foregoing acts and conduct, and by attempting to effectuate a unilateral wage increase and by publishing this fact to its employees, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

In its duly filed answer and amended answer to the Board's complaint, the respondent admitted its refusal to bargain with the Union as representative of the unit which the Board found to be appropriate, and asserted by way of affirmative defense that the Board erred in its finding as to the appropriateness of the unit in question. It further denied that it had engaged in any of the alleged unfair labor practices.

Pursuant to notice, a hearing was held on October 14, 1943, at St. Louis, Missouri, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the close of the hearing, the parties were advised that they might argue orally before and file briefs with the undersigned. Pursuant thereto, the attorney for the Board presented oral argument before, and the respondent filed a brief with the undersigned.

Upon the entire record of proceedings, including Case No. R-5331,[2] the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The May Department Stores Company is a New York corporation owning and operating department stores in several states. In St. Louis the respondent does business under the trade name of Famous-Barr Company and, at times, Famous and Barr Company. Only employees of the St. Louis store are involved in this proceeding.

The respondent at its St. Louis store is engaged in purchasing, receiving, processing, repairing, selling and distributing a general line of department store

[1] *Matter of May Department Stores Company, d/b/a Famous and Barr Company* and *St. Louis Joint Council, United Retail, Wholesale & Department Store Employees of America, CIO*, 50 N. L. R. B. 669.

[2] See footnote 1 *supra*.

goods and merchandise. In the course and conduct of its business and in the operation of the St. Louis store, it causes and has continuously caused large quantities of goods and merchandise to be purchased and transported in interstate commerce from and through States of the United States, other than the State of Missouri, to its St. Louis store. During the calendar year of 1942, the respondent purchased and transported approximately $27,000,000 worth of such goods and merchandise, approximately 70 percent of which was purchased and transported from points outside the State of Missouri to the St. Louis store. The respondent causes and has continuously caused large quantities of such goods and merchandise to be sold and transported in interstate commerce to, into and through States other than the State of Missouri. During the calendar year of 1942, the respondent sold and transported such goods and merchandise in excess of $27,000,000, of which approximately 12 percent was transported from the St. Louis store to points outside the State of Missouri.

On the basis of the foregoing findings of fact, derived from a stipulation of the parties, the undersigned finds that the respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

St. Louis Joint Council, United Retail, Wholesale & Department Store Employees of America is a labor organization affiliated with the Congress of Industrial Organizations. The Joint Council represents in St. Louis various locals of United Retail, Wholesale & Department Store Employees of America which admit to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. The appropriate unit and representation by the Union of a majority therein

On June 16, 1943, the Board issued its Decision and Direction of Election in Case No. R-5331 (50 N. L. R. B. 669), in which it found that all employees of the respondent at its St. Louis store engaged in the busheling room, second floor, department 280, and in the busheling room, basement, department 281, including regular extra employees but excluding the two foremen and all other employees of the respondent, constituted a unit appropriate for the purposes of collective bargaining. On June 29, 1943, an election was held, pursuant to the said Direction of Election. On June 30, 1943, the Regional Director issued and served upon the parties an Election Report with respect to the balloting. No objections to the said Report or to the conduct of the ballot were filed by any of the parties. On July 12, 1943, the Board in its Certification of Representatives, certified the Union as the representative for the purposes of collective bargaining of the employees in the unit hereinabove referred to.

The respondent contests the appropriateness of the unit, referred to above, and hence the subsequent certification of the Union therefor. No additional evidence to support the respondent's contention was introduced in the present proceeding. Similarly, no evidence was introduced in the present proceeding to rebut the presumption arising from the certification that the Union is still the representative of the majority of the employees of the respondent in the appropriate unit.

The undersigned finds that all employees of the respondent at the St. Louis store engaged in the busheling room, second floor, department 280, and in the busheling room, basement, department 281, including regular extra employees but excluding the two foremen and all other employees of the company, constitute and at all times material herein constituted a unit appropriate for the purposes

of collective bargaining. The undersigned further finds that on and at all times after July 12, 1943, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was on July 12, 1943, and at all times thereafter has been, and is now the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. The refusal to bargain

On July 8, 1943, the Union requested the respondent to bargain collectively with respect to rates of pay, wages, hours of employment and other conditions of employment, with the Union as the exclusive representative of all employees in the appropriate unit. On July 19, 1943, the respondent, through its vice president and general manager, Fred J. Salomon, advised the Union by letter of its refusal to recognize the Union and to bargain with it as the representative of its employees. The respondent in its July 19 letter stated, "we do not agree that your organization represents a majority of the employees within an appropriate unit, and we wish to preserve our full rights to question the recent decision of the National Labor Relations Board on that subject as we may see fit." It is clear from respondent's admissions, and the undersigned finds, that at all times since July 19, 1943, the respondent has maintained its position as set forth in its July 19 letter.

The undersigned accordingly finds that the respondent on July 19, 1943, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. *Interference, restraint, and coercion*

On August 30, 1943, the respondent made unilateral application to the National War Labor Board for "approval of a voluntary wage or salary rate adjustment," affecting the wages or salaries of some 4,530 employees engaged in its St. Louis operations, including employees of the unit represented by the Union, some 40 in number. In a letter attached to its application the respondent stated that certain of its employees, being covered in collective bargaining agreements between the respondent and certain labor organizations, were excluded from the application. The letter further set forth the facts concerning the Union's certification as bargaining representative, the respondent's refusal to recognize or bargain with it, and the respondent's intention to contest the Union's certification, wherefore the respondent argued that the Union had no interest in the application. The letter provided, however, that if the Union should object to the inclusion in the application of employees for whom it had been certified as bargaining representative, the application might "be considered as having been amended so as to exclude those employees from the application." The respondent, subsequent to the filing of its application, by speeches of its superintendent of employment, Griffith McCarthy, and its vice president and general manager, Fred J. Salomon, and through its publication, *Store Chat*, published to its employees, including employees of the unit in which the Union had been certified as bargaining representative, an account of its unilateral efforts and progress in obtaining approval of its proposed wage increases.

The Board and the courts have uniformly held that unilateral action by an employer in the granting of a wage increase, where there is a duly constituted

and existing bargaining representative of the employees affected, is in derogation of the union's right to recognition and representation in such matters. It logically follows that the respondent's action in ignoring the Union while attempting to win approval of its proposal for wage increases, and in publishing the facts of its unilateral action to its employees, including employees represented by the Union, had the effect of depriving the Union of credit which normally would accrue to it, and of nullifying its efficacy as a bargaining agent. The said action may, therefore, reasonably be said to have undermined the Union among employees for whom it had been certified as bargaining representative, and to have discouraged employees generally in their union affiliation. Were the respondent successful in obtaining approval of its proposed wage adjustments, under the circumstances of the war emergency, this might result in the Union being foreclosed for an indefinite period from effective bargaining with reference to the wages of employees for whom it had been certified as bargaining representative. Nor could the respondent through unilateral action place the Union in a position where it would be required to request the National War Labor Board's deletion of employees it represented from respondent's application, or assert its approval thereof, in order to maintain a semblance of authority as bargaining representative. No justification for the respondent's unilateral actions, set forth above, is found in its contesting of the appropriateness of the unit and the Union's certification therein, since it gains no immunity for engaging in unfair labor practices until such time as ultimate adjudication of the matter has been reached in the courts. "An order of the Board is final and binding upon the parties thereto unless reversed upon appropriate judicial review."[3]

The undersigned finds that, by its unilateral action in seeking approval of its proposed wage adjustments, and by statements of its officers and its publication *Store Chat* addressed to employees concerning said unilateral action, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent as set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Since it has been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union.

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

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[3] *Matter of Bear Brand Hosiery Co.* and *International Brotherhood of Firemen & Oilers, Local 296 (AFL)*, 46 N. L R. B. 609.

CONCLUSIONS OF LAW

1. St. Louis Joint Council, United Retail & Department Store Employees of America, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees of the respondent at its St. Louis store engaged in the busheling room, second floor, department 280, and in the busheling room, basement, department 281, including regular extra employees but excluding the two foremen and all other employees of the respondent, constitute a unit appropriate for collective bargaining, within the meaning of Section 9 (b) of the Act.

3. St. Louis Joint Council, United Retail & Department Store Employees of America, affiliated with the Congress of Industrial Organizations, was on July 12, 1943, and at all times thereafter has been the exclusive representative of all the employees in the aforesaid unit, for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise lectively with St. Louis Joint Council, United Retail & Department Store Employees of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent, May Department Stores Company, doing business as Famous-Barr Company, and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with St. Louis Joint Council, United Retail & Department Store Employees of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all its employees at its St. Louis store engaged in the busheling room, second floor, department 280, and in the busheling room, basement, department 281, including regular extra employees but excluding the two foremen and all other employees of the respondent;

(b) In any other manner interfering with, restraining, and coercing its employees in the exercise of the 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 Act;

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with St. Louis Joint Council, United Retail & Department Store Employees of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all its employees at its St. Louis store engaged in the busheling room, second floor, department

280, and in the busheling room, basement, department 281, including regular extra employees but excluding the two foremen and all other employees of the respondent;

(b) Post immediately in conspicuous places at its St. Louis, Missouri, store and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Fourteenth Region in writing within ten (10) days from the date of the receipt of this Intermediate Report, what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 28, 1942—any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of the order transferring the case to the Board.

WILLIAM E. SPENCER,
Trial Examiner.

Dated October 23, 1943