

In the Matter of THE J. L. HUDSON COMPANY and UNITED RETAIL,
WHOLESALE AND DEPARTMENT STORE EMPLOYEES OF AMERICA
(C. I. O.)

Case No. 7-C-1201.—Decided January 25, 1944

DECISION
AND
ORDER

On November 4, 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. None of the parties requested oral argument before the Board. 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 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, The J. L. Hudson Company, Detroit, Michigan, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Retail, Wholesale and Department Store Employees of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all paint sprayers, cabinet makers and furniture finishers, employed on the third and sixth floors of the respondent's warehouse No. 1 at Detroit, Michigan, excluding supervisory and clerical employees;

(b) Engaging in any like or related acts or conduct 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 United Retail, Wholesale and Department Store Employees of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all paint sprayers, cabinet makers and furniture finishers, employed on the third and sixth floors of the respondent's warehouse No. 1 at Detroit, Michigan, excluding supervisory and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately in conspicuous places throughout its Detroit, Michigan, store and warehouses 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 Seventh Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

INTERMEDIATE REPORT

Mr. Frank L. Danello, for the Board.

Messrs. Beaumont, Smith and Harris, by *Mr. Albert E. Meder*, of Detroit, Mich., for the respondent.

Messrs. Tucker P. Smith and Frank Achterkurch, of Detroit, Mich., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by the United Retail, Wholesale and Department Store Employees of America, (C. I. O.), herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Seventh Region (Detroit, Michigan), issued its complaint dated September 23, 1943, against The J. L. Hudson 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. A copy of the complaint accompanied by notice of hearing was duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged, in substance, (1) that all paint sprayers, cabinet makers, and furniture finishers employed

on the third and sixth floors of the respondent's warehouse No. 1, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining; (2) that on June 5, 1943, the Board certified the Union as the exclusive representative of the employees of the respondent in such unit;¹ (3) that on or about June 5, 1943, and at all times thereafter, the respondent, although duly requested, refused to bargain collectively with the Union as the exclusive representative of all of its employees in the said appropriate unit; and (4) that by such refusal the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On October 12, 1943, the respondent filed its answer admitting certain allegations of the complaint concerning its business operations, the proceedings of the Board leading to the certification of the Union, and the allegations concerning the request and refusal to bargain, but denying that the unit certified is an appropriate bargaining unit and also denying that it was committing any unfair labor practices.²

Pursuant to notice a hearing was held at Detroit, Michigan, on October 21, 1943, before Henry J. Kent, the undersigned 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 on the issues was afforded all parties. At the close of the hearing motions, by counsel for the Board and the respondent, to conform the pleadings to the proof were granted. Pursuant to leave granted briefs have been received from the Board and the parties.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The J. L. Hudson Company, a Michigan corporation having its principal offices in Detroit, Michigan, is engaged in the purchase and resale of various types of goods and commodities at a retail department store in Detroit.

During the fiscal year ending January 31, 1942, the Company purchased goods at a cost of approximately \$43,000,000, more than 80 percent in value of such goods being shipped to Michigan from points outside the State of Michigan.

During the same period, the total sales of the Company were in excess of \$71,000,000, one and six-tenths percent in value being shipped to customers outside the State of Michigan.

During the same period, the Company's sales through its Mail Order Department were in excess of \$500,000, approximately 15 percent in value being made to customers outside the State of Michigan.

The Company uses several interstate commerce carriers to import and export goods from and to points outside the State of Michigan

¹ *Matter of J. L. Hudson Co., and United Retail, Wholesale and Department Store Employees of America*, (C. I. O.), 49 N. L. R. B. 273.

² The answer also denied that the respondent was engaging in commerce within the meaning of the Act, but the respondent conceded at the hearing that the Board has jurisdiction of the cause by reason of the Court's approval of the Board's finding in another case that the respondent was engaging in commerce within the meaning of the Act. See *Matter of J. L. Hudson Co and United Retail, Wholesale and Department Store Employees of America*, et al., 42 N. L. R. B. 536, enfd in *N. L. R. B v J. L. Hudson Co.*, 135 F. (2d) 380 (C. C. A.), cert. denied 64 S. Ct. 40.

During the same fiscal period, the Company advertised its business and merchandise through newspapers, periodicals, radio, and direct mail, at a cost in excess of \$1,500,000; several of said newspapers and periodicals are published outside the State of Michigan, and each of said radio stations has a coverage of, and carries advertising to several States other than the State of Michigan.³

The respondent concedes that it is engaged in commerce within the meaning of the Act.

II THE ORGANIZATION INVOLVED

United Retail, Wholesale and Department Store Employees of America, is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. Background

On March 18, 1942, the Board issued its complaint against the respondent, the complaint being grounded upon separate charges filed by United Retail, Wholesale and Department Store Employees of America, C. I. O., and Fred L. Young.⁴ On May 12, 1942, all of the parties in the cause entered into a stipulation of settlement, subject to the approval of the Board.⁵ On June 1, 1942, the Board approved the said stipulation, and on June 23, 1943, the respondent and the Union appeared before the Board to present oral arguments and briefs, on the commerce issue only. Thereafter on July 16, 1942, the Board entered its decision finding, among other things, that the respondent is engaged in commerce within the meaning of the Act and ordered the respondent to cease and desist from committing unfair labor practices within the meaning of Section 8 (1) and (3) of the Act, which findings were subsequently approved by the United States Circuit Court of Appeals for the Sixth Circuit.⁶

B. The refusal to bargain

1. The appropriate unit

On April 29, 1943, following a hearing held on April 7, 1943, to take evidence concerning the issues, the Board issued its Decision and Direction of Election.⁷ In the said decision the Board found, among other things, that all paint sprayers, cabinet makers and furniture finishers employed on the third and sixth floors of the Company's warehouse No. 1, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

The respondent, in the said representation case, contested the appropriateness of the unit found therein by the Board and thereafter the subsequent certification of the Union therefor. As stated in the Board's decision, the respondent, in substance, contended: that the cabinet and finishing department employees do not

³ These findings are based on a stipulation entered into by and between the parties.

⁴ *Matter of J. L. Hudson Company and United Retail, Wholesale and Department Store Employees of America, et al.*, 42 N. L. R. B. 536.

⁵ The stipulation also provided that should the Board find that the respondent was engaging in commerce within the meaning of the Act, the question of jurisdiction might be further litigated.

⁶ *Matter of J. L. Hudson Company and United Retail, Wholesale and Department Store Employees of America, et al.*, 42 N. L. R. B. 536, enf'd in *N. L. R. B. v. The J. L. Hudson Company*, 135 F. (2d) 380 (C. C. A. 6); cert. denied 64 S. Ct. 40.

⁷ *Matter of J. L. Hudson Company and United Retail, Wholesale and Department Store Employees of America, (C. I. O.)*, 49 N. L. R. B. 273.

constitute a clearly identifiable homogeneous group of employees; that if the Board found the said departmental unit to be appropriate, it would follow that separate departmental units would thereafter be set up for each of its numerous departments; and urged that the Board find a company-wide unit to be appropriate. The Board considered these contentions but rejected them and, in effect, found that by reason of the limited extent of organization then existing among the respondent's employees, the present determination of a company-wide unit would prevent those employees, who had organized, from bargaining collectively for an indefinite period. The Board decided that under the circumstances therein the above found unit would best serve to effectuate the purposes of the Act.

The Union herein has recently filed two other petitions for investigation and certification of representatives concerning the employees and the respondent. The first was for a unit of 11 shift and maintenance engineers and the other was for a unit consisting of 6 plumbers and steamfitters. Other than that submitted in respect to these 2 groups, no evidence was offered at the instant hearing which tended to show that any other employees of the respondent had been organized for the purposes of collective bargaining, since the Union was certified as the representative of the employees involved in these proceedings. The factual surroundings which led the Board to find the above unit appropriate has not materially changed, excepting that presently there is one less employee in the unit. The respondent made no showing warranting a deviation from the unit found to be appropriate by the Board.⁸

The undersigned finds, in accordance with the Board's previous determination of the unit question, that all paint sprayers, cabinet makers and furniture finishers employed on the third and sixth floors of the Company's warehouse No. 1, at Detroit, Michigan, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2. The Union's majority; the refusal to bargain

On May 26, 1943, an election was held pursuant to the above mentioned direction of election. Later on the same day the Regional Director issued and served upon the parties his Election Report with respect to the balloting. This report shows that there were 33 eligible voters in the unit; that 31 ballots were cast; that 18 were cast in favor of the Union and 13 against. No objection to the said report, or to the conduct of the ballot have been filed by any of the parties. On June 5, 1943, the Board issued its Certification of Representatives, certifying the Union as the representative for the purposes of collective bargaining of the employees, in the unit hereinabove referred to. No evidence was introduced in the present proceedings 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 said appropriate unit. The undersigned finds that the Union is still the representative of a majority of the employees in the said unit.

On June 7, 1943, the Union in a letter to the respondent requested it to bargain with the Union, as follows:

A majority of your employees in the Department of Cabinet Makers and Furniture Finishers have designated this Union as bargaining agent.

⁸ Cf. *N. L. R. B. v. Botany Worsted Mills*, 133 F. (2d) 876 (C. C. A. 3), enfg. as modified 41 N. L. R. B. 218; cert. denied 319 U. S. 751. *Matter of May Department Stores and Retail Clerks International Protective Association, Retail Shoe Salesmen, Local Union No. 420, A. F. of J.*, 39 N. L. R. B. 471.

They have requested us to arrange an early meeting to negotiate an agreement with the Company.

Please indicate to us an early date that would be convenient for you to open said negotiations.

On June 14, 1943, the respondent made the following reply:

Answering yours of the 7th to our client, The J. L. Hudson Company, we assume that your request has reference to the certification of the National Labor Relations Board of June 5, 1943, in case No. R-5126. Therefore please note the following:

The Company continues in its position that the National Labor Relations Act is not applicable to it. A petition is about to be filed by the company in the United States Supreme Court requesting that court to review the recent decision of the Circuit Court of Appeals for the Sixth Circuit, involving The J. L. Hudson Company.⁹

Further, and without waiving the foregoing, the company does not agree that the point [sic] sprayers, cabinet makers and furniture finishers employed by it on the third and sixth floors of its warehouse No 1, constitute a unit or an appropriate unit for the purpose of collective bargaining.

Because of all the foregoing, our client must decline to comply with your request. [Italics supplied.]

At the hearing, counsel for the respondent stated, in substance, that the respondent still refuses to bargain with the Union for the reason that the unit certified by the Board is not an appropriate collective bargaining unit.

On all the above the undersigned finds that on June 5, 1943, and at all times thereafter the Union was, and now is, the duly designated representative of a majority of the employees in the above appropriate unit. Pursuant to Section 9 (a) of the Act the said Union was, and now is, the exclusive representative of the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

The undersigned further finds that on June 14, 1943, and at all times thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, and that the respondent has thereby 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 undersigned finds that the activities of the respondent 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 relationship 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

Having found that the respondent has engaged in certain 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.

⁹ The respondent in this paragraph was referring to its former contention, averred in its answer, that it was not engaged in commerce within the meaning of the Act. This defense was abandoned at the hearing. See footnote 2, *supra*.

The undersigned has found that the respondent refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit. In order to effectuate the policies of the Act the undersigned will recommend that the respondent, upon request, bargain collectively with the Union as the exclusive representative of its employees within the unit herein found to be appropriate.

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

CONCLUSIONS OF LAW

1. United Retail, Wholesale and 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 paint sprayers, cabinet makers and furniture finishers, of the respondent at Detroit, Michigan, employed on the third and sixth floors of the respondent's warehouse No. 1, at all times material herein have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. United Retail, Wholesale and Department Store Employees of America, affiliated with the Congress of Industrial Organizations, was on June 5, 1943, and at all times thereafter has been, the exclusive representative of all employees in said unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on June 14, 1943, and at all times thereafter, to bargain collectively with United Retail, Wholesale and Department Store Employees of America, Affiliated with the Congress of Industrial Organizations, as the exclusive representative of its employees in the 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, The J. L. Hudson Company, Detroit, Michigan, and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Retail, Wholesale and Department Store Employees of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all paint sprayers, cabinet makers and furniture finishers employed on the third and sixth floors of the respondent's warehouse No. 1 at Detroit, Michigan.

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the rights 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 United Retail, Wholesale and Department Store Employees of America, affiliated with the Congress of Industrial Organizations, as the exclusive representative of all paint sprayers, cabinet makers and furniture finishers, employed on the third and sixth floors of the respondent's warehouse No 1 at Detroit, Michigan, in respect to rates of pay, wages, hours of employment and other conditions of employment;

(b) Post immediately in conspicuous places and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices throughout its Detroit, Michigan, store and warehouses 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 Seventh Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the date of 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 19, 1943—any party or counsel for the Board 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. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. 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 within ten (10) days from the date of the order transferring the case to the Board.

HENRY J. KENT

Trial Examiner

Dated November 4, 1943.