

In the Matter of INDIANA DESK COMPANY and UNITED FURNITURE  
WORKERS OF AMERICA LOCAL NO. 331, AFFILIATED WITH THE C. I. O.

Cases Nos. 14-C-793 and 14-R-623 (R-4429)

ORDER DENYING RESPONDENT'S PETITION FOR MODI-  
FICATION OF BOARD'S DECISION AND ORDER

September 4, 1944

On April 29, 1944, the Board issued its Decision and Order in the above-entitled proceeding,<sup>1</sup> in part, finding that the respondent discriminatorily refused, upon application, to reinstate approximately 50 strikers, and ordering, among other things, that the respondent reinstate the bulk of such strikers with back pay. On August 11, 1944, the respondent filed with the Board a "Petition for Reconsideration and Modification" of the Decision and Order, and a brief to support its petition.

The respondent in substance contends that the strike, participated in by the employees involved in this proceeding, was prosecuted to compel the respondent to grant wage increases in violation of federal law,<sup>2</sup> and that the Board erred in extending protection of the National Labor Relations Act to employees who had engaged in such unlawful conduct. In support of its contention, the respondent relies on our decision in *Matter of American News Company, Inc.*, and *Magazine Mailers' and Deliveries' Union of North Jersey*.<sup>3</sup> However, in our opinion, the operative facts in the *American News* case are essentially different from those in the instant proceeding, and the doctrine of the *American News* case is inapplicable here.

In the *American News* case, the union and the employer had bargained to an agreement for wage increases and, in accordance with applicable federal regulations, had made a joint application to the

<sup>1</sup> 56 N. L. R. B. 76.

<sup>2</sup> In its brief the respondent refers to the Act of Congress of October 2, 1942, 56 Stat. 764, a measure intended to limit and control wage increases. Pursuant to the Act of October 2, 1942, on the next day, the President issued Executive Order No. 9250, "Providing for the Stabilization of the National Economy," 7 F. R. 781, which prohibited any wage increase arrived at by voluntary agreement, collective bargaining, or otherwise, until such increase had been approved by the National War Labor Board, Section 11 of the Act of October 2 provided that any individual or corporation violating any provision of the statute, or of any regulation promulgated thereunder, should upon conviction be subject to fine, imprisonment, or both.

<sup>3</sup> 55 N. L. R. B. 1302.

58 N. L. R. B., No. 10.

National War Labor Board for approval of the proposed increases. Before such approval had been obtained and with knowledge that, under existing wage stabilization legislation and regulations, the proposed wage increases could not lawfully be put into effect prior to such approval, the union resorted to strike action to force the employer to pay the proposed wage increases immediately. In these circumstances, the Board concluded that the purpose of the strike was illegal and that such a strike was not a concerted activity protected by the National Labor Relations Act.

However, in the present case the strike had no such illegal purpose. The record shows that the strike here, unlike that in the *American News* case, was the outgrowth of a wage dispute provoked by the respondent's unwillingness to agree to the employees' request for wage increases and was not precipitated by an unlawful demand that agreed wage increases be put into effect prior to approval by the War Labor Board. In essence, the instant case involves a situation in which, after reaching an impasse in bargaining negotiations concerning wages, employees have resorted to economic pressure to effect an agreement with their employer. There is no basis for the respondent's contention that, because of the Act of October 2, 1942, or regulations thereunder, such concerted activity, otherwise within the protection of the National Labor Relations Act, should be outlawed. Wages characteristically have been within the scope of collective bargaining and, as we pointed out in the *American News* decision, ". . . the Government's power of review over wages," under the Act of October 2, 1942, does not "render collective bargaining obsolete."<sup>4</sup> Neither such legislation, nor the regulations thereunder, was intended to curtail or impair the employees' right to bargain collectively concerning wages or to engage in other related concerted activity, or to lessen the employer's obligation under the National Labor Relations Act to bargain collectively in good faith on wage matters,<sup>5</sup> except insofar as such provisions for wage stabilization made wage agreements subject to War Labor Board approval as a condition to their becoming effective. Thus, the employees herein, by implementing normal and legitimate collective bargaining with respect to negotiation of wage increases with strike action, were engaged in a type of activity falling within the protection of Section 7 of the Act.

The respondent finally contends that the Board erred in finding discrimination against the strikers and ordering their reinstatement

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<sup>4</sup> Section 4 of the Act of October 2, 1942, provides in part that no action should be taken under the authority of that statute "which is inconsistent with . . . the National Labor Relations Act." In the debate on the bill, Senator Brown, speaking for the Committee said, in part, that Section 4 "preserved for labor . . . the right of collective bargaining contained in the National Labor Relations Act" Congressional Record, p 7207, September 21, 1942.

<sup>5</sup> See *Matter of Ideal Leather Novelty Co , Inc* , 54 N L R B 761.

in that "the striking employees were discharged by the respondent promptly when the respondent ascertained said strikers were engaged in an economic strike; that at the time of their discharge, and thereafter, they were not discriminated against by the respondent because of their concerted activity; that while it is true that their places had not been filled during the pendency of the strike, such failure to fill their places was due to the fact that the striking employees prevented the respondent from operating its plant at all between October the 10th, 1942, the day the strike occurred, and November the 9th, 1942, the day upon which normal operations at respondent's plant resumed." The contention is clearly without merit. Indeed, by admitting that the strikers were discharged because they had engaged in an economic strike and before replacement employees were hired, the respondent has confessed that it discriminated with respect to their hire and tenure of employment within the meaning of Section 8 (3) of the Act. Nor is it relevant why the respondent did not replace the strikers, so long as it appears, as it does here, that the strikers were engaged in a concerted activity protected by the Act,<sup>6</sup> and that the jobs formerly held by the strikers had not been filled at the time the respondent discriminatorily rejected their unconditional application for reinstatement.

Having duly considered the respondent's application, it is ordered that the "Petition for Reconsideration and Modification of the Board's Decision and Order" in the above-entitled proceeding be, and it hereby is, denied.

CHAIRMAN MILLIS took no part in the consideration of the above Order Denying Respondent's Petition for Modification of Board's Decision and Order.

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<sup>6</sup>No showing was made that the strikers were guilty of any serious acts of misconduct on the picket line or that they unlawfully prevented the respondent from operating its plant.