In the Matter of LANCASTER FOUNDRY CORPORATION *and* INTERNATIONAL MOULDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, A. F. L.

Case No. 9–C–2239

SUPPLEMENTAL FINDINGS OF FACT

AND

ORDER

April 14, 1949

On November 20, 1947, the National Labor Relations Board, herein called the Board, issued a Decision and Order in this case,[1] in which it found that the Respondent, Lancaster Foundry Corporation, Lancaster, Ohio, had engaged in and was engaging in certain unfair labor practices affecting commerce, and ordered the Respondent to take certain affirmative remedial action. The Board found, among other things, that on and after January 17, 1946, the Respondent had refused to bargain collectively with International Moulders and Foundry Workers Union of North America, A. F. L., herein called the Union, in violation of Section 8 (5) and (1) of the National Labor Relations Act,[2] 49 Stat. 449, herein called the Act.

To remedy this unfair labor practice, the Board directed the Respondent, upon request, to bargain collectively with the Union as the exclusive representative of the employees in the collective bargaining unit which the Board found appropriate, in respect to rates of pay, wages, hours of employment, and other conditions of employment.[3]

The Board petitioned the United States Court of Appeals for the Sixth Circuit to enforce its order against the Respondent. Thereafter, the Respondent moved the court for an order dismissing the petition for enforcement, or in the alternative, for an order modifying the Board's order by omitting therefrom the requirement that the Respondent bargain with the Union. The Board also moved the court for the summary entry of a decree enforcing the order of the Board upon the transcript of the record.

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[1] 75 N L R B 255

[2] The provisions of Section 8 (5) and (1) of the Act have been continued unchanged as Section 8 (a) (5) and 8 (a) (1) of the Labor Management Relations Act, 1947.

[3] Paragraphs 1 (a), 1 (b), and 2 (a) of the Order, 75 N. L. R. B. at 256–257.

On February 14, 1949, the court issued its order denying the Respondent's motion and granting the Board's motion for enforcement of its order, "but with reservation to the Respondent to make further application to the Board in view of the alleged changed circumstances." Pursuant to the reservation contained in the court's order, the Respondent, on March 7, 1949, filed with the Board a motion requesting that the Board's order of November 20, 1947, be modified by deleting therefrom paragraphs 1 (a), 1 (b), and 2 (a), which in substance and effect require the Respondent to bargain with the Union.

Having duly considered the matter, the Board makes the following:

SUPPLEMENTAL FINDINGS OF FACT

The issue posed by the Respondent's motion is whether the Board should relieve the Respondent of the requirement that it bargain with the Union because that organization no longer represents a majority of the employees in the appropriate unit. In point of fact, the Respondent alleges that another labor organization, District 50, United Mine Workers of America, is the majority representative and that it has signed a collective bargaining contract with that union since the issuance of the Board's order. For the purpose of discussion, we assume that the claimed loss of majority has actually taken place. We note also the Respondent's admission that the Board's order was "just, lawful and reasonable at the time the order was issued."

More than 3 years have elapsed since the Respondent unlawfully refused to bargain with the Union, and approximately 18 months have passed since the Board issued its order directing the Respondent to bargain. It is not surprising therefore that the Union should have lost its majority during the long period of the Respondent's recalcitrance. Employees join unions primarily in order to secure the benefits of collective bargaining. When an employer refuses to bargain with a union, especially when the refusal is protracted, employee support usually withers and dies. Old employees lose interest and resign; new employees refuse to join. The effect of an unremedied refusal to bargain with a union, even where standing alone and unaccompanied by any other unfair labor practices, is to discredit the Union in the eyes of old and new employees, to drive them to a second choice, or to persuade them to abandon collective bargaining altogether.[4] And when, as here, the refusal to bargain is accompanied by a discriminatory discharge, the effect of the refusal upon employees is compounded. The situation is not made different by any assertion that the Union's loss of support is accounted for by factors which have nothing to do with

[4] *Matter of Karp Metal Products Co., Inc.*, 51 N. L. R. B. 621, enf'd by supplemental decree dated October 23, 1943, cert denied, 332 U. S. 728; *Franks Bros. Co.* v. *N. L. R. B.*, 321 U S. 702; *N. L. R. B.* v. *Swift & Company*, 162 F. (2d) 575 (C A. 3).

the unlawful refusal to bargain. Any attempt to disentangle these other factors from the discouraging effect of the refusal to bargain is impossible so long as the unfair labor practices are unremedied.[5]

The only way by which the Board can undo the effect of the Respondent's unlawful refusal to bargain, is to require the Respondent to bargain with the Union at this time. To refuse to do so because the Union has lost its majority would not only leave the Respondent's unlawful conduct unremedied, but would also obviously discourage collective bargaining and encourage non-compliance with Board orders in the hope and expectation that a union's majority will be dissipated by delay and litigation. Nor is it material that the Respondent has signed a collective bargaining agreement with another labor organization which allegedly now represents a majority of the Respondent's employees. The contract cannot avail as an escape from the requirement that the Respondent return to the status existing before it committed the unfair labor practices.[6]

We do not mean to imply that because the Respondent has unlawfully refused to bargain with the Union, it must deal exclusively with that labor organization in perpetuity. We do say that the order to bargain must be given effect for a reasonable period of time in which it can be given a fair chance to succeed. After such a reasonable period, the Board will, in a proper proceeding and upon a proper showing, take steps to ascertain again the employees' choice of a bargaining representative.[7] However, until the Respondent has expunged the effects of its illegal refusal to bargain by first according the Union the bargaining rights which it had illegally withheld from that organization, we do not reach the stage for a redetermination of representatives.

For the above reasons, we conclude that it will best effectuate the policies of the Act to require the Respondent to bargain collectively with the Union. Accordingly, we shall deny the Respondent's motion to modify the Board's order of November 20, 1947.

ORDER

IT IS HEREBY ORDERED that the Respondent's motion to modify the order issued herein on November 20, 1947, by deleting therefrom paragraphs 1 (a), 1 (b), and 2 (a), be, and it hereby is, denied.

MEMBER GRAY took no part in the consideration of the above Supplemental Findings of Fact and Order.

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[5] *International Association of Machinists* v. *N. L. R. B.*, 311 U. S. 72.

[6] *N. L. R. B.* v. *American Creosoting Company, Inc.*, 139 F. (2d) 193 (C. A. 6); *International Association of Machinists* v. *N. L. R. B.*, *supra*.

[7] *Franks Bros. Co.* v. *N. L. R. B.*, *supra*.