

In the Matter of GREEN BAY AUTO PARTS COMPANY *and* LOCAL 862 OF
THE INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF
AMERICA, AFL

Case No. 31-CA-123.—Decided October 9, 1950

DECISION AND ORDER

On March 1, 1950, Trial Examiner Meyers D. Campbell, Jr., issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had violated Section 8 (a) (1) and 8 (a) (5) of the Act as alleged in the complaint and recommended that the Respondent take certain action to remedy such unfair labor practices, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the complainant filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Reynolds, Murdock, and Styles].

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case. Consideration of the entire record has impelled us to question the propriety of the exercise of the Board's jurisdiction.

The Respondent, a Wisconsin corporation, is engaged in the sale and distribution of automotive parts and the servicing and repair of automotive equipment in Green Bay, Wisconsin. In 1948 the gross sales and services aggregated approximately \$275,000.¹ Of this amount, only approximately \$11,000 was sold or furnished to out-of-State customers and common carriers. The Respondent's out-of-State purchases amounted to approximately \$142,500.

Although the operations of the Respondent affect commerce within the meaning of the Act, the amount of its out-of-State sales and services, its sales and services to firms over whom the Board would assert

¹ In 1947 the sales and services totaled \$405,000, with proportional out-of-State purchases and sales. The record contains no figures with respect to the year 1949 during which the hearing herein was held.

jurisdiction, and its out-of-State purchases are, neither individually nor in combination, equal to that which the Board has recently stated to be the minimum required for exercising its discretion to assert jurisdiction.²

We find, therefore, that it would not effectuate the purposes or policies of the Act to exercise jurisdiction in the instant proceeding, and we shall therefore dismiss the complaint in its entirety.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Irving M. Friedman, Esq., of Chicago, Ill., for the General Counsel.

Chadek, Cornelisen, Denissen & Farrell, by *Frank Cornelisen, Esq.*, of Green Bay, Wis., for the Respondent.

Omer Weidman, of Milwaukee, Wis., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed August 24, 1948, by Local 862 of the International Union, United Automobile Workers of America, A. F. L., herein called the Union, the General Counsel of the National Labor Relations Board, herein called respectively, the General Counsel and the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued a complaint, dated July 19, 1949, alleging that Green Bay Auto Parts Company, herein called the Respondent, had engaged in, and was engaging in, unfair labor practices affecting commerce, within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the charge and the complaint, together with notice of hearing, were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that on or about March 11, 1948, and at all times thereafter, Respondent refused and does now refuse to bargain collectively with the Union as the exclusive representative of Respondent's employees in an appropriate unit although the Union's status as such bargaining representative had been duly established.

In its duly filed answer, the Respondent denied the commission of any unfair labor practices, and denied the jurisdiction of the Board.

Pursuant to notice, a hearing was held on November 15, 1949, at Green Bay, Wisconsin, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel, and the Union by a representative. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues.

² See *Stanislaus Implement and Hardware Co., Ltd.*, 91 NLRB 618; *Hollow Tree Lumber Company, Inc.*, 91 NLRB 635; *Federal Dairy Company, Inc.*, 91 NLRB 638; *The Rutledge Paper Products, Inc.*, 91 NLRB 625.

The parties were afforded full opportunity to state their respective positions on the record and to argue on the record. The parties were granted time to file briefs and a brief was filed on behalf of the Respondent on January 6, 1950, and a brief was filed on behalf of the General Counsel on January 9, 1950.

Upon the entire record in the case, the undersigned makes the following:

FINDINGS OF FACT¹

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Wisconsin corporation, is engaged in the sale and distribution of automotive parts and the servicing and repair of automotive equipment. In 1947 the Respondent sold automotive parts, equipment, and services valued at \$405,000. Ninety-six to ninety-seven percent of such sales of goods and services was made to public garages, implement dealers, farmers, and stores in and around Green Bay, Wisconsin. Three to four percent of such sales of goods and services was made to persons or firms located outside the State of Wisconsin and to common carriers and contract carriers operating into and through States other than Wisconsin. Such carriers were licensed by the appropriate Federal and State authorities. In 1947, the Respondent purchased raw materials and supplies such as pistons, valves, rings, bearings, clutch parts, gears, and all types of automotive parts, shop tools, paint and spray guns, valued at approximately \$271,000. Approximately 75 percent thereof was obtained from sources located outside the State of Wisconsin, and 25 percent from sources within the State of Wisconsin. Total sales and services in the year 1948 amounted to approximately \$275,000, with approximately the same proportion of distribution among local and interstate purchasers as in 1947. In the same year the purchases of raw materials and supplies amounted to about \$190,000, with approximately the same proportionate distribution between sources within and without the State of Wisconsin.

The total amount of labor cost for services performed by the Respondent on behalf of its customers in 1947 amounted to \$52,000, and in 1948 amounted to \$35,000, both of which figures are included in the foregoing amounts.

The Respondent contended that it is not an "Industry affecting commerce" within the contemplation of Section 501 of the Act, and that the Board should decline to accept jurisdiction herein, upon the ground that the strike herein had no effect of substantial interruption or interference with commerce or with the free flow of such commerce. Also upon the ground that the Union originally invoked the jurisdiction of the Wisconsin Employment Relations Board by filing substantially the same charges as it filed herein.

It was not disputed that Respondent furnished materials and services to several trucking companies that were engaged in interstate commerce.

As the Board stated in *Liddon White Truck Company, Inc.*,² "we are of the opinion that at the present time the policies of the Act can best be effectuated if the organizational activities of the employees herein involved are conducted within, rather than without, the framework of the Act." Upon the basis of the

¹ The record as a whole contains few material conflicts of fact. The parties stipulated on the major conflict. In making the findings herein, the undersigned has considered and weighed the entire evidence and the contentions of the parties. It would needlessly burden this report to separately evaluate all the evidence on the few disputed points. Such evidence that conflicts with the findings herein is not credited.

² 76 NLRB 1181, l.c. 1182. See cases therein cited.

foregoing, the undersigned finds that the Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Local 862 of the International Union, United Automobile Workers of America, A. F. L., is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. Prefatory statement³

The Respondent and the Union entered into a collective bargaining agreement effective February 1, 1947, for a 1-year period after the Union had been certified as the exclusive representative of Respondent's employees in the unit herein by the Wisconsin Employment Relations Board⁴ in October 1946. In accordance with the contract provisions the Union notified Respondent on November 24, 1947, of its desire to amend the contract, and on December 26, 1947, notified the Federal Mediation and Conciliation Service and the WERB of the existence of a dispute.

F. N. Trowbridge, counsel and bargaining representative for a group of employers, negotiated with the Union during December 1947 and January and February 1948. The bargaining was in good faith by both parties although when terms were agreed upon, the Respondent, on February 16, 1948, denied that Trowbridge had its authority to represent it in any negotiations or agreements. Thereafter, during February and in two meetings in March the Respondent by Donald McGinn, its vice president, and F. J. Van Laanen, a friend of the McGinn family, and the Union by Omer Weidman, met and negotiated.

The second meeting in March was on the 10th and the Union at that time made certain contract proposals to McGinn. The Union contends that McGinn was to answer the proposals the next day and that is denied by the Respondent. The Union took a strike vote on March 16 and struck the Respondent's plant for failure to give any answer to any of the proposals made on March 10.

On April 3, 1948, the Union filed a complaint with the WERB charging refusal to bargain. After hearing, the WERB dismissed the complaint.

Further bargaining meetings were held during May 1948 and on June 8, 1948, a consent election was held. After 11 of 12 eligibles voted favorably the Regional Director of the Board issued a certification to the Union.

Thereafter four bargaining meetings were held, the last on August 9, 1948. There were a few telephone conversations between the parties after August 9 and on August 16, the Respondent filed a representation petition with the WERB. As the charges herein were filed on August 24, the WERB, at the opening of its hearing on August 25, ruled that the hearing would be held in abeyance pending disposition of the charges by the Board in this case.

B. The appropriate unit

The parties by stipulation agreed and the undersigned finds that all employees of the Respondent, employed in the stockroom as follows: Order Department, Counter Department, Stock Department and all other interstore depart-

³ This statement is based upon undisputed evidence, stipulations of the parties, and exhibits adduced at the hearing.

⁴ Herein referred to as the WERB.

ments pertaining to actual stock work (Division 1) and all employees in the machine shop (Division 2), and janitors, but excluding guards, professional and supervisory employees as defined in the Act, and all other employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

C. The Union majority in the appropriate unit

The parties by stipulation agreed that the Union was certified by the WERB after an election in 1946 and continued to function as the bargaining representative of Respondent's employees in the above-described unit during all of the time material herein, and that the Respondent and the Union executed a consent-election agreement before the Board on May 18, 1948, for a union-authorization referendum in the unit. The election was held on June 8, 1948, and on the basis of a tally of ballots showing 11 votes for and 1 against the Union, a certification authorizing the union to execute a union-shop agreement on behalf of the employees was issued by the Regional Director.

The Respondent offered no evidence or argument at the hearing to show that either certification was invalid or that since either certification there was or has been any change in the desires of the employees in the unit described above as to their bargaining representative.

The undersigned therefore concludes and finds that at all times since the year 1946 the Union was, and now is, the exclusive representative of all employees in the appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

D. The refusal to bargain

The Respondent effected a collective bargaining agreement with the Union for a period of 1 year, February 1, 1947, which expired January 31, 1948. The Union duly notified Respondent of its desire to modify that contract in accordance with its terms; and negotiated with Trowbridge as above stated. The Union contacted McGinn in February 1948 and on March 10, 1948, presented certain proposals for Respondent's consideration. The Union expected a reply thereto on the following day and its representative thereafter made several attempts to talk to McGinn but was not successful. McGinn was confined to his home because of illness for 7 or 8 days after March 10.

During the bargaining conferences February 16 through March 10, the respondent was represented by McGinn and F. J. Van Laanen, an experienced man in labor matters, and a friend of the McGinn family. It is also clear that Van Laanen had talked by telephone to McGinn at his home and had called on him there in person. Those conversations were not disclosed in the record but the undersigned is convinced that bargaining matters were discussed as it was not disputed that several negotiation meetings had been held during the 3 weeks preceding McGinn's illness. The previous contract had expired January 31 and McGinn knew on February 16 that negotiations prior thereto between Trowbridge and the Union had almost terminated in full agreement. The urgency of the situation was clearly shown by the action of the Respondent's employees in taking a strike vote on March 16 because of McGinn's failure to appear or make any arrangements for contract discussions after March 10. The day after the strike the union representative was contacted by Van Laanen but the Respondent made no attempt to negotiate further until March 19.

On April 3, 1948, the Union filed a complaint against the Respondent with WERB alleging refusal to bargain. The WERB hearing examiner dismissed the complaint on June 16, 1948.

Further bargaining meetings were held during May and on the 18th the Respondent and the Union orally agreed to the terms of a contract and the Respondent proposed that it be reduced to writing, on the condition that the Union dismiss its complaint then pending before WERB. On the Union's refusal the Respondent refused to execute the contract.

Further bargaining meetings were held on August 2 and 9. At the last meeting the parties again came to oral agreement on all the terms of a contract except the effective date. The Respondent desired the contract to be effective August 1, 1948, and the Union wanted it retroactive to February 1, 1948. The Respondent stated that if the Union persisted it would challenge the Union's majority by petitioning the WERB for a representation election among the employees. Such a petition was filed and the WERB ruled that it would hold the petition in abeyance pending disposition of this case.

It was stipulated at the hearing, and the undersigned finds that both the Respondent and the Union from November 24, 1947, until the strike March 16, 1948, continued to observe and to work under all the terms and conditions of the 1947 contract.

The undersigned is convinced and finds that the Respondent, at no time during its negotiations with the Union beginning on March 10, 1948, bargained in good faith with the Union.⁵ Its failure to bargain in good faith, as required by the Act is demonstrated by the unreasonableness of its failure to make any effort to answer the Union's proposals of March 10, 1948, although the record is clear that persons other than McGinn could have at least appeared for discussion with union representatives; by its insistence upon the withdrawal by the Union of its charges before the WERB as a condition precedent to the execution of a written contract embodying the oral agreements reached between the parties; and by the filing of a petition for representation election with the WERB when the Union first refused to make the new contract effective August 1, 1948, and when there was no apparent reason for challenging the Union's majority.

It is therefore found that from and after March 10, 1948, the Respondent refused to bargain in good faith with the Union in matters of rates of pay, wages, hours of employment, and other conditions of employment and has thereby violated and is violating Section 8 (a) (1) and (5) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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 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 the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

⁵ *Burgie Vinegar Company*, 71 NLRB 829; *Aldora Mills*, 79 NLRB 1; *The American Laundry Machinery Company*, 76 NLRB 981.

Having found that the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, the undersigned will recommend that the Respondent, upon request, bargain collectively with the Union.

Because of the basis of the Respondent's refusal to bargain, as indicated in the facts found, and because of the absence of any evidence that danger of other unfair labor practices is to be anticipated from the Respondent's conduct in the past, the undersigned will not recommend that the Respondent cease and desist from the commission of any other unfair labor practice. Nevertheless, in order to effectuate the policies of the Act, the undersigned will recommend that the Respondent cease and desist from the unfair labor practices found and from in any manner interfering with the efforts of the Union to bargain collectively with it.⁶

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

CONCLUSIONS OF LAW

1. Local 862 of the International Union, United Automobile Workers of America, A. F. L., is a labor organization within the meaning of Section 2 (5) of the Act.

2. Local 862 of the International Union, United Automobile Workers of America, A. F. L., is now, and during all times material herein has been, the exclusive representative, within the meaning of Section 9 (a) of the Act, of all the employees of the Respondent in the unit heretofore found to be appropriate, within the meaning of Section 9 (b) of the Act.

3. By refusing on March 11, 1948, and at all times thereafter, to bargain collectively with Local 862 of the International Union, United Automobile Workers of America, A. F. L., as exclusive bargaining representative of employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

4. By the aforesaid refusal to bargain, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (a) (1) of the Act.

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

[Recommended Order omitted from publication in this volume.]

⁶ See *N. L. R. B. v. Express Publishing Company*, 312 U. S. 426.