

IN the Matter of SYNCRO MACHINE COMPANY, INC. and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C. I. O.

*Case No. 4-C-1437.—Decided June 29, 1945*

*Mr. Geoffrey J. Cunniff*, for the Board.

*Mr. Fayette S. Dunn*, of New York City, for the respondent.

*Mr. Paul Barton Phillippe*, of New York City, for the Union.

*Mr. Milton E. Harris*, of counsel to the Board.

## DECISION

AND

## ORDER

### STATEMENT OF THE CASE

Upon a charge duly filed on July 28, 1944, by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., herein called the Union,<sup>1</sup> the National Labor Relations Board, herein called the Board, by its Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued its complaint dated November 18, 1944, against Syncro Machine Company, Inc., Perth Amboy, New Jersey, 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 thereon, were duly served on the respondent and the Union.

Insofar as material with respect to the unfair labor practices, the complaint alleged in substance that the respondent on or about June 13 and July 14, 1944, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of all its employees in a certain appropriate unit at its Perth Amboy, New Jersey, plant, and that by such

<sup>1</sup> There are minor variations in the designation of the Union appearing in the record.

conduct the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Thereafter, the respondent duly filed its answer, in which it in substance admitted that it had refused to bargain with the Union "on several occasions subsequent to June 13, 1944"; but it denied that such refusals constituted unfair labor practices, on the ground that the alleged appropriate unit was "inappropriate as to it" and further because its acquisition of the Perth Amboy plant subjected it to "no obligation to recognize any labor organization as a bargaining agent for any such persons" as might be employed at said plant.

Pursuant to notice, a hearing was held in Perth Amboy, New Jersey, on December 5, 1944, before James R. Hemingway, the Trial Examiner duly designated by the Chief Trial Examiner. The Board 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 on the issues. At the close of the hearing, counsel for the Board and the respondent moved to amend their respective pleadings to conform to the proof as to insubstantial matters, and the motion was granted. At the conclusion of the hearing, the parties waived their right to present oral argument before the Trial Examiner. Subsequently, counsel for the Board and the respondent duly filed briefs with the Trial Examiner. During the course of the hearing, the Trial Examiner made rulings on other motions and on objections to the admission of evidence. The Board has reviewed all the rulings of the Trial Examiner, and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On January 22, 1945, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon all parties. In his Intermediate Report the Trial Examiner found that the respondent had engaged in and was engaging in the alleged unfair labor practices, and recommended that it cease and desist therefrom and take certain affirmative action. Thereafter, the respondent duly filed exceptions to the Intermediate Report, and a supporting brief.<sup>2</sup>

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

<sup>2</sup> On June 8, 1945, the respondent moved to reopen the record "for the sole purpose of adding thereto the statement of Fayette S. Dunn [the respondent's attorney] . . . annexed to . . . this motion." The statement sets forth certain alleged facts occurring subsequent to July 14, 1944, the date of the respondent's refusal to bargain with the Union as hereinafter found, and alleges that such facts "cast grave doubt upon the good faith" of the Union in "claiming to represent" the respondent's employees, and "should be considered by the Board . . . in connection with the decision of this case." On June 10, 1945, the Union filed a memorandum in opposition to the motion. Assuming, without finding, that the facts are correctly set forth in the statement, we deny the motion on the ground that the respondent's allegations are immaterial in view of our disposition of this case.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

The respondent, a New Jersey corporation, has maintained and operated a plant at Perth Amboy, New Jersey, since June 12, 1944. From that date to the time of the hearing, the respondent purchased raw materials exceeding \$50,000 in value, of which approximately 75 percent was transported to the plant from points outside the State of New Jersey. During the same period of time the respondent's finished products exceeded \$100,000 in value, of which approximately 75 percent was shipped from the plant to points outside the State of New Jersey.

The respondent admitted in its answer, and we find, that it is engaged in commerce within the meaning of the Act

## II. THE ORGANIZATION INVOLVED

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent<sup>3</sup>

## III. THE UNFAIR LABOR PRACTICES

A. *Chronology of events*

In February 1944, the respondent was engaged in the sale of certain products manufactured for it by National Pneumatic Company, Rahway, New Jersey: namely, machinery for wire processing, a high-speed friction coupling known as the Rawson centrifugal coupling, and elevator parts and accessories. On or about February 21, 1944, the respondent decided to acquire a plant where it could manufacture such products for itself, and it accordingly acquired the aforesaid Perth Amboy plant, theretofore owned and operated by Kincaid Manufacturing Company, Inc., and John R. Toolan,<sup>4</sup> Trustee in Equity Receivership for Kincaid Manufacturing Company, Inc., herein jointly called Kincaid.

Meanwhile, after the usual proceedings, the Board on April 11, 1944, issued a Decision and Direction of Election,<sup>5</sup> in part finding that all the employees of Kincaid engaged at the said plant in productive, non-productive, and maintenance operations, including journeymen sheet metal workers and apprentices, but excluding office employees, foremen, and all or any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or

<sup>3</sup> The respondent in its brief before the Board argued that the Union's charter excluded employees of the respondent from membership. However, the evidence shows that such employees are eligible for membership in the Union.

<sup>4</sup> The record also contains the designation "John E. Toolan."

<sup>5</sup> 55 N L R B 1196.

effectively recommend such action, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. Pursuant to an election conducted on April 26, 1944, the Board on May 4, 1944, certified the Union as the exclusive collective bargaining representative of all the employees in the aforesaid appropriate unit. The respondent does not contest the validity of the foregoing proceedings.

On June 12, 1944, the respondent took possession of the Perth Amboy plant. Having assumed Kincaid's unfilled orders and contracts for the manufacture and sale of Kincaid's products, all of which differed from those of the respondent, the respondent continued without interruption the employment of the individuals theretofore employed by Kincaid in the appropriate unit and the operations theretofore performed by them.<sup>6</sup>

On June 13, 1944, the day after the respondent took possession of the plant, the negotiating committee of the Union met General Manager Slutzker in his office and presented a proposed contract for the respondent's consideration.<sup>7</sup> Slutzker told the committee that he was not in a position to make any commitments but that he would present the proposals to the proper parties; and he asked for and received three copies of the proposed contract, one for himself, one for the respondent's president, Paul B. Fantone, and one for the respondent's attorney, Fayette S. Dunn.

On or about June 14, 1944, the respondent commenced bringing to the Perth Amboy plant some of its own machines, for the manufacture of the Rawson coupling. Around June 19 or 22, the respondent began operations on these machines. Beginning in July, more of the respondent's machines began to arrive at a rate of about four to six machines per week, for the manufacture of its varied products.

On July 14, 1944, after two attempts by the Union to arrange for a further meeting with the respondent, such a meeting was held in President Fantone's office. The Union was represented by Joseph Repetti, the chairman of the negotiating committee, and Paul Phillippe, an international representative. The respondent was represented by President Fantone, General Manager Slutzker, Attorney Dunn, and Treasurer L. P. Manske. Dunn told Repetti and Phillippe that in his opinion the certification did not bind the respondent, that there would be many new employees coming to the plant, and that he thought the respondent should not bind them to a contract. He suggested that the Union wait 3 or 4 months, and that the management would then consent to a new election. Repetti replied that the present employees had a right to be represented by the Union which

<sup>6</sup> On June 18, 1944, the first pay day after the respondent took possession of the plant, all 98 of the respondent's production and maintenance employees were the same individuals who had been in Kincaid's employ on June 10, 1944, in the unit which the Board had previously found to be appropriate. Moreover, the plant continued under the actual management of Joseph Slutzker, the same general manager who had been employed by Kincaid.

<sup>7</sup> The terms and duration of the proposed contract do not appear in the record.

they had designated, and that the new employees should abide by that designation. Dunn insisted, however, that the respondent was entitled to a new certification and that it would not recognize the Union or negotiate with it.

By the end of August 1944, according to the credible testimony of General Manager Slutzker, the persons in the respondent's employ were still substantially the same as those whom the respondent had taken over from Kincaid in the appropriate unit. As certain of the Kincaid operations were concluded, mostly in September and all by the second week in October 1944, the respondent at an increasing rate commenced operations for the manufacture of its own products, in a large number of instances on machines not theretofore used by Kincaid and with persons who had previously operated such new machines. During the same period the respondent hired a large number of other persons, and terminated the employment of almost half of the 98 employees originally taken over from Kincaid in the appropriate unit.<sup>8</sup> By November 26, 1944, according to a stipulation which the respondent stated at the hearing that it wanted to place in the record, it still retained 50 of the 98 former Kincaid employees, and had hired a total of 116 additional persons for production and maintenance work.

*B. The Union's status as the majority representative in an appropriate unit on July 14, 1944*

As set forth above, the Board on April 11, 1944, found that all Kincaid's employees engaged at the Perth Amboy plant in specified operations constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act; and on May 4, 1944, the Board certified the Union as the exclusive collective bargaining representative of all such employees.

The certification raised a presumption of the Union's continuing majority representation in the appropriate collective bargaining unit therein set forth; and the presumption was valid even as against the respondent, the *bona fide* transferee of the plant.<sup>9</sup> The respondent contends in effect, however, that the presumption was rebutted by reason of the following facts: The plant, prior to its acquisition by the respondent, was operated by Kincaid, an independent business organization, to manufacture ship parts (such as pilot houses, conning towers, booby hatches, splinter shields for invasion craft, oil heat exchangers, rudders, water tank bases, submarine valve stems, and a few other miscellaneous items); and the operations consisted largely of the assembly and welding of sheet metal and armor

<sup>8</sup> There is no allegation nor evidence that the termination of these employees constituted an unfair labor practice; on the contrary, the evidence shows that they were either unqualified to perform the respondent's new operations or unwilling to do so for the wage rates being paid by the respondent

<sup>9</sup> *Matter of South Carolina Granite Company, et al.*, 58 N. L. R. B 1448.

plate.<sup>10</sup> The respondent acquired the plant, not in order to continue to carry on Kincaid's business, but for the purpose of manufacturing a different group of products, as set forth in the preceding section. The manufacture of such products for the most part demanded machine work of relatively greater precision than Kincaid's operations had required, with only a small proportion of welding work; it called for much new machinery, and the new operations to be performed at the plant made it likely that there would be a substantial change in personnel.

We find, contrary to the respondent's contentions, that the presumption of the Union's continuing majority representation in the appropriate unit as of July 14, 1944, has not been rebutted in this case. In acquiring the plant, the respondent undertook to complete Kincaid's unfilled orders and contracts; it retained in its employ the same persons whom Kincaid had employed in the appropriate unit immediately prior to the transfer of the plant; and these employees continued to perform the same operations for the respondent which they had performed for Kincaid. Moreover the record indicates that such employees were still in the respondent's employ and performed substantially the same operations on July 14, 1944.

On the entire record, we find that on July 14, 1944, all the respondent's employees engaged at the Perth Amboy plant in productive, non-productive, and maintenance operations, including journeymen sheet metal workers and apprentices, but excluding office employees,<sup>11</sup> foremen, and all or any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constituted a unit appropriate for the purposes of collective bargaining. We further find that on such date the Union was the exclusive collective bargaining representative of all the employees in said unit.

### *C. The refusal to bargain*

As set forth above, the respondent on July 14, 1944, refused to bargain collectively with the Union as the representative of the employees in the aforesaid appropriate unit. We have found that the Union on that date was the exclusive collective bargaining representative of all the employees in the aforesaid unit.

The respondent, in effect, contends that its refusal to bargain was not an unfair labor practice because certain changes in operation and personnel, which it then planned to and subsequently did make, allegedly rendered inappropriate the unit hereinabove found appropriate on July 14, 1944. However, it appears from the evidence offered by the respondent that the Kincaid operations were not finally completed until about the second week

<sup>10</sup> Kincaid also used light drill presses, small bed lathes, turret lathes, and a brake and shear.

<sup>11</sup> We find, as did the Trial Examiner, that the respondent's draftsmen come within this classification.

of October 1944 Nor did the respondent establish the precise extent of the change in personnel prior to November 26, 1944, at which time more than half the 98 original Kincaid employees in the appropriate unit were still in the respondent's employ.<sup>12</sup>

In view of these facts, it is clear that there remained on July 14, 1944, a considerable area for collective bargaining. Thus, the employees had a legitimate and proper interest in the terms, conditions, and tenure of their employment, both for the period prior to the completion of their operations on the Kincaid products, and thereafter with respect to continued employment by the respondent. While the respondent of course need not have continued to employ those who were unqualified to perform the new types of operations, some program might have been worked out for retraining the employees and for governing the lay-offs of those who remained unqualified.<sup>13</sup> Obviously the employees did not cease to be interested in these subjects merely because of the respondent's prospective plans. The respondent's failure to submit any kind of counter-proposal to the Union, and its sweeping refusal to recognize or negotiate with the Union at all, prevented these legitimate problems from being explored, although there was both a need and a desire to adjust such problems. The respondent thereby forestalled the peaceful settlement of these sources of industrial unrest and thwarted the statutory policy of encouraging collective bargaining.

On the entire record we find, as did the Trial Examiner, that on July 14, 1944, the respondent refused to bargain collectively with the Union as the exclusive collective bargaining representative of all the respondent's employees in the aforesaid appropriate unit, thereby interfering with, restraining, and coercing 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 respondent's activities set forth in Section III, above, occurring in connection with its operations 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

We have found that on July 14, 1944, the respondent refused to bargain collectively with the Union as the exclusive collective bargaining representative of its employees in the above-described appropriate unit. The evi-

<sup>12</sup> There were also 116 new production and maintenance employees on the respondent's payroll at this time.

<sup>13</sup> See *Matter of Brown-McLaren Manufacturing Company, et al.*, 34 N. L. R. B. 984, where the Board found an unlawful refusal to bargain despite the employer's prospective transfer of operations to a new city, on the ground that the reemployment of the former employees at the new location was a proper subject for collective bargaining.

dence, as previously found, satisfies us that because of the changes which occurred after the refusal to bargain and prior to the hearing before the Trial Examiner, it would not effectuate the policy of the Act, under the unusual circumstances which now exist, to require the respondent to bargain collectively with the Union. We shall accordingly modify our normal remedy to meet the changing circumstances.<sup>14</sup> Among the factors which have led us to this conclusion are, for example, (1) the absence of any evidence as to the number represented by the Union who are able to perform the new types of work in which the respondent is presently engaged, and (2) the insufficiency of the evidence to show either the exact present composition of the appropriate collective bargaining unit or the fact that, particularly with respect to the experienced machine operators newly employed, a normal turn-over situation is here involved. Thus, under the peculiar circumstances of this case, and upon the entire record, we are not convinced that it would effectuate the policies of the Act to require the respondent at this time to bargain collectively with the Union. This finding is not to be taken, however, as authority in any other case where the facts differ from those here present.

To remedy its refusal to bargain with the Union, we shall accordingly order the respondent forthwith to cease and desist from refusing to bargain collectively with the representatives of its employees, subject to the provisions of Section 9 (a) of the Act.

Upon the basis of the foregoing findings of fact and the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. All the respondent's employees engaged at the plant in Perth Amboy, New Jersey, in productive, non-productive, and maintenance operations, but excluding office employees, foremen, and all or any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constituted on July 14, 1944, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

<sup>14</sup> See *Matter of Brown-McLaren Manufacturing Company, et al*, 34 N. L. R. B. 984, 1014-5, where the employer in good faith transferred his operations to a different city after unlawfully refusing to bargain with the Union, and hired new employees. The Board found that it would not effectuate the policies of the Act to order the employer to bargain collectively with the Union as the employees' exclusive representative at the new location, in the absence of any evidence of the Union's majority representation among the employees of the new plant. See also *Matter of Metal Textile Corporation of Delaware*, 47 N. L. R. B. 743, where the employer was unable to get raw materials and so discontinued operations after unlawfully refusing to bargain with the Union. Finding that there was no likelihood of a resumption of operations "until after the war, if then," the Board decided not to order the employer to bargain collectively with the Union.

3. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., was on July 14, 1944, the exclusive collective bargaining representative of all the employees in the above-described appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing, on July 14, 1944, to bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., as the exclusive collective bargaining representative of all its employees in the aforesaid appropriate unit, the respondent engaged in an unfair labor practice 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 engaged in an unfair labor practice 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.

#### ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and 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, Syncro Machine Company, Inc., Perth Amboy, New Jersey, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the representatives of its employees, subject to the provisions of Section 9 (a) of the Act;

(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 labor organizations, to join or assist International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes 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) Post at the plant in Perth Amboy, New Jersey, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the Fourth Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60)

consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

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

## APPENDIX A

### NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not, by any acts or conduct like or related to our refusal on July 14, 1944, to bargain collectively with International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, C. I. O., interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, 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. All our employees are free to become or remain members of this Union, or any other labor organization.

We will not refuse to bargain collectively with the representatives of our employees, subject to the provisions of Section 9 (a) of the National Labor Relations Act.

SYNCHRO MACHINE COMPANY, INC. (*Employer*)

By

(Representative)

(Title)

Dated

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.