

In the Matter of THE ELYRIA TELEPHONE COMPANY *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION B-1014 (AFL)

Case No. 8-C-1756.—Decided August 21, 1945

DECISION
AND
ORDER

On June 21, 1945, 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. No exceptions to the Intermediate Report were filed, and oral argument before the Board in Washington, D. C., was not requested. The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report 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 Elyria Telephone Company, Elyria, Ohio, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) In any manner 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 Brotherhood of Electrical Workers, Local Union B-1014, affiliated with the American Federation of Labor, 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, as guaranteed in Section 7 of the Act.

63 N. L. R. B., No. 66.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its plant at Elyria, Ohio, copies of the notice attached hereto, marked "Appendix A." Copies of said notice to be furnished by the Regional Director for the Eighth 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 for the Eighth Region in writing within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

APPENDIX A

NLRB 576
(9-1-44)

NOTICE TO ALL EMPLOYERS

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 in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join, or assist International Brotherhood of Electrical Workers, Local Union B-1014 (AFL) 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.

THE ELYRIA TELEPHONE COMPANY

(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.

INTERMEDIATE REPORT

Mr. Thomas E. Shroyer, for the Board.

Mr. William Patrick Clyne, of Cleveland, Ohio, for the respondent.

Mr. James E. Reilly, of Richmond, Ind., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by International Brotherhood of Electrical Workers, Local Union B-1014 (AFL), herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated May 1, 1945, against The Elyria Telephone Company, Elyria, Ohio, 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 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, were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that from January 1, 1945, to the date of the issuance of the complaint, the respondent advised and urged its employees to withdraw from the Union, attempted to persuade its employees to withdraw from the Union by notifying them that it was granting a retroactive wage increase, and stated to its employees that they might withdraw from the Union without being penalized under the closed shop provision of the contract between the respondent and the Union, and (2) that by such conduct the respondent engaged in unfair labor practices within the meaning of Section 8 (1) of the Act.

Thereafter the respondent filed its answer, in which it denied that it had engaged in any unfair labor practice and that James E. Reilly, who had signed and instituted the charge of unfair labor practices in behalf of the Union, was an officer of the Union or had authority from the Union to institute such charge.¹

Pursuant to notice, a hearing was held on May 24, and 25, 1945, at Elyria, Ohio, before Frederic B. Parkes, 2nd, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by an official representative. 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 Board's case, the respondent moved to dismiss the complaint for failure of proof; the motion was renewed at the closing of the hearing. The undersigned reserved ruling on both motions. They are hereby denied. Following the introduction of all evidence, the undersigned granted without objection, a motion by counsel for the Board to conform the pleadings to the proof as to dates and minor variations. All parties waived oral argument before the undersigned.

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 respondent, an Ohio corporation with its principal office and place of business in Elyria, Ohio, is engaged in the business of furnishing local exchange

¹ The undersigned finds no merit in this contention. Reilly testified that the international president of the Union has the right to administer the affairs of a local union and may delegate his authority to international representatives. The last of November 1944, Reilly was assigned by the international president to advise Local B-1014. Reilly further testified that the Union authorized him to file the complaint. See *Matter of Wilson & Company, Inc.*, 31 N. L. R. B. 440, enfd 126 F (2d) 114 (C. C. A. 7), cert. denied 316 U. S. 699.

telephone service over its own lines and equipment as well as long distance telephone service and communications over its own lines and equipment and connecting lines of the Ohio Bell Telephone Company. Through the latter company and other companies the respondent's system is connected with the American Telephone and Telegraph Company. The respondent provides the territory serviced by it with the only means of communication by telephone to points outside the State of Ohio. The respondent, together with the Ohio Bell Telephone Company and other telephone companies, furnishes nation-wide communication service through the coordination of plant equipment and services, and, pursuant to arrangements with these telephone companies, the respondent handles and transmits calls originating at points outside the State of Ohio, coming into its territory from that of such companies, and transfers to such companies calls originating in its territory and directed to points in states other than the State of Ohio. During the year 1944, the respondent purchased equipment and materials valued in excess of \$25,000, of which approximately 75 percent was transported in interstate commerce to the respondent's place of business from states of the United States other than the State of Ohio. During the same period, the total gross receipts of the respondent were in excess of \$250,000, a substantial portion of which was in payment for calls transmitted by the respondent to points outside the State of Ohio. The respondent concedes that it is subject to the Board's jurisdiction.

II. THE ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, Local Union B-1014, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. Background

In March 1943, the Union negotiated its first contract with the respondent covering the employees of the traffic department, the only employees of the respondent concerned in this proceeding.² The contract term was effective retroactively from January 1, 1943, for the period of one year, and was to continue in effect from year to year thereafter unless either party desiring changes should notify the other in writing at least sixty days prior to the annual renewal date. Among other things, the contract provided for a closed shop, forbade any work stoppage by strike or lockout, and established a wage scale ranging from 30 to 60 cents an hour. Subsequently, apparently in 1943, upon the agreement of the respondent, and the Union and with the approval of the National War Labor Board, herein called the W. L. B., the wage rates were increased so that they ranged between 40 and 62½ cents an hour.

During one working day in July 1943, the employees of the traffic department were on strike, leaving the office for a number of hours. The traffic department contract, as amended, was automatically renewed for another year at the close of its 1943 term.

On October 17, 1944, following an election directed by the Board,³ the Union was certified as the statutory representative of the employees in the respondent's

² The employees of the traffic department are long distance telephone operators. All local calls are handled by an automatic system, requiring no operators. In addition to the long distance telephone operators, the contract also covered record clerks, trouble clerks and service department employees.

³ *Matter of The Elyria Telephone Company*, 58 N. L. R. B. 402.

plant department. Shortly thereafter, negotiations for a contract covering the plant department employees were commenced. About October 24, 1944, the Union informed the respondent in writing that it desired to change the terms of the 1943 traffic department contract, which had been automatically renewed for the year 1944; and about November 14, 1944, the Union presented to the respondent a memorandum of proposed changes.

On November 17, 1944, the traffic department employees commenced a sit-down strike which lasted for 8 days. On November 22, 1944, the respondent sent the following telegram to the Union's international president:

This is to notify you that the telephone operators of this company, members of your local 1014 have been on sitdown strike since last Friday. Also a group of plant department employees are on strike who are members of your organization. We will refuse in the future to enter into any closed shop contract with you since you have violated your present contract on two occasions and will consider our present contract null and void unless your members return to work by five p. m. Wednesday the 22nd.⁴

By agreement the parties first commenced negotiation on the contract for the plant department employees. When, on December 12, 1944, an impasse was reached in such negotiations, the Union requested that negotiations on the traffic department contract be started. However, the respondent expressed a desire to complete the negotiations on the plant department agreement before discussing the traffic department contract, so that general matters affecting all its employees agreed to in the plant department contract might be automatically incorporated in the traffic department contract.

On January 5, 1945, a conciliator from the United States Conciliation Service was called in and met with the respondent and the Union. At this meeting, according to the undenied and credible testimony of James E. Reilly, the Union's representative, it was agreed that inasmuch as the traffic department employees "were under contract which provided a continuance from year to year, that the Union need have no apprehension about the fact that the new contract had not been consummated, and we were assured by the Company that it was their desire that the contract should continue during the time it was necessary to iron out our difficulties in the Plant department, and then go into serious work on the Traffic Department contract." During the negotiations for the plant department contract, it was also agreed that the new traffic department contract would be given retroactive effect to January 1, 1945.

On February 16, 1945, the respondent and the Union executed the agreement governing the plant department employees and turned their attention to the contract for the traffic department. At this meeting, the respondent offered, among other things, to give all employees in the traffic department a 2½ cents an hour increase in pay.

On February 22, 1945, employee Mildred Trieskey and "some of the older girls" composed and circulated a petition indicating that the signers did not wish to continue their union membership and submitted it to one Robinson, president of the respondent. Fourteen employees in the traffic department signed the petition.⁵

The same 2½ cents an hour wage increase was included in the proposed contract submitted by the respondent to the Union at their next meeting on February 26. At the last meeting on February 27, the Union and the respondent were in

⁴ Although it appears that the employees did not return to work until after the date of the respondent's ultimatum, the respondent did not cancel the contract.

⁵ At the time of the hearing, there were 33 employees in the traffic department unit.

agreement, according to Reilly, upon all general terms of the contract and had reached an accord to submit to the W. L. B. five disputed matters, namely, union security provisions,⁶ overtime pay, "calling time," pay for work on Monday after a Sunday holiday, and severance pay. Reilly testified that the Union did not at this meeting agree to the respondent's proposal of a 2½ cents an hour increase for all employees, but stated that the matter would have to be submitted to the membership for approval. That evening a meeting of the Union was held and it was agreed to accept the respondent's proposal on the wage issue. On February 28, Reilly informed the conciliator of the Union's acceptance of the wage increase proposed by the respondent.

B. *Interference, restraint, and coercion*

Mary Harrison, a long distance operator in the traffic department, testified without contradiction and the undersigned finds that on February 27, 1945, about 4:30 in the afternoon⁷ one Mrs. Williams,⁸ head operator of the traffic department, called Harrison to Williams' desk and stated that "she [Williams] had to tell every girl, individually, that [General Manager] Ammel was going to give us a 2½ cents raise after January 1, 1945, and whether we belonged to the Union or not, we would not be penalized "

According to the undenied and credible testimony of employee Marie Stankard, president of the Union, she was next interviewed by Williams, who made substantially the same statements attributed to her by Harrison. When Stankard remonstrated, "What do you mean, we won't be penalized for not belonging to the Union? We have a contract that is in effect. It is a closed shop, and we have to belong to a Union," Williams replied, "I don't know anything about that. That is what I was told to tell you " Thereupon Stankard returned to her duties at the switchboard and a few minutes later Williams came over and showed her a copy of the telegram sent by the respondent to the Union's international president on November 22, 1944, set forth above. Williams then telephoned someone and after a brief conversation posted the copy of the telegram on the bulletin board where it remained for approximately 2 weeks. After Williams posted the telegram, she went down the line of switchboards and talked with each of the remaining operators, with the exception of employee Mildred Trieskey, who, according to Harrison and Stankard, had been the first employee to be summoned to Williams' desk in the series of interviews that afternoon.⁹

⁶ The Union insisted that the closed-shop provisions of the 1943 contract be carried over into the new agreement. The respondent refused to agree to a closed shop and offered instead a maintenance of membership provision whereby employees who on a specified date were members of the Union and had not resigned therefrom should as a condition of employment maintain their membership in the Union. A similar maintenance of membership provision was agreed upon by the Union and the respondent in the plant department contract.

⁷ Reilly testified without contradiction and the undersigned finds that the final bargaining conference on February 27 ended about 3:30 p. m. but that General Manager Roy Ammel left the meeting about 2 p. m.

⁸ Williams is in charge of the supervision of the traffic department. She makes out work schedules, instructs the operators, and give them orders. She never works on the switchboards. She grants or denies requests for leave of absence. The respondent admits that Williams is "a supervisory employee of an executory nature." She is not included in the traffic department contract unit. The undersigned finds that Williams is a supervisory employee and that the respondent is accountable for her statements and activities.

⁹ The above findings are based upon the mutually corroborative and undenied testimony of the Board's witnesses. The respondent did not call any witnesses during the course of the hearing.

C. Conclusions

The respondent contends that by announcing on February 27, 1945, through Head Operator Williams, that the respondent was granting a 2½ cents an hour wage increase to each employee in the traffic department, it committed no unfair labor practice, because the Union and the respondent had entered into an accord upon the wage increase a few hours earlier at a collective bargaining conference. The contention is clearly without merit. Reilly, the Union's representative, testified without contradiction, and the undersigned finds, that at the close of the meeting on February 27, 1945, the Union had not agreed to the 2½ cents wage increase offered by the respondent since it was necessary that this vital issue be submitted to the membership for approval. On the other hand, assuming *arguendo* that the Union and the respondent had reached an accord upon the wage issue, it is clear that the collective bargaining negotiations had not ceased and that no contract had yet been executed. The respondent, under these circumstances, was under a duty to refrain from action which would influence the employees in their voting on the respondent's wage proposal or in their organizational desires. Instead, having knowledge through the petition circulated on February 22, 1945, that a considerable group of the traffic department employees were disposed to withdraw from the Union, the respondent sought to undermine further the strength of the Union by announcing, without giving credit to the Union for its negotiating efforts, that the respondent was granting a wage increase. In addition, the respondent coupled with the wage increase announcement the further statement that, despite the current closed-shop provisions of the extended 1943 contract and the pendency before the W. L. B. of the union security provision of the 1945 contract then being negotiated, the employees would not impair their job security by not being a member of the Union. Similarly, by the posting of the telegram of November 22, the respondent sought to further emphasize its pronouncement to the employees that they did not have to remain members of the Union. By such unilateral action the respondent indicated to its employees that the Union was an ineffective instrument through which they might expect to secure their demands, thereby undercutting the authority of the Union as the chosen representative of the employees. That such action on the part of the respondent was obviously designed to discourage, and had the necessary effect of discouraging, union membership and activity is shown by the testimony of employee Harrison, who stated in this regard, "The idea is if you are going to be penalized or not, what would be the use of joining the Union . . . The way it was said, it sounded that that 2½ cents was given to us, whether you belong to the Union or not, you wouldn't be penalized."

The undersigned concludes and finds that the respondent, by the statements of Williams hereinbefore set forth and by the posting of the telegram of November 22, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.¹⁰

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.

¹⁰ *Matter of Schmidt Baking Co., Inc.*, 27 N. L. R. B. 864, enf'd 122 F. (2d) 162 (C. C. A. 4); *Matter of Great Southern Trucking Company*, 34 N. L. R. B. 1068, enf'd 127 F. (2d) 180 (C. C. A. 4), cert. denied 317 U. S. 652.

V. THE REMEDY

Having found that the respondent has engaged in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

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. International Brotherhood of Electrical Workers, Local Union B-1014, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. 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.

3. 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 foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, The Elyria Telephone Company, Elyria, Ohio, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) In any manner 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 Brotherhood of Electrical Workers, Local Union B-1014, affiliated with the American Federation of Labor, 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, as 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) Post at its plant at Elyria, Ohio, copies of the notice attached hereto, marked "Appendix A." Copies of said notice to be furnished by the Regional Director for the Eighth 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 for the Eighth Region in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

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 3, as amended, effective July 12, 1944,

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 25, 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 proceedings (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 upon each of the 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 to the Board within ten (10) days from the date of the order transferring the case to the Board.

FREDERIC B. PARKES, 2nd,
Trial Examiner.

Dated June 21, 1945.