

In the Matter of JOE HEARIN, LUMBER and LUMBER AND SAWMILL
WORKERS UNION LOCAL No. 2795, A. F. OF L.

Case No. 19-C-1323.—Decided March 28, 1946

Mr. John E. Hedrick, for the Board.

Mr. C. L. Irving, of Klamath Falls, Oreg., for the respondent.

Mr. J. G. Wolf, of Medford, Oreg., for the Union.

Miss Grace McEldowney, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a charge duly filed by Lumber and Sawmill Workers Union, Local No. 2795, affiliated with the American Federation of Labor, herein called the Union,¹ the National Labor Relations Board, herein called the Board, by its Regional Director for the Nineteenth Region (Seattle, Washington), issued its complaint, dated January 11, 1945, against Joe Hearin, Lumber, herein called the respondent,² 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, together with notice of hearing thereon, 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 15, 1944, a majority of the respondent's employees in an appropriate unit placed their respective signatures on cards designating the Union as their collective bargaining agent; that on or about the same date, the respondent and the

¹ Although the charge was signed by Klamath Basin District Council, Lumber & Sawmill Workers Union, A. F. of L., the record shows that it was filed by that organization on behalf of the Union.

² Erroneously referred to in the charge and in the complaint as "Joe Hearin Mills" At the hearing, the Trial Examiner granted a motion of counsel for the Board, to which there was no objection, to amend the formal papers to show the correct name of the respondent, as set forth above.

Union entered into a written agreement for a cross-check of appropriate records of the respondent and the Union, to be made under the direction and supervision of the Regional Director for the Nineteenth Region, pursuant to which agreement the respondent agreed to recognize the Union as the exclusive collective bargaining representative of the employees in the appropriate unit upon the advice of the Regional Director that the Union had been so designated; that on March 21, 1944, a cross-check was made in accordance with the provisions of the agreement, and the Regional Director advised the respondent that the Union had been designated and selected by a majority of the employees in the unit as the exclusive bargaining representative of the employees within the unit; that at all times since March 21, 1944, the Union had been and still was the exclusive collective bargaining representative of said employees; and that on or about July 14, 1944, and at all times thereafter, the respondent had refused, and was continuing to refuse, to bargain collectively with the Union as such representative. On January 20, 1945, the respondent filed its answer, in which it admitted certain allegations of the complaint, but denied that it had engaged in the alleged unfair labor practices, and affirmatively alleged, in effect, that the Union was not, at the time of the alleged refusal to bargain, the representative of the employees in the appropriate unit.

Pursuant to notice duly served upon the parties, a hearing was held at Ashland, Oregon, on February 8, 1945, before Howard Myers, the Trial Examiner duly designated by the Chief Trial Examiner. The Board was represented by counsel, and the respondent and the Union by representatives. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the close of the case, a motion of counsel for the Board to conform the pleadings to the proof was granted without objection. 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 the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Thereafter, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the respondent and the Union. In the Intermediate Report, the Trial Examiner found that the respondent had not engaged in the unfair labor practices alleged in the complaint, and recommended that the complaint be dismissed. Thereafter, counsel for the Board filed exceptions to the Intermediate Report and a supporting brief, and the Union filed exceptions. None of the parties requested oral argument before the Board, and none was held.

The Board has considered the exceptions filed by the counsel for the Board and by the Union and, insofar as they are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Joe Hearin is a private individual doing business under the trade name and style of Joe Hearin, Lumber, a proprietorship licensed to do business in the State of Oregon. The respondent's plant and office are located at Ashland, Oregon, where it is engaged in the manufacture of pine and fir lumber products. All the raw materials used by the respondent are obtained locally in the State of Oregon. During the year 1944, the respondent produced approximately 10,000,000 board feet of finished lumber, of which approximately 90 percent was shipped to points outside of the State of Oregon, and approximately 35 percent was used in fulfillment of government contracts.

II. THE ORGANIZATION INVOLVED

Lumber and Sawmill Workers Union, Local No. 2795, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Sequence of events; the alleged refusal to bargain*

In December 1943, the Union began organizational activities among the respondent's employees. Thereafter, on or about January 20, 1944, J. G. Wolf, general representative of the Union, handed Joe Hearin a letter, which stated that a majority of the respondent's employees had designated the Union as their bargaining representative and that the Union was prepared to submit proof of such designation, and asked whether the respondent would recognize the Union on the basis of such proof. Hearin told Wolf that before granting recognition he wanted to see the Union's proposed contract. Wolf replied that the Union had no proposal to make at that time, but that "the first thing that must be established would be to determine whether [the Union was] the bargaining agency under the law." Wolf then handed Hearin a copy of the Act and the Board's Rules and Regulations, and Hearin stated that he wanted to consult his attorney.

At a union meeting on January 30, 1944, Wolf was instructed by the membership to prepare a working agreement. Thereafter, he tried on several occasions to reach Hearin, and finally had a conference with him on or about February 10. At that time, Hearin asked Wolf to take up with the respondent's attorney the question of the recognition of the Union. A few days later, Wolf conferred with the attorney, who informed him, in effect, that the respondent desired "official certification from the Board" as proof of the Union's claim. It was agreed that Wolf would prepare a letter to the Board, to be signed by the Union and the respondent, regarding certification on a cross-check. Wolf did not prepare such a letter, but on February 16, 1944, filed with the Board, on behalf of the Union, a petition for investigation and certification of representatives. Thereafter, he made several attempts to communicate with the respondent's attorney, and when he was unable to do so, filed a charge with the Board alleging that the respondent had refused to bargain collectively with the Union. On or about March 15, 1944, however, the parties met with a Board agent, a cross-check agreement was signed, and the Union withdrew its charge.

The cross-check agreement provided, in substance, that all production and maintenance employees of the respondent, excluding supervisory and clerical workers, employed at the Ashland, Oregon, operations of the respondent, constituted a unit appropriate for the purposes of collective bargaining; that a cross-check of appropriate records of the Union and the respondent should be made under the direction and supervision of the Regional Director to determine whether or not the employees in the agreed unit desired to be represented by the Union for the purposes of collective bargaining; that the Regional Director should, upon completion of the cross-check, issue a Report on Cross-Check; and that if the Regional Director should advise that the Union had been designated by the employees in said unit, the respondent would recognize the Union as the exclusive representative of said employees for the purposes of collective bargaining. Pursuant to this agreement, the cross-check was made, and on March 21, 1944, the Regional Director issued his Report on Cross-Check in which he reported that of 50 employees in the agreed unit, 32 had designated the Union, and accordingly found and determined that the Union had been designated and selected by a majority of the employees in the agreed unit as the exclusive bargaining representative of the employees within the unit.

In the latter part of March, Wolf presented the Union's proposed working agreement to Hearin; and early in May, Hearin submitted a counter-proposal to the Union. The counter-proposal was not acceptable to the Union's plant committee, and Wolf was instructed

not to accept it. On May 15, Wolf and Hearin again met and discussed the contract. At this meeting, according to Wolf, some provisions of the respondent's counter-proposal were tentatively agreed to, but "on some of them we were dead-locked. We got nowhere on vacations or hours of work provisions." Thereafter, Wolf requested the assistance of the United States Conciliation Service, and a meeting of the parties with a conciliator was arranged for June 26.

In the meantime, the respondent's force had been reduced by approximately 50 percent from the time of the cross-check. This reduction was due in part to the elimination of the night shift,³ and in part to the fact that some employees had voluntarily left the respondent's employ because the West Coast Lumber Commission had ordered a "roll back" of wages in certain classifications.⁴ On or about June 22, 1944, two of the respondent's employees submitted to Hearin a petition, signed by 16 of the 25 employees then in the respondent's employ, which read as follows:

We the under Sign wish to drop all A. F. L. union rights.

On June 26, 1944, the meeting with the conciliator took place. At this meeting, according to Wolf, the parties "got nowhere with negotiations on the working agreement," and Hearin, after referring to the petition, described above, stated that "he was considering whether or not he should deal with [the Union] any further." He then requested and was given 15 days in which to consider the matter and notify the Union of his decision. On July 14, 1944, he wrote Wolf as follows:

At our meeting on June 26, 1944, with Mr. Louis Ziman of the Conciliation Service present, I stated that I would give you my decision regarding further contract negotiations on or before July 15, 1944.

In March of this year, a representative of the National Labor Relations Board cross checked against the Company's payroll the names of employees of this company who had signed membership cards in your organization. Since it appeared obvious that a majority of the employees desired to be represented by your organization, the company entered into negotiations with the union on a working agreement. The working agreement has not been completed to date.

Since negotiations were entered into, the company has found it necessary to curtail the operation by closing down the night shift and, at the present time, approximately 25 men are employed.

³ When the night shift was eliminated, it was the respondent's intention to discontinue it permanently. However, it was reestablished in October or November 1944.

⁴ The "roll back" was ordered and put into effect early in January 1944. The respondent spent considerable time thereafter in an unsuccessful attempt to have the Commission revise its order.

We are now in receipt of a petition, dated June 22, 1944, and signed by 16 employees of the company. The petition purports to express the desire of the signers to "drop all A. F. of L. Union rights". We must take the position, therefore, that to continue negotiations with your organization would constitute a breach of faith with our employees. A majority of them have by voluntarily signing the above mentioned petition, indicated their desire not to be represented by your organization.

This company has no objection to any employee joining, or continuing membership in, any union or organization, nor will such affiliation affect his employment with the company. In the event that the National Labor Relations Board feels an election is necessary to determine the wishes of the majority of our employees, the company will enter into a consent election agreement, if the I. W. A.-C. I. O. appears on the ballot or will formally indicate to the National Labor Relations Board that it has no interest in so appearing.

A few days later, according to Wolf's testimony, he met Hearin on the street and asked him whether "he could foresee anything that could cause him to change his position from that stated in his letter, and he said he couldn't think of anything that would change his position." Wolf reported Hearin's decision to the Union, and on instructions from the Union, prepared the charge in the present proceeding, alleging that the respondent had refused to recognize and deal with the Union as the bargaining representative of its employees.

By the time of the hearing before the Trial Examiner in February 1945, the night shift had been resumed, and there were approximately 45 employees in the respondent's employ, only about 18 of whom had been on the respondent's pay roll at the time of the card check in March 1944.

B. *Conclusion*

Upon the above facts, we agree with the Trial Examiner's conclusion that the respondent has not engaged in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act.

As previously stated, the Regional Director, in his Report on Cross-Check, issued March 21, 1944, found that the Union had been duly designated as the exclusive bargaining representative of the respondent's employees in an agreed unit.⁵ The respondent did not

⁵ No question has been raised as to the appropriateness of the unit agreed on for the purpose of the consent cross-check. We therefore find, as did the Trial Examiner, that the respondent's production and maintenance employees, exclusive of supervisory and clerical workers, at all times material herein constituted, and that they now constitute, a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

then, and does not now, contest the validity of this finding as of the date thereof. On the contrary, it thereafter recognized the Union and entered into bargaining negotiations with it, as a result of which some provisions of a contract were tentatively agreed to. We agree with the Trial Examiner that there is nothing in the record to indicate that in these negotiations the respondent acted otherwise than in good faith.⁶ Moreover, although it appears that some provisions of the proposed contract were still in dispute at the time of the final meeting of the parties on June 26, 1944, we are not convinced, on the record before us, either that an impasse had been reached or that the respondent would have refused to continue negotiations had circumstances not arisen which raised a question as to the continued representative status of the Union.

Admittedly, however, the respondent, on July 14, 1944, refused to continue negotiations with the Union, on the ground that a majority of its employees had, by signing a petition, indicated their desire not to be represented by the Union. In support of this position, the record establishes that the number of the respondent's employees had been reduced by 50 percent from the time of the cross-check in March, and that 16 of the 25 employees remaining in the unit had signed a petition, dated June 22, 1944, and submitted to the respondent before it refused to bargain with the Union, stating that they wished to "drop all A. F. L. union rights."⁷ There is no evidence that the respondent had engaged in unfair labor practices responsible, either in whole or in part, for the reduction in force or for the preparation and circulation of the petition. The crucial question is whether, under these circumstances, the respondent can be heard to question the prior designation of the Union as the exclusive bargaining representative of the employees in the unit, and thus justify its conduct in discontinuing negotiations with the Union.

We have consistently held that when a union has been certified, after a Board-directed election, as the duly designated bargaining representative of employees in an appropriate unit, or when its representative status has been determined by means of a consent election conducted by the Board, its status as such representative continues for a reasonable time thereafter, normally a year; and that during that time neither a substantial turn-over among the employees in the bargaining unit, nor an attempt on their part to revoke, by means of a petition, their designation of the representative, is sufficient to

⁶ We also note that the respondent's good faith in these negotiations, all of which took place between March 21 and June 26, 1944, is not put in issue by the complaint, which alleges a refusal to bargain "on or about July 14, 1944, and at all times thereafter."

⁷ We find, as did the Trial Examiner, that the language of the petition sufficiently evinces a desire on the part of the signatories thereto to revoke the Union's authority to act as their representative.

justify an employer in refusing to bargain with the representative.⁸ Counsel for the Board contends that the same rule should apply when the determination of representatives has been made on the basis of a consent card check. We do not agree.

As we have previously stated, "The fruition of collective bargaining in an agreement often requires negotiations lasting several months. It is therefore essential to the effectuation of the Act that the representative status, once established, be vested with a substantial degree of stability."⁹ We have accordingly held that when that status has been established in an election by secret ballot conducted under the auspices of the Board in accordance with express statutory provisions, a method of determination which leaves no room for doubt as to the employees' true desires, repudiation of their selection can be established only through the medium of an equally probative technique.¹⁰ We do not feel, however, that a card check reflects employees' true desires with the same degree of certainty as such an election.¹¹ Accordingly, in the circumstances of this case, where there is clear and cogent evidence that a majority of the employees within the unit no longer desired representation by a union whose representative status had been determined by a card check, and a complete absence of evidence that the respondent interfered with the employees' statutory rights, we are of the opinion that the respondent was justified in questioning the Union's majority status and in good faith refusing to continue negotiations for this reason. Accordingly, we find that the respondent has not refused to bargain with the Union, within the meaning of Section 8 (5) of the Act.

Having found that the respondent has not engaged in the unfair labor practices alleged in the complaint, we shall dismiss the complaint in its entirety.

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

⁸ See, for example, *Matter of Appalachian Electric Power Co.*, 47 N. L. R. B. 821, enf'd. 140 F. (2d) 217 (C. C. A. 4), and *Matter of The Century Oxford Manufacturing Corporation*, 47 N. L. R. B. 835, enf'd. 140 F. (2d) 541 (C. C. A. 2).

⁹ *Matter of Appalachian Electric Power Co.*, 47 N. L. R. B. 821.

¹⁰ *Matter of The Century Oxford Manufacturing Corporation*, 47 N. L. R. B. 835.

¹¹ For this reason, the Board, in formal representation proceedings, almost invariably resorts to an election by secret ballot as the means of ascertaining which union, if any, the employees desire to designate as their collective bargaining representative. See *Ninth Annual Report of the National Labor Relations Board*, p. 28. Statistics show, moreover, that consent cross-checks are used much less frequently than either Board-ordered or consent elections as the means of determining bargaining representatives. Thus, during the fiscal year ending June 30, 1945, there were 1554 Board-ordered elections, 2887 stipulated or consent elections, and only 478 stipulated or consent card checks.

CONCLUSIONS OF LAW

1. The operations of the respondent, Joe Hearin, Lumber, Ashland, Oregon, occur in commerce, within the meaning of Section 2 (6) of the Act.

2. Lumber and Sawmill Workers Union, Local No. 2795, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the Act.

3. The respondent has not engaged in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act, as alleged in the complaint.

ORDER

Upon the basis of the foregoing findings of fact, 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 orders that the complaint against the respondent, Joe Hearin, Lumber, Ashland, Oregon, be, and it hereby is dismissed.