In the Matter of GRANITE CITY STEEL COMPANY *and* UNITED STEELWORKERS OF AMERICA, CIO

Case No. 14–C–1096.—Decided May 7, 1946

DECISION
AND
ORDER

On February 8, 1946, 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 therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report, attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. On April 25, 1946, the Board at Washington, D. C., heard oral argument in which the respondent and the Union participated.

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 respondent's exceptions and brief, 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, Granite City Steel Company, Granite City, Illinois, and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steelworkers of America, CIO, as the exclusive representative of all watchmen employed at its Granite City, Illinois, plant, but excluding the captain and assistant chief, and 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:

(b) In any manner interfering with the efforts of United Steel-

workers of America, CIO, to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit.

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

(a) Upon request, bargain collectively with the United Steelworkers of America, CIO, as the exclusive bargaining representative of all its employees in the aforesaid appropriate unit, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its plant in Granite City, Illinois, copies of the notice attached to the Intermediate Report, marked "Appendix A." [1] Copies of said notice, to be furnished by the Regional Director for the Fourteenth Region, after being signed by the respondent's representative, shall 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 such notices are not altered, defaced, or covered by any other material;

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

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Mr. Ryburn L. Hackler, for the Board.

Mr. William R. Bascom, of St. Louis, Mo., and *Mr. M. D. Conroy*, of Granite City, Ill., for the Respondent.

Mr. Ralph Z Miller, of Granite City, Ill., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by the United Steelworkers of America, C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Fourteenth Region (St. Louis, Missouri), issued its complaint dated January 9, 1946, against Granite City Steel Company, 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 upon the respondent and the Union

With respect to the unfair labor practices, the complaint alleged in substance that the respondent on or about November 5, 1945, and at all times thereafter refused to bargain collectively with the Union as the exclusive representative of

[1] Said notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "RECOMMENDATION OF A TRIAL EXAMINER" and substituting in lieu thereof the words "A DECISION AND ORDER."

the employees in the unit described in the complaint, although a majority of the employees in said unit had designated and selected the Union as their representative for the purpose of collective bargaining. On January 23, 1946, during the hearing in this matter, the respondent filed its answer in which it admitted that the Union had been designated and selected by a majority of the employees in the unit of all watchmen exclusive of supervisory employees. The respondent denied, however, refusing to bargain collectively with the Union, denied that "a unit consisting of all the watchmen . . . will effectuate the policies of the Act," and denied that it had engaged in any unfair labor practices within the meaning of the Act. The respondent further alleged that under a contract now existing between the respondent and the Union, "the Union has contracted to refrain from acting as the duly constituted bargaining agent and representative of the watchmen. . . ."

Pursuant to notice, a hearing, was held on January 23, 1946, at St. Louis, Missouri, before Millard L Midonick, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented at the hearing by counsel, and the Union was represented at the hearing by its international representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. Motion of counsel for the Board to conform the pleadings to the proof in minor details, such as names and dates, was granted without objection. At the close of the hearing, the respondent and the Board argued orally before the undersigned. Although the respondent was granted permission to file a brief on January 30, 1946, and was notified that time for filing such brief was extended to February 4, 1946, no brief has been received. In view of findings and recommendations hereinafter made, the respondent's motion to dismiss the complaint, made at the close of he hearing, is denied.

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

Granite City Steel Company is a Delaware corporation engaged in the manufacture of flat rolled steel at its Granite City, Illinois, plant. During 1945, the respondent used in its manufacturing processes raw materials valued in excess of $1,000,000, of which approximately 10 percent was shipped to it from points outside the State of Illinois. During that year, the respondent manufactured finished products valued in excess of $21,000,000, of which approximately 90 percent was shipped from it to points outside the State of Illinois.

At the hearing the respondent conceded that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. The appropriate unit and representation by the Union of a majority therein

On September 14, 1945, the Board issued a Decision and Direction of Election in Case No. 14–R–1233 [1] finding that all the respondent's watchmen, but excluding

[1] 63 N. L. R. B. 898.

the captain and assistant chief, and 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

On October 11, 1945, pursuant to said Direction of Election, an election by secret ballot was conducted under the supervision of the Regional Director for the Fourteenth Region.[2] On October 25, 1945, the Board certified the Union as the exclusive representative, for the purposes of collective bargaining, of the employees in the unit hereinabove described.

The respondent contends, as it did in the representation proceeding, that watchmen do not constitute an appropriate unit and that there can be no appropriate unit for the inclusion of these employees. The respondent reasons that as some units in its plant are represented by the Union, and others are represented by American Federation of Labor affiliates, and that as watchmen are closely allied to management, unionization would impair the satisfactory discharge of their duties by causing division of their loyalty where other employees represented by the Union are involved, and by causing friction where other employees represented by the American Federation of Labor affiliates are involved.

Consideration of all the evidence clearly indicates the unit of watchmen established by the Board in the representation case is appropriate. In acocrdance with the expectation expressed by the Board in the representation decision, not only will the Union set up a separate local to represent watchmen, but it intends that the separation here of the bargaining unit of the watchmen from the other units of the respondent's employees in their negotiations with the respondent and their day-to-day activities will be one of fact, not merely form, and the separation shall be reflected in all bargaining between the respondent and the Union, including negotiations for a separate contract for the watchmen.

The Board has considered the contentions raised by the respondent in numerous previous cases involving similar employees of other employers, and it has found them to be without merit.[3]

The respondent concedes that its watchmen are no longer militarized. The cases cited by the respondent involving militarized watchmen and guards decided by the Circuit Courts of Appeal[4] are therefore not applicable here,[5] as the Supreme Court's ruling in those cases provides:[6]

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[2] The tally of ballots showed that of approximately 18 eligible voters, 18 cast valid votes, of which 13 were for the Union and 5 against.

[3] See *Matter of Minnesota and Ontario Paper Company*, 65 N. L. R. B. 971; *Matter of The B. F. Goodrich Company*, 62 N. L. R. B. 206; *Matter of Sealed Power Corporation*, 61 N. L. R B 1639; *Matter of International Harvester Company, Milwaukee Works*, 61 N L. R. B 912, *Matter of Bethlehem-Fairfield Shipyard, Inc*, 61 N. L. R. B 901, *Matter of Bethlehem Steel Company*, 61 N. L. R. B. 892; *Matter of Rohm & Haas Company*, 60 N. L R. B. 554; *Matter of Dravo Corporation*, 52 N. L. R. B. 322. The Board has recently decided, in a case involving representation of foremen, that the Act does not confer upon it the administrative discretion "to decide that some 'employees' may not constitute an appropriate unit in any circumstance." *Matter of L. A. Young Spring & Wire Corporation*, 65 N L. R. B 298.

[4] *N L R B.* v. *Jones & Laughlin Steel Corporation*, 146 F. (2d) 718 (C. C. A. 6); *N. L. R. B.* v. *E. C. Atkins & Co*, 147 F. (2d) 730 (C. C. A. 7).

[5] *Matter of Minnesota and Ontario Paper Company*, 65 N. L. R B. 971.

[6] *N. L. R. B.* v. *Federal Motor Truck Company*, 325 U. S. 838; *N. L. R. B.* v. *Jones & Laughlin Steel Corporation*, 325 U. S. 838; *N. L. R. B.* v. *E. C. Atkins and Company*, 325 U. S. 838.

> The petition for writ of certiorari is granted. The judgment is vacated and the case remanded to the Circuit Court of Appeals for further consideration of the alleged changed circumstances with respect to the demilitarization of the employees involved, and the effect thereof on the Board's orders.

The respondent further contends that the Union may not represent its watchmen because "the Union has contracted to refrain from acting as the duly constituted bargaining agent and representative of the watchmen. . . ." Turning to the contractual provision relied upon by the respondent, we find it embodied in the agreement made with the Union on January 26, 1944, to continue in effect until October 15, 1946:

> Section 2—RECOGNITION
>
> The Company recognizes the Union as the exclusive collective bargaining agency for those employees who are covered by contract with Local Lodges No. 11, 16, 67, and 68.
>
> * * * * * * *
>
> The term "employee" as used in the Agreement includes all employees working on jobs covered by contract with Local Lodges No. 11, 16, 30, 67, and 68 of the United Steelworkers of America; but shall not include executives, superintendents, assistant superintendents, foremen and assistant foremen, who will do no production and maintenance work except in an emergency, general inspectors, timekeepers, clerical employees in the main and plant offices, watchmen, chief clerks in the Mill Offices, technical and professional engineers, draftsmen, chemists, metallurgists, nurses and other salaried employees. Such employees will not be included in this Agreement. This Agreement will include the following occupations—all clerical employees on mill floors and in mill offices, observers, and Junior and Senior Analysts, Test Runners in Department of Metallurgy and Inspection.

The quoted provisions of the contract purport merely to define the classes of employees excluded from the operation of the agreement; certainly there is no promise contained therein on the part of the Union to refrain from organizing or representing in future negotiations employees not covered by the agreement. There is testimony that it has been the practice for production employees to withdraw from the Union's predecessor upon transfer to duties as a watchman. Nevertheless, the respondent's only witness made it equally clear that, although a union representative stated previous to the current agreement that the Union did not then want watchmen in their organization, no one indicated that the Union would not represent watchmen or would undertake not to organize them.

The respondent cannot properly rely on *Matter of Briggs Indiana Corporation*.[7] In that case the Board dismissed a petition of the labor organization seeking to represent plant protection employees because the international affiliate of the petitioning union was there bound by contract not to accept for membership the plant protection employees. The terms of that contract are here quoted to emphasize the dissimilarity from those of the agreement now under consideration:

> . . . That it [the contracting unions] will not accept for membership direct representatives of the management, such as superintendents, foremen, assistant foremen, or supervisors in charge of any classes of labor, time study men, plant protection employees, or confidential salaried employees (Article 1, paragraph (d)).

[7] 63 N. L. R. B. 1270.

The undersigned finds that the contract involved in the case at hand is descriptive merely of the coverage of the contract and contains no promise whatever committing the Union to refrain from organizing the watchmen or from bargaining in their behalf. Since no contract requires the Union to refrain from representing the watchmen, the doctrine of the *Briggs* case has no application here. The Board has uniformly held that the mere exclusion of certain groups of employees from the coverage of a contract does not constitute a bar to the right to represent these groups.[8]

The undersigned finds, in accordance with the Board's previous determination in the representation case, that all the respondent's watchmen, but excluding the captain and assistant chief, and 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

The undersigned further finds that on and at all times after October 11, 1945, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid bargaining unit and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was on October 11, 1945, and at all times thereafter has been the exclusive representative of all employees in the aforesaid unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

2. The refusal to bargain

On October 30, 1945, the Union wrote to the respondent requesting an appointment "to begin negotiations on a collective bargaining agreement covering the watchmen." The respondent replied on November 5, 1945, insisting "that the management of the Company and the preservation of its properties are matters which must remain outside the scope of collective bargaining. It is our conviction, therefore, that our Company's guards do not constitute an appropriate bargaining unit and that under the existing circumstances your Union does not constitute a proper bargaining agent for our guards." On November 6, 1945, the Union wrote to the respondent asking:

> Will you please answer by return mail whether or not you are willing to recognize, in accordance with the National Labor Relations Board certification, the United Steelworkers of America, CIO, as the bargaining agent for the guards at your plant?

On November 9, 1945, the respondent answered in part:

> To answer the question asked in your letter of November 6, this is to advise that Granite City Steel Company is not willing, at the present time, to recognize, in accordance with the National Labor Relations Board certification, United Steelworkers of America, CIO, as the bargaining agent for the Company's guards.

At the hearing and in its answer, the respondent re-affirmed the position taken in this previous correspondence. It is clear that the respondent's conduct constituted a refusal to bargain and the undersigned so finds.

The undersigned finds that the respondent on November 5, 1945, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby

[8] *Matter of American Central Manufacturing Corporation*, 65 N. L. R. B. 342; *Matter of Allegheny Ludlum Steel Corporation*, 64 N. L. R. B. 1284; *Matter of Consolidation Coal Company*, 63 N. L. R. B. 169.

interfered with, restrained, and coerced 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 undersigned finds that 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 it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It having been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended 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 practices. 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.[9]

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. United Steelworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All the respondent's watchmen, but excluding the captain and assistant chief, and 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. United Steelworkers of America, C I O, was on October 11, 1945, and at all times thereafter has been the exclusive representative of all employees in the aforesaid unit for purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on Novemebr 5, 1945, and at all times thereafter to bargain collectively with United Steelworkers of America, C. I O, as the exclusive representative of all its employees in the aforesaid appropriate unit, respondent has engaged in and is engaging in unfair labor practices 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 has engaged in

[9] See *N. L. R. B.* v. *Express Publishing Company*, 312 U. S. 426; *May Department Stores Co.* v. *N. L. R. B.* 323 U. S. 376

and is engaging in unfair labor practices 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.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommends that the respondent, Granite City Steel Company, Granite City, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steelworkers of America, C. I. O., as the exclusive representative of all watchmen employed at its Granite City, Illinois, plant, but excluding the captain and assistant chief, and 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;

(b) In any manner interfering with the efforts of United Steelworkers of America, C. I. O., to bargain collectively with it.

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

(a) Upon request bargain collectively with United Steelworkers of America, C. I. O., as the exclusive representative of all its employees in the aforesaid appropriate unit;

(b) Post at its plant at Granite City, Illinois, copies of the notice attached to the Intermediate Report herein, marked "Appendix A". Copies of said notice, to be furnished by the Regional Director for the Fourteenth 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;

(c) File with the Regional Director for the Fourteenth Region on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that he has complied 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 November 27, 1945, any party or counsel for the Board may within fifteen (15) days[10] 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 proceeding (including rulings upon all

[10] The transcript of the hearing is hereby corrected by deleting the word "thirty" appearing on page 57, line 1, thereof, and substituting the word "fifteen."

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 thereof upon each of the other 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 within ten (10) days from the date of the order transferring the case to the Board.

MILLARD L. MIDONICK,
Trial Examiner.

Dated February 8, 1946.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to recommendations of a Trial Examiner 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 BARGAIN collectively upon request with UNITED STEELWORKERS of AMERICA, C. I. O., as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All watchmen employed at the Granite City, Illinois, plant, but excluding the captain and assistant chief, and 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.

WE WILL NOT in any manner interfere with the efforts of UNITED STEELWORKERS OF AMERICA, C. I. O, to bargain collectively with us.

GRANITE CITY STEEL COMPANY,
Employer.

Dated _____ By _____
Representative (Title)

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