In the Matter of TAMPA SHIPBUILDING COMPANY, INCORPORATED *and* GUARDS, WATCHMEN AND FIREFIGHTERS LOCAL UNION NO. 22970, A. F. OF L.

Case No. 10-C-1813.—Decided May 13, 1946

DECISION

AND

ORDER

On March 18, 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 the respondent cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto. No exceptions to the Intermediate Report, or briefs were thereafter filed with the Board.

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 and the entire record in the case. As previously noted, the respondent has filed no exceptions to the Intermediate Report. The Board 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, Tampa Shipbuilding Company, Incorporated, Tampa, Florida, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Guards, Watchmen and Firefighters Local Union No. 22970, A. F. of L., as the exclusive representative of all the guards employed at its Tampa, Florida, shipyard, excluding corporals, sergeants, lieutenants, the captain, and all 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 Guards, Watchmen and Firefighters Local Union No. 22970, A. F. of L., to bargain collectively with it as the representative of its employees in the appropriate unit described above.

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

(a) Upon request, bargain collectively with Guards, Watchmen and Firefighters Local Union No. 22970, A. F. of L., as the exclusive representative of all its employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its shipyard at Tampa, Florida, copies of the notice attached to the Intermediate Report, marked "Appendix A." [1] Copies of this notice, to be furnished by the Regional Director of the Tenth 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 these notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth 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. William Pate, for the Board.

Reeves, Allen and Johnson, by *Mr. Leroy Allen*, of Tampa, Fla., for the respondent.

Mr. J. P. Rhodes, of Jacksonville, Fla., for the Union

STATEMENT OF THE CASE

Upon a charge duly filed on November 2, 1945, by Guards, Watchmen and Firefighters Local Union No. 22970, A. F. of L, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Tenth Region (Atlanta, Georgia), issued its complaint, dated February 14, 1946, against Tampa Shipbuilding Company, Incorporated, 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 were duly served upon the respondent and the Union.

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

With respect to the unfair labor practices, the complaint alleged in substance: (a) that all guards employed at the respondent's Tampa shipyard, exclusive of corporals, sergeants, lieutenants, the captain, and all 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 purpose of collective bargaining, as found by the Board in its Certification of Representatives issued August 10, 1945,[1] wherein the Board certified that the Union had been designated and selected by a majority of the employees in said unit as their representative for the purpose of collective bargaining; (b) that on September 16, 1945, the Union requested the respondent to bargain collectively and that on September 16 and at all times thereafter, the respondent had refused to bargain with the Union as the exclusive representative of the employees in the above-described appropriate unit; (c) that by such refusal to bargain with the Union the respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and Section 8 (5) of the Act.

The respondent did not file an answer to the complaint.

Pursuant to notice, a hearing was held on March 6, 1946, at Tampa, Florida, before Louis Plost, the undersigned 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. 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 hearing the parties entered into a stipulation covering the facts An opportunity was afforded all parties to file briefs with the undersigned A brief has been received from the respondent.

Upon the record thus made the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Tampa Shipbuilding Company, Incorporated, is a Florida corporation, operating a shipyard at Tampa, Florida, where it is engaged in the construction, conversion, and repair of ships During the year 1945, it purchased and used raw materials valued in excess of $2,000,000, of which 80 percent came to its Tampa shipyard from points outside the State of Florida. During the same period its receipts from its operations exceeded $10,000,000. More than 90 percent of the ships it constructed, converted, and repaired was delivered on interstate waterways to the United States Navy, the War Shipping Administration, and the Lend Lease Administration.[2]

II. THE ORGANIZATION INVOLVED

Guards, Watchmen and Firefighters Local No. 22970 is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

---

[1] See *Matter of Tampa Shipbuilding Company, Incorporated* and *Guards, Watchmen and Firefighters Local Union No 22970, A F. of L*, Case No 10-R-1279.

[2] The Board has taken jurisdiction over the respondent in *Matter of Tampa Shipbuilding Company, Incorporated* and *Guards, Officers, Petroleum and Nightwatchmen, Federal Local No. 22970 A. F. L*, 50 N L R B 177, and in *Matter of Tampa Shipbuilding Company, Incorporated*, 62 N L. R B 954.

III. THE UNFAIR LABOR PRACTICES

A. *Sequence of events*

Upon a petition duly filed by the Union, alleging that a question affecting commerce had arisen concerning the representation of certain of the respondent's employees, namely the guards employed at its Tampa shipyard, the Board scheduled a hearing before a Trial Examiner for January 8, 1945. The State of Florida thereupon sought and obtained from the Circuit Court of the Thirteenth Judicial District in and for Hillsborough County, Florida (hereinafter called the State Court), an order enjoining the conduct of said hearing. On January 27, 1945, the cause was removed to the District Court of the United States for the Southern District of Florida (hereinafter called the U. S. District Court). The same day the Board filed motions with the U. S. District Court to dissolve the injunction and dismiss the complaint. On January 23, the State of Florida moved the U. S. District Court to remand the cause to the State Court. Following a hearing upon the above motions, the U. S. District Court, on January 15, 1945, granted the Board's motion to dismiss the complaint. On appeal the United States Circuit Court of Appeals for the Fifth Circuit affirmed the ruling of the U. S. District Court.[3]

Upon due notice, a hearing on the matter was held in Tampa, Florida, on March 8 and 9, 1945, before a Trial Examiner of the Board. At the hearing the respondent contended that the guards at its Tampa shipyard were deputy sheriffs in the employ of the county sheriff, and were not subject to the provisions of the Act. The Board found that the guards were deputized by the sheriff under the provisions of a Florida statute which gave the sheriff authority to provide adequate industrial guard service, but that the deputized guards exercised no authority as deputy sheriffs off the respondent's property; were in fact paid by the respondent and under the respondent's control, the sheriff's control of the guards being nominal. The Board found the guards to be employees of the respondent within the meaning of Section 2 (3) of the Act.[4]

The respondent took the further position that its guards should not be included in *any* collective bargaining unit because they were engaged in protecting a vital war industry. The Board found no merit in this contention and further found that all (the respondent's) guards (employed at its Tampa shipyard) excluding corporals, sergeants, lieutenants, the captain, and all other supervisory employees with the 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, and directed that an election be held among the employees within the appropriate unit to determine whether they desired to be represented by the Union for the purpose of collective bargaining with the respondent.

On July 24, 1945, the State of Florida filed in the State Court a suit to enjoin the agent of the Board from conducting said election on the grounds that the

---

[3] Before the State Court and the U. S. District Court it was urged that the employees involved were deputy sheriffs of Hillsborough County, Florida, and hence not covered by the Act, being employees of a political subdivision of the State.

The United States Circuit Court of Appeals in affirming the dismissal of the complaint said, "We think the suit was premature in that the appellant without exhausting its administrative remedy sought to enjoin representatives of the Board from concluding a hearing in an incompleted administrative proceeding."

See *Florida* v. *Bellman*, 149 F. (2d) 380 (C. C. A. 5).

[4] See *Matter of Tampa Shipbuilding Company, Incorporated* and *Guards, Watchmen and Firefighters Local No. 22970*, 62 N. L. R. B. 954.

respondent's guards were employees of the sheriff of Hillsborough County, Florida, and expressly exempted from the operation of the Act. The State Court entered an order granting a temporary injunction. Thereafter, the Board filed a petition to remove the suit to the U. S. District Court. On July 26, the State Court entered an order to remove the suit to the U. S. District Court. On the same day the Board filed a motion with the U. S. District Court to dismiss the complaint and dissolve the temporary restraining order. On the following day the State of Florida moved to remand the cause to the State Court.[5] Following a hearing, on July 27, the District Court entered an order denying the motion of the State of Florida and granting the motion to dissolve the temporary restraining order.

Thereafter, on July 27, the agent of the Board conducted an election in accordance with the Board's order. The Tally of Ballots showed that from among approximately 150 eligible voters, 66 cast valid votes, of which 47 were for the Union, and 19 against.

No objections to the conduct of the election were filed.

On August 10, 1945, the Board certified that the Union had been designated and selected by a majority of the respondent's employees within the appropriate unit heretofore described.

On September 16, 1945, the Union requested the respondent to bargain with it as the exclusive representative of the guards in the unit above described. On September 17, the respondent informed the Union that it would not bargain with it as requested, and has at all times thereafter refused so to bargain.

B. *The refusal to bargain*

1. The appropriate unit and the Union's majority representation therein

As hereinabove related the Board on August 10, 1945, issued its certification in the *Matter of Tampa Shipbuilding Company, Incorporated* and *Guards, Watchmen and Firefighters Local Union No. 22970, A. F. of L.*, Case No. 10-R-1279, certifying that the Union had been designated and selected by a majority in an appropriate unit of the respondent's employees, consisting of all guards (employed by the respondent at its Tampa yard), excluding corporals, sergeants, lieutenants, the captain and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

The undersigned finds that the Board's finding as to the appropriate unit in Case No. 10-R-1279 and its subsequent certification of the Union, are binding upon the respondent. The undersigned further finds that all the guards employed by the respondent at its Tampa, Florida, shipyard excluding corporals, sergeants, lieutenants, the captain, and all 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, and that at all times after August 10, 1945, the Union, pursuant to Section 9 (a) of the Act, has been the exclusive representative of such employees.

---

[5] *State of Florida ex rel. Tom Watson, Attorney General* v. *Frank Fraser as Field Examiner for the National Labor Relations Board.* U. S. D. C. Southern District of Florida, decided July 27, 1945.

2. The refusal to bargain

On September 16, 1945, the Union requested the respondent to bargain, and on September 17, the respondent refused and has continued to refuse to bargain with the Union. In refusing to bargain with the Union the respondent advanced the following reasons: (1) the guards are not its employees; (2) the guards act as an armed force guarding war industry, and do not constitute a unit appropriate for collective bargaining; (3) a majority of the eligible voters in the alleged unit did not participate in the election for designation of representatives, as required by law.

The first two reasons were urged by the respondent in Case No. 10-R-1279 and were found by the Board to be without merit The undersigned finds no merit in the third reason given by the respondent for its refusal to bargain with the Union, namely, that a majority of the eligibles did not participate in the election for designation of representatives, *as required by law*.[6] The Board has consistently held that a determination of representatives can be made by a majority of those voting in an election, though less than a majority of those eligible elected to cast ballots.

In *National Labor Relations Board* v. *Standard Lime and Stone Company*,[7] the Court in enforcing the Board's order, said, "there is no reason why the ordinary political rule should not be applied, viz, that those who do not take the trouble to vote acquiesce in the choice registered by the majority of those voting." The law does not require that a majority vote in an election. It is sufficient that all voters be given the opportunity to cast ballots, and that a representative number have voted (as is the case here). The respondent, moreover, filed no objection to the conduct of the election in 10-R-1279.

The undersigned finds that on September 17, 1945, and at all times subsequent, the respondent has refused to bargain collectively with the Union as the exclusive representative of certain of its employees in an appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent's business 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

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

Having found that the respondent on September 17, 1945, and all times thereafter, refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, the undersigned will recommend that the respondent, upon request bargain collectively with the Union.

As there appears to be no evidence that danger of other unfair labor practices is to be anticipated from the respondent's conduct, the undersigned will not recommend that the respondent cease and desist from the commission of any

[6] The Tally of Ballots in Case No. 10-R-1279 showed approximately 150 eligibles, and 66 valid votes cast, of which 47 were for the Union, 19 against. In the instant matter B C Staffort, the respondent's assistant secretary-treasurer, testified that the respondent now employs 38 guards, exclusive of supervisory employees

[7] 149 F. (2d) 435 (C C A. 4), enf'g 56 N L R B 522, cert. denied 66 S Ct. 28.

other unfair labor practices[8] However, 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.

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

CONCLUSIONS OF LAW

1. Guards, Watchmen, and Firefighters Local Union No. 22970, A. F. of L, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All guards employed by Tampa Shipbuilding Company, Incorporated, at its Tampa Florida shipyard, excluding corporals, sergeants, lieutenants, the captain, and all 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 purpose of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. The Union was at all times material herein and now is the exclusive representative of all the employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with the Union as the exclusive representative of the employees in the above-stated unit the 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 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, Tampa Shipbuilding Company, Incorporated, Tampa, Florida, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Guards, Watchmen and Firefighters Local Union No. 22970, A. F. of L., as the exclusive representative of all its guards employed at its Tampa, Florida, shipyard excluding corporals, sergeants, lieutenants, the captain, and all 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 the Union to bargain collectively with it, for the unit above found to be appropriate.

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

(a) Upon request bargain with the Union as the exclusive representative of the employees in the appropriate unit hereinabove described;

(b) Post at its shipyard at Tampa, Florida, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director of the Tenth Region, shall, after being duly signed by the

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

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

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 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 November 27, 1945, 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 proceeding (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 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.

LOUIS PLOST,
Trial Examiner.

Dated March 18, 1946.

APPENDIX A

NOTICE TO ALL EMPLOYES

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 Guards, Watchmen and Firefighters Local Union No 22970, A. F of L, as the exclusive representative of all guards employed at our shipyard at Tampa, Florida, excluding corporals, sergeants, lieutenants, the captain and all 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 the above named Union to bargain with us collectively, or refuse to bargain with the said Union collectively as the exclusive representative of the unit above described.

_____
(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.