

In the Matter of WEBSTER MANUFACTURING, INC. and OFFICE
EMPLOYEES INTERNATIONAL UNION, LOCAL No. 155 (AFL)

Case No. 8-C-1901.—Decided June 28, 1946

Mr. George F. Hayes, for the Board.

*Messrs. Richard A. Stith and David L. Daley, of Elyria, Ohio, and
Messrs. J. E. Gordon and C. S. Jones, of Tiffin, Ohio, for the respondent.*

Mr. R. M. Daugherty, of Toledo, Ohio, for the A. F. L.

Mr. James Zett, of counsel to the Board.

DECISION

AND

ORDER

On May 31, 1946, Trial Examiner William J. Scott 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 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, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

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, Webster Manufacturing, Inc., Tiffin, Ohio, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Office Employees International Union, Local 155, A. F. L., as the exclusive representative of all the employees of the respondent's engineering department except

¹ The typographical error in stating the respondent's name on page 2 of the Intermediate Report is hereby corrected to read Webster Manufacturing, Inc

for supervisory employees having the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, in respect to rates of pay, wages, hours of employment and other conditions of employment;

(b) In any manner interfering with the efforts of Office Employees International Union, Local 155, A. F. L., 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 purposes of the Act:

(a) Upon request, bargain collectively with Office Employees International Union, Local 155, A. F. L., as the exclusive representative of all employees of the respondent's engineering department, except for supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action with respect to rates of pay, wages, hours of employment, or other conditions of employment;

(b) Post at its plant in Tiffin, Ohio, copies of the notice attached to the Intermediate Report, marked "Appendix A."² Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by an authorized representative of the respondent, 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 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.

INTERMEDIATE REPORT

Mr. George F. Hayes, for the Board.

Messrs. Richard A. Stith and David L. Daley, of Elyria, Ohio, and *Messrs. J. E. Gordon and C. S. Jones*, of Tiffin, Ohio, for the Respondent.

Mr. R. M. Daugherty, of Toledo, Ohio, for the A. F. L.

STATEMENT OF THE CASE

Upon a charge duly filed by Office Employees International Union, Local 155 (A. F. L.), herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Eighth Region (Cleveland,

² 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."

Ohio), issued its complaint dated April 30, 1946, against Webster Manufacturing, Inc., Tiffin, 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 (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 January 23, 1946, and at all times thereafter refused to bargain collectively with the Union as the exclusive bargaining representative of the respondent's employees within an appropriate bargaining unit, although a majority of the employees in such unit, in an election conducted under the supervision of the Board on September 20, 1945, had designated and selected the Union as their representative for the purpose of collective bargaining.

Pursuant to notice a hearing was held in Tiffin, Ohio, on May 15, 1946, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by a union official. No written answer was filed but at the hearing the respondent answered orally upon the record admitting that on January 23, 1946, and at all times thereafter it had refused to bargain with the Union. Respondent also admitted certain other allegations in the complaint but denied that its acts constituted an unfair labor practice. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the hearing the respondent moved to dismiss the complaint; this motion was denied. This motion was renewed at the close of the hearing and ruling thereon was reserved. This motion is now denied.

At the conclusion of the hearing a motion by Board's counsel to conform the pleadings to the proof with respect to formal matters was granted by the Trial Examiner without objection.

Counsel for the Board and respondent argued orally on the record. Opportunity was afforded the parties to file briefs but none have been received. Upon the entire record of 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, Western Manufacturing, Inc., is an Ohio corporation having its principal office and place of business in Tiffin, Ohio, where it is engaged in the manufacture, sale and distribution of elevating and conveying machinery and gray iron and malleable castings. During the calendar year 1945 the respondent purchased for use at its plant raw materials and supplies valued in excess of \$1,000,000, of which more than 50 percent was obtained from sources outside Ohio. During the same period the respondent manufactured finished products valued in excess of \$2,000,000, of which amount more than 50 percent was distributed to points outside Ohio. The undersigned finds that the respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Office Employees International Union, Local #155, affiliated with the American Federation of Labor, 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

The complaint alleged, the respondent admitted, and the undersigned finds, that on September 7, 1945, respondent and the Union entered into an agreement for a consent election, in a unit consisting of all employees in the Engineering Department of the respondent except for supervisory employees having the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. Pursuant to said agreement, an election was held, September 20, 1945, under the direction of the Regional Director for the Eighth Region of the Board (Cleveland, Ohio), in which the eligible voters were given the opportunity to vote by secret ballot.

On January 23, 1946, in a letter written by respondent's counsel to the Union the respondent, among other things, intimated that the unit was not appropriate. At the hearing, the respondent contended that the engineering and general office employees constituted the appropriate unit. There are about twenty-nine employees in the unit consisting of approximately twelve civil and mechanical engineers, four draftsmen, six apprentice draftsmen, several design and mechanical engineers, and four clerks. All of the Engineering Department employees with the exception of clerks require some kind of engineering education. The clerks are generally stenographers who take care of the files and make lists of material for shop products. Their work is confined entirely to the Engineering Department. The employees in the Engineering Department have a separate office, separate supervision, different working hours, different department numbers for time cards and records from the general office employees, and until recently (April 1, 1946) the two groups were not allowed the use of the cafeteria for lunch at the same period. The record is clear that the parties agreed upon the aforesaid unit as constituting "a unit appropriate for the purposes of collective bargaining," that the employees of the Engineering Department desired a separate unit, that they are a homogeneous group composed primarily of members of skilled craft whose work and skills differ essentially from those of the general office employees and that they constitute such a group as the Board has frequently found to be an appropriate separate unit.¹ The undersigned finds that the foregoing unit consisting of all the employees in respondent's Engineering Department, Tiffin, Ohio, excluding supervisors, is appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2. Representation by the Union of a majority in the appropriate unit

In the consent election held September 20, 1945, a majority of the employees voted for the Union.² On September 27, 1945, the Regional Director for the Eighth Region issued his consent determination of representatives finding and determining that the Office Employees International Union, Local 155 (A. F. L.), is the exclusive representative of all the employees in the unit above defined for the purposes, of collective bargaining with respect to rates of pay, wages,

¹ In *Matter of Spicer Manufacturing Corporation*, 55 N L R B 1491, the Board stated "although we have included technical and professional employees within a unit containing office and clerical workers our general policy has been to place employees in these groups in separate units unless the parties themselves raise no objection to their inclusion within a single unit."

² Tally of Ballots showed 26 votes cast, 14 for the Union, 12 against. There were no void or challenged ballots.

hours of employment, and other conditions of employment Respondent filed no objections to the election. The undersigned finds that the Union was on September 20, 1945, and at all times thereafter has been the duly designated representative of a majority of the respondent's employees in the aforesaid appropriate unit and that by virtue of Section 9 (a) of the Act, the exclusive representative of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

3. The refusal to bargain on January 23, 1946

The respondent admits that it refused to bargain with the Union on January 23, 1946, and at all times thereafter. Following the consent election, wherein the majority had voted for the Union, a contract was presented to the respondent and a conference set between the Union and respondent for about December 15, 1945. This conference was continued by agreement until the latter part of January 1946. However, no conference was held. Respondent by its attorney, Richard A. Stith, sent a letter, dated January 23, 1946, to R. M. Daugherty, representative of the Union cancelling the negotiation meeting which had been arranged with the Union and stating, in substance, that the respondent would not negotiate a contract with the Union until another election had been held. The letter reads as follows:

It was with considerable regret that I was obliged to cancel the contract and wage negotiation meeting which had been arranged with your Union at Webster Manufacturing Inc., yesterday. Please accept my apologies for having advised you at the last moment that it would not be possible for the Company to meet with your Committee on that date. Certain disturbing developments which have occurred at the plant, however, made it imperative to postpone the meeting indefinitely until a satisfactory answer has been found for the problems which have been created by these recent developments. The Company has in its possession concrete evidence which established the fact that prior to and after the consent election agreed upon between the Company and your Union, a concerted effort has been made, and is being made, to extend the scope of your bargaining unit to include all of the office employees at Webster Manufacturing, Inc. Such an organization campaign at this time is, we feel, totally inconsistent with the original intentions of your Union to establish at the plant a craft bargaining unit confined entirely to the Engineering Department. We are of the opinion that this subsequent activity repudiates in a sense the elements of the agreement reached by the Company and the Union in stipulating that a consent election would be held to determine whether the craft unit desired to be represented by your Union. This attempt to include the general office force as a part of your bargaining unit is apparently an effort to obtain indirectly a status which could not have been achieved directly.

If it was the belief of your Union that there actually exists a close affinity or community of interest between the engineering employees and the general office force, it is our opinion that such views should have been brought to the Company's attention during the meetings which preceded the consent election. The balance of the employees now working in the general office have never had an opportunity to express their wishes with regard to inclusion in such a bargaining unit and we are, therefore, obliged to postpone any further negotiations with your Union until that question has been resolved.

As you undoubtedly are aware, the production employees of the Webster Manufacturing, Inc., are now represented by three separate and independent Unions. One of these Unions, namely, the International Molders and Foundry Workers Union of North America, is currently bargaining with the Company through two separate Committees: one for the gray iron foundry and one for the malleable foundry. We are restating these facts merely to demonstrate that the Company is already faced with the complexities incident to the intra-departmental bargaining. We cannot, without protest, expose the Company to the possibility of being required to bargain with two more Unions representing its office employees, especially since it is the obvious intent of your Union to include all office employees in one bargaining group.

In view of the above, we have reached the conclusion that the entire problem cannot be satisfactorily disposed of until another election has been held to determine the real intention and desire of all parties concerned.

No evidence was introduced to substantiate the statements in the above letter that the Union was making any effort to include the office employees in the unit or that there was any agreement pertaining to the office employees prior to the consent election. On the contrary, Board's witness William E. Wilson, president of Local 155, denied that the Union had made any attempt to organize the office employees for the purpose of including them in the appropriate unit herein. The undersigned credits this denial. Wilson did testify that both prior and subsequent to the consent election, efforts were made by the Union to organize the office employees but not as part of the unit herein found to be appropriate. The respondent admitted it had knowledge before the consent election that the Union was attempting to organize the office and clerical employees.

The undersigned finds no merit to the reasons given by the respondent in its letter, for refusing to bargain with the Union. The respondent's counsel cites the decision of the Board in *Barlow-Maney Laboratories, Inc.*³ in support of his contention that the Union's failure to furnish proof of majority representation at the hearing or when the charge was filed with the Board warrants dismissal of the Board's action in this proceeding. The respondent's counsel has failed to properly interpret the case he relies upon. In *Barlow-Maney* the Union at no time represented a majority in the unit it claimed to be appropriate. The Board has 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 by the Board, its status as such representative continues for a reasonable time thereafter, normally a year.⁴ The respondent raised the question of majority in the unit for the first time, following the consent election, at this hearing.

The undersigned finds no merit in respondent's contention that the Union was required to furnish proof of majority representation either when the charge was filed or at the hearing.

The undersigned concludes and finds on the basis of the foregoing that the respondent on January 23, 1946, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, in respect to rates of pay, wages, hours of employment, or other conditions of employment, and has thereby interfered with, restrained,

³ 65 N. L. R. B. 928.

⁴ *Matter of Joe Hearin Lumber*, 66 N. L. R. B. 1276.

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 activities of respondent set forth in Section III, above, occurring in connection with the operations of 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 thereof.

V. THE REMEDY

Having found that the respondent has engaged in an unfair labor practice affecting commerce by refusing to bargain collectively with the Union as the designated representative of a majority of its employees in an appropriate unit and therefore as the exclusive bargaining representative of all the employees in such unit, it will be recommended that respondent cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act. Except as respondent's refusal to bargain with the Union as heretofore recited is an interference with the rights guaranteed to its employees in Section 7 of the Act, there is no indication of an inclination on the part of respondent to disregard or fail to observe the provisions of the Act. Because this is so, the recommendation will be confined to a correction of the single condition found to exist, and to the posting of appropriate notices to its employees in connection therewith.

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. Office Employees International Union, Local 155 (A. F. L.), is a labor organization within the meaning of Section 2 (5) of the Act.

2. All employees of the respondent's engineering department except for supervisory employees having 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.

3. Office Employees International Union, Local 155 (A. F. L.), 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 on January 23, 1946, and at all times thereafter as the exclusive representative of the employees in the above described 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 the above acts, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has thereby 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, Webster Manufacturing, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Office Employees International Union, Local 155 A. F. L., as the exclusive representative of all the employees of the respondent's Engineering Department except for supervisory employees having the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) In any manner interfering with the efforts of Office Employees International Union, Local 155, A. F. L., to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit.

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

(a) Upon request bargain collectively with Office Employees International Union, Local 155, affiliated with the America Federation of Labor, as the exclusive representative of all employees of the respondent's engineering department, except for supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached embody such understanding in a written signed agreement;

(b) Post at its plant in Tiffin, Ohio, copies of the notice attached hereto and marked "Appendix A." Copies of such notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by an authorized representative of respondent, be posted by 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 respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Eighth Region in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the date of this Intermediate Report, 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 to the Board within ten (10) days from the date of the order transferring the case to the Board. Any party desiring to submit a brief in support of the Intermediate Report shall do so within fifteen (15) days from

the date of the entry of the order transferring the case to the Board, by filing with the Board an original and four copies thereof, and by immediately serving a copy thereof upon each of the other parties and the Regional Director.

WILLIAM J. SCOTT,
Trial Examiner.

Dated May 31, 1946

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the 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 OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL 155, A. F. L., 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 EMPLOYEES IN THE ENGINEERING DEPARTMENT OF THE RESPONDENT'S TIFFIN, OHIO, PLANT EXCEPT SUPERVISORY EMPLOYEES HAVING THE 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 or refuse to bargain with said Union as the exclusive representative of all our employees in the aforesaid described appropriate unit.

WEBSTER MANUFACTURING, INC.,
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