

In the Matter of CHARLES E. REED & Co., and INTERNATIONAL ASSO-
CIATION OF MACHINISTS, DISTRICT No. 8

Case No. 13-C-2921.—Decided March 4, 1948

Mr. Robert T. Drake, for the Board.

Fyffe & Clarke, by *Mr. Albert J. Smith*, of Chicago, Ill., for the respondent.

Mr. Russell R. Oddo, of Chicago, Ill., for the Union.

DECISION

AND

ORDER

On February 26, 1947, Trial Examiner Frederic B. Parkes, 2nd, issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (1) and (5) of the Act¹ 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.

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 exceptions and brief, and the entire record in the case, and, to the extent consistent with the Decision and Order herein, hereby adopts the findings and conclusions of the Trial Examiner and finds merit in the respondent's exceptions.

1. During negotiations for a new agreement, the parties orally agreed to be bound by the written provisions of the collective bargaining agreement originally executed in April 1944, and automatically renewed in April 1945. This agreement contained, *inter alia*, a provision against strikes "because of any grievance or complaint arising

¹ Those provisions of Section 8 (1) and (5) of the National Labor Relations Act, which the Trial Examiner herein found were violated, are continued in Section 8 (a) (1) and 8 (a) (5) of the Act as amended by the Labor Management Relations Act, 1947

out of or under the terms of this agreement while such matters are under investigation or discussion.” On April 29, 1946, the respondent and the Union tentatively agreed upon all terms of the new contract, subject to ratification by the employees. The following day, May 1, the employees went on strike to protest the discharge that day of employee Bishoff, allegedly for inefficiency. Later during the same day, a committee of strikers requested Charles E. Reed, president of the respondent, to reinstate Bishoff and the strikers and then to process Bishoff’s case under the established grievance procedure. Reed refused to reinstate Bishoff but was willing to reinstate the other strikers and to discuss the matter further at that time. The strikers refused to return without Bishoff. On May 6, Russel R. Oddo, the Union’s business representative, telephoned Reed and again requested the reinstatement of Bishoff and the strikers.² Reed refused to do so. On May 8, Oddo again telephoned Reed and inquired if he would conclude negotiations.³ Reed declined. In a final telephone conversation on May 16, Oddo asked Reed if he would complete negotiations and reinstate Bishoff and the strikers. Reed again refused, being unwilling to reinstate Bishoff.⁴ The Trial Examiner found that “on May 1 and 6, 1946, and at all times thereafter, the respondent refused to bargain collectively” within the meaning of Section 8 (5) of the Act.

It is clear from the foregoing facts, and we find, that the strike, which was not caused by any unfair labor practice of the respondent, was in violation of the no-strike provision by which the parties had

² Contrary to the Trial Examiner, we find that the request for the reinstatement of the striking employees was conditioned upon the reinstatement of Bishoff

³ Viewed in its proper setting and in the light of the previous and subsequent requests which concerned the processing of the grievance over Bishoff’s discharge and the reinstatement of the strikers we are unable to find that the request of May 8 constituted an *unconditional* request to bargain concerning the terms of the *new* agreement

⁴ Oddo’s testimony with respect to this conversation is as follows

DIRECT EXAMINATION

A. I believe it was on May 16 that I called him again.

Q On the telephone?

A That is right, and asked him if he would sit down and complete negotiations or what he wanted to do about these men

Q What was his reply?

A. He said he was not going to do anything about it.

CROSS-EXAMINATION

Q I do not believe that the record reveals the reply of Mr Reed to your request made by telephone on May 16, 1946

A On that telephone conversation I just asked him if he would complete negotiations and whether or not you would reinstate William Bishoff and get these men back to work and forget the whole thing. That would be a means of settling it

Q What did he say?

A He refused. He was not going to put Bishoff back. That was it.

agreed to be bound.⁵ The Union's requests to bargain either directly concerned, or were conditioned upon, the reinstatement of the strikers and the processing of the grievance over the discharge of Bishoff, which was the cause of the strike. As the contract provided for a detailed procedure of adjusting grievances, the respondent could lawfully refuse to process the grievance concerning Bishoff or to reinstate the strikers, while the strike was in progress.⁶ In the absence of any clear affirmative evidence of an *unconditional* request to bargain concerning the terms of the *new* contract, we are not called upon to decide in this case what the respondent's obligation would be under such circumstances. We conclude that the respondent's refusal to bargain was not violative of the Act. *Timken Roller Bearing Co. v. N. L. R. B.*, 161 F. (2d) 949 (C. C. A. 6), reversing 70 N. L. R. B. 500.

2. We also do not adopt the Trial Examiner's finding that the respondent's conduct in seeking to induce one of the strikers to return to work was an unfair labor practice. Inasmuch as we have found that the respondent was under no obligation to bargain with the Union about the grievance over the discharge of Bishoff or the reinstatement of the strikers while the employees were out on strike in violation of their contract, we are of the opinion that the respondent was privileged to deal directly with the individual strikers for the purpose of obtaining their return to work.⁷

We find that the respondent did not violate Section 8 (1) and (5) of the Act and, accordingly, we shall dismiss the complaint.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint issued herein against the respondent, Charles E. Reed & Co., Chicago, Illinois, be, and it hereby is, dismissed.

⁵ We need not, and do not, pass upon the binding effect of a no-strike clause in a contract orally extended for an indefinite period under other circumstances than those present in this case.

⁶ We do not agree with the Trial Examiner's finding that the Union was proceeding, in effect, in the manner provided in Section 2 of the contract, with respect to negotiations concerning the reinstatement of Bishoff. Section 4 of the contract provides that "any employee who is discharged by the Company may treat such action as a grievance and present it as provided for in Section 2 of this Article. If such disciplinary action is reversed, the employee may be reinstated without loss of seniority or wages as may be agreed upon. Such grievances, however, must be presented within two working days after such employee is discharged or disciplined." We are of the opinion, and find, that the grievance procedure of the contract did not require bargaining thereon until after a discharge was effectuated and that neither Bishoff nor the Union resorted to this established procedure. There was, therefore, no breach of the contract by the respondent to justify the violation by the employees of the no-strike provision.

⁷ *Matter of Fafavr Bearing Co.*, 73 N. L. R. B. 1008, 1012-13.

INTERMEDIATE REPORT

Mr. Robert T. Drake, for the Board

Fylffe & Clarke, by *Mr. Albert J. Smith*, of Chicago, Ill., for the respondent

Mr. Russell R. Oddo, of Chicago, Ill., for the Union.

STATEMENT OF THE CASE

Upon an amended charge duly filed by International Association of Machinists, District No. 8, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint dated November 15, 1946, against Charles E. Reed & Co., Chicago, Illinois, 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.

With respect to the unfair labor practices, the complaint alleged, in substance, that (1) all employees of the respondent, exclusive of guards, office and clerical employees, foremen, and other supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act; (2) on or about January 21, 1944, a majority of the employees in the foregoing unit designated and selected the Union as their representative for the purposes of collective bargaining in an election conducted by the Board, (3) at all times since January 21, 1944, the Union has been the statutory representative for the purposes of collective bargaining of all employees in the foregoing unit; (4) on or about May 1, 1946, the Union requested the respondent to bargain collectively in respect to rates of pay, wages, hours of employment, or other conditions of employment with the Union as the statutory representative of the employees of the respondent in the above-described unit and in respect to the reinstatement of William Bishoff, a discharged employee; and (5) on or about May 1, 1946, and at all times thereafter, the respondent did refuse and continues to refuse to bargain collectively with the Union as the exclusive representative of all employees in the unit heretofore described. The complaint alleged that by the foregoing conduct the respondent engaged in violations of Section 8 (1) and (5) of the Act.

On November 25, 1946, the respondent filed its answer, admitting certain allegations of the complaint but denying the commission of any unfair labor practices. In its answer, the respondent affirmatively alleged that (1) subsequent to the Board election the respondent and the Union entered into a collective bargaining contract for the term of 1 year on April 19, 1944; (2) upon its termination, the contract was renewed with certain supplementary agreements for an additional period of 1 year; (3) subsequent to the termination of the contract of April 19, 1945, new negotiations were entered into for a collective bargaining agreement to be effective during the ensuing year, (4) while negotiations were in process, 12 of the respondent's 17 employees within the unit voluntarily terminated their employment with the respondent on April 30, 1946, and since such date the Union has not been the representative for the purposes of collective bargaining of a majority of the employees within the appropriate unit; (5) on May 1, 1946, the Union requested only a reconsideration by the respondent of its discharge of Bishoff, and (6) the respondent's refusal on or about May 9, 1946,

to continue bargaining with the Union as the exclusive representative of all employees of the respondent was in conformity with the provisions of the Act inasmuch as the Union did not then and has not since that time represented a majority of the respondent's employees.

Pursuant to notice, a hearing was held at Chicago, Illinois, on December 10, 1946, before Frederic B. Parkes, 2nd, the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by an official representative. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties.

At the close of the hearing, the undersigned granted, without objection, a motion by counsel for the Board to conform the pleadings to the proof as to dates and minor variances. At the same time, counsel for the respondent moved that the complaint be dismissed on the ground that the evidence adduced by the Board failed to sustain the allegations of the complaint. The undersigned reserved ruling on the motion. It is hereby denied. Upon the conclusion of the hearing, the undersigned advised the parties that they might argue orally before, and file briefs or proposed findings and conclusions, or both, with the Trial Examiner. The respondent and the Board participated in oral argument, and the respondent later filed a brief.

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

Charles E. Reed & Co., an Illinois corporation with its place of business in Chicago, Illinois, is engaged in the operation of a machine shop, serving partially as a job machine shop and in part as a production machine shop. During the year 1945, the respondent purchased for its use metals and other materials having a value of approximately \$12,000 from warehouses within the State of Illinois. More than 50 percent of such materials was originally purchased outside the State of Illinois by the respondent's suppliers. During the same period, the respondent sold finished products and performed services having a value of approximately \$150,000, of which approximately 35 percent was transported to points outside the State of Illinois. The respondent concedes that for the purpose of this proceeding it is subject to the Board's jurisdiction.

II. THE ORGANIZATION INVOLVED

International Association of Machinists, District No. 8, is a labor organization, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES¹

A. *Sequence of events*

On January 5, 1944, the Board issued a Decision and Direction of Election in Case No. 13-R-2135, directing that an election be held among a unit of the respondent's production and maintenance employees, hereinafter more fully defined, to determine whether or not they desired to be represented by the

¹ The findings in this section are based upon undisputed evidence.

Union for the purposes of collective bargaining.² On January 21, 1944, the election was held and was won by the Union. On January 31, 1944, the Board issued a Certification of Representatives certifying the Union as the statutory representative of the respondent's employees within the appropriate unit.

On April 19, 1944, the respondent and the Union entered into a collective bargaining contract for the term of 1 year but automatically renewable at the end of such term unless 30 days prior to the termination date either party gave written notice that the agreement be amended or terminated. *Inter alia*, the contract provides that "Management of the Company is understood to be retained exclusively in the Company including the rights of hiring, discharging, promoting, transferring or laying off of employees."

Included in the section entitled "Settlement of Grievances" is the following:

Section 1: There shall be no strikes, suspension of work or slow-down of production by members of the union because of any grievance or complaint arising out of or under the terms of this Agreement while such matters are under investigation or discussion and any employee engaging in such activities shall be subject to immediate discipline.

+ * * * * *

Section 2: Complaints or grievances arising between the employees or the Union and the Company shall be handled in the following manner:

(a) Between the employee and his foreman and if not promptly settled, then

(b) Between the employee, accompanied by his union representative if desired, with the Superintendent and if not promptly settled, then

(c) Between the employee, accompanied by his Union Committee if desired, with top management for final settlement

* * * * *

Section 4: Any employee who is discharged or otherwise subjected to disciplinary action by the Company may treat such action as a grievance and present it as provided for in Section 2 of this Article. If such disciplinary action is reversed, the employee may be reinstated without loss of seniority or wages as may be agreed upon. Such grievances, however, must be presented within two working days after such employee is discharged or disciplined.

On February 11, 1946, the Union wrote the respondent the following letter:

Kindly accept this as our official notice of intent to open for changes the Agreement in existence between your Company and our Organization

We would appreciate hearing from you at an early date to discuss this matter

However, Charles E. Reed, president of the respondent, was on a vacation and negotiations for a new contract did not start until April 26, 1946, when Russell R. Oddo, business representative of the Union, and employee William Bishoff, shop chairman of the Union, met with Reed. At this meeting, Oddo indicated that the only changes desired in the old contract were in respect to wage rates, and submitted a proposed wage scale which the respondent believed to be excessively high. During the course of the meeting, Reed stated that some employees were not working efficiently and Oddo replied that Reed had the right to discharge any employee who did not fulfill his duties

² *Matter of Charles E. Reed & Co.*, 54 N. L. R. B. 322.

On April 27, 1946, the same representatives of the Union met again with Reed, who presented a counter-proposal in regard to wages, but no agreement was reached. A third collective bargaining conference of the three individuals was held on April 27 without reaching an agreement.

On April 29, 1946, Oddo and Reed conferred alone. Oddo requested that Bishoff be summoned. Reed refused to call him because Reed was considering discharging Bishoff for the reason that the latter was "taking too long on certain jobs." Oddo replied, according to his credible and undenied testimony, that Reed "should let Bill [Bishoff] have a chance at the grievance procedure or to give some reason why the job took that long . . . not to just let him go without any hearing." At this meeting, Reed made certain wage increase proposals which Oddo believed would be acceptable to the union membership. As to others, however, Oddo stated that they would have to be submitted to the membership for approval. Thus, Oddo and Reed reached a tentative agreement upon all the terms of the new contract, including wages and classifications, subject to acceptance by the membership body. It does not appear that at any of these conferences the respondent questioned the Union's majority status. The record establishes that during the course of the negotiations on the new contract, the parties deemed the provisions of the old contract to be in effect.

On April 30, 1946, at 3:45 p. m., Superintendent Heinichen discharged Bishoff. Upon hearing of Bishoff's discharge 30 minutes later—verification of a rumor circulating about the plant for several days—various employees turned off their machines although they did not leave the plant until the end of the work day at 4:30.

The next day, May 1, 1946, 13 of the 18 employees within the appropriate unit, including Bishoff, did not come to work. After conferring with Oddo, the employees participating in the work stoppage selected a committee of 5 to accompany Oddo to a conference with Reed.

Immediately thereafter, Oddo and the committee called upon Reed. Oddo requested that Reed restore the status quo by reinstating Bishoff and all the employees engaging in the work stoppage and then processing Bishoff's case under the established grievance procedure. Reed stated that he would not reinstate Bishoff but the other employees might return to work and that he would not discuss the matter further until the striking employees returned to their jobs. Oddo asked the committee if they desired to abandon the work stoppage and return to work without Bishoff. They declined to return.

At the conclusion of the meeting, which lasted about 5 minutes, the committee and Oddo reported the outcome to the other strikers who were assembled in front of the respondent's plant. Oddo urged them to return to work but none followed his suggestion.

On May 6, 1946, Oddo telephoned Reed and asked him "if he would reinstate these men and talk about putting William Bishoff back to work" but Reed refused to do so. On May 8 Oddo again telephoned Reed and inquired "if he would sit down and conclude negotiations or complete negotiations maybe that would induce these men to come back to work." Reed replied, however, that the Union "had no more members in his plant, so there would be no further use in negotiating an agreement."³ In another telephone conversation on May 16,

³ Oddo had previously submitted to the union membership for approval the wage increases proposed by the respondent and the membership had expressed dissatisfaction with the increases proposed for the lower classifications.

Oddo asked if Reed "would sit down and complete negotiations or what he wanted to do about these men . . . He said he was not going to do anything about it."⁴

Sometime in May, the Union submitted the case to the United States Conciliation Service, Department of Labor. When this agency was unable to effect a settlement of the matter, the Union filed its original charge with the Board, alleging that the respondent had engaged in violations of Section 8 (1), (3), and (5). None of the employees who participated in the work stoppage returned to the respondent's employ, but no picket lines were established. During the latter part of May, some of the strikers obtained work elsewhere and removed their tool kits from the respondent's plant.

It was stipulated by the parties at the hearing that if William Jacobs, who participated in the work stoppage in May 1946, had been called as a witness he would have testified, in part, as follows:

I want [sic] to work on May 27th on a better job with better pay. I took my tools out of Reed's from my bench nearer the first of May than May 27th [Superintendent] Heinichen called me at home between May 1 and May 7 and asked me to come back to work. I said no, unless the rest of the fellows decided to go back. I told Heinichen on the second call that Reed, before April 30, had offered the union a ten cent an hour increase for machinists and a five cent an hour raise for specialists [which was Jacob's classification] and that was not right. Heinichen said it was a mistake and the ten cent an hour raise included me on the third call.

Heinichen made three calls in about four days, asking me to come back. I said I would stick with the other fellows.

The undersigned credits the undenied testimony of Jacobs.

B. Conclusions

1. The appropriate unit

The complaint alleged that all employees of the respondent, exclusive of guards, office clerical employees, foremen, and other supervisory employees constitute a unit appropriate for the purposes of collective bargaining. The respondent in its answer denied this allegation.

The Board in its Decision and Order in Case No 13-R-2135 found that "all production and maintenance workers employed by the Company [the respondent herein], including Thomas McKiernan, but excluding guards, office clerical employees, foremen, and 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."

In the contract executed on April 19, 1944, the respondent recognized the Union as the statutory representative of the employees in the unit as defined by the Board.

The undersigned finds that all production and maintenance employees of the respondent, excluding guards, office clerical employees, foremen, and other supervisory employees with authority to hire, promote, discharge, discipline,

⁴ The quotations in this paragraph are from the undenied and credible testimony of Oddo.

or otherwise effect changes in the status of employees, or effectively recommend such action, at all times material herein constituted and now constitute a unit 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

Pursuant to the Board's direction, previously mentioned, an election among the employees in the appropriate unit was conducted under the auspices of the Board on January 5, 1944. Of the 29 eligible voters, 29 cast valid votes in the election, of which 20 were for the Union and 9 against. On January 31, 1944, the Board certified the Union as the statutory representative of the respondent's employees within the appropriate unit.

It was stipulated at the hearing that on April 30, 1944, there were 18 employees within the appropriate unit and that 13 of these employees participated in the work stoppage following the discharge of Bishoff. Bishoff, who was shop chairman of the Union, testified without contradiction and the undersigned finds, that of the 13 employees who engaged in the work stoppage, 11 were members of the Union and that none of the 5 employees who reported for work on May 1 was a Union member. The record establishes that none of the strikers ever returned to the respondent's employ.⁵

The undersigned concludes and finds that on April 30, 1946, and at all times thereafter, the Union was the duly designated representative of a majority of the employees in the aforesaid appropriate unit, and that, pursuant to Section 9 (a) of the Act, the Union was on that date and at all times thereafter, and is now, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

3 The refusals

The respondent contends that it was under no duty to bargain with the Union following the work stoppage near the close of the work day on April 30, 1946, since the employees engaging in the stoppage voluntarily terminated their employment with the respondent and the Union thereby lost its majority status as the bargaining representative of the respondent's employees. The undersigned find no merit in this contention.

The employees ceased work because of a current labor dispute as defined in Section 2 (9)⁶—namely, the discharge of Bishoff—and thus assumed the role of economic strikers.⁷ As such they retained their status as employees of the respondent within the meaning of Section 2 (3) of the Act.⁸ Since the striking

⁵ The respondent's contentions as to the Union's loss of majority status are discussed *infra*.

⁶ This section reads, "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputes stand in the proximate relation of employer and employee."

⁷ See *Jeffery-De Witt Insulator Co. v. N L R B*, 91 F (2d) 134 (C C A 4), enf g N L R B 618, cert den 302 U S 731, and cases cited therein.

⁸ This section reads, "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who

employees retained their status and since the Union continued as the statutory representative, the respondent was legally obligated during the course of the strike to continue to bargain with the Union.⁹ Moreover, the Union remained the sole bargaining agent of the respondent's employees within the unit, regardless of whether the strike was in violation of the Union's contract¹⁰

The record establishes that the respondent clearly refused to bargain with the Union. At the conference between Reed and the Union's committee on May 1, Reed flatly refused the Union's proposal to restore the status quo by the reinstatement of all the employees, including Bishoff, and processing the grievance on Bishoff's discharge. Moreover, he stated that he would not discuss the matter further until the strikers returned to work. On May 6, the Union abandoned its position taken on May 1 and did not condition its request for the reinstatement of the strikers upon the reemployment of Bishoff but merely asked that the strikers be reinstated and that the respondent "talk about putting Bishoff back to work." Thus the respondent refused to do. In other telephone conversations on May 8 and 16, 1946, Reed denied the Union's request to conclude the pending negotiations on the contract. For an employer to condition the performance by him of a statutory duty upon the cessation of concerted activities by employees is clearly violative of the Act.¹¹ In respect to the reinstatement of Bishoff, it is to be noted that the Union was proceeding, in effect, in the manner provided in Section 2 (c) of the contract. Clearly, the respondent was obligated to bargain with the Union in regard to Bishoff's discharge and reinstatement, as well as the reinstatement of the striking employees. The undersigned concludes that on May 1 and 6, 1946, and thereafter, the respondent refused to bargain with the Union. In addition, the respondent further engaged in conduct violative of Section 8 (5) of the Act by seeking to induce employee Jacobs to abandon his strike activities and return to work.¹²

Although the respondent seemingly contended at the hearing that the strikers obtained employment elsewhere early in May, the record does not support such contention. None of the witnesses testified that he procured substantially equivalent employment elsewhere before the latter part of May. The undersigned so finds. There is testimony indicating that during the early part of the strike some strikers removed their tool kits from the respondent's plant; this, however, cannot be deemed to be an indication of severance of the employer-employee relationship in view of the value of such boxes to the employees engaged in machinist's work. The undersigned infers and finds that they were removed as a precautionary measure against theft and not as an indication that the employer-employee relationship was severed.

has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

⁹ *Jeffery-De Witt Insulator Co v N L R B*, *supra*, *Black Diamond S S Corp v. N. L. R. B.*, 94 F (2d) 875 (C C A 2), enfg 3 N L R. B. 84, cert. den. 304 U S 579, *N L R B v Lightner Publishing Corp*, 113 F (2d) 621 (C C A 7), enfg 12 N L R B 1255; *The M H Ritzwoller Company v N L R B*, 114 F (2d) 432 (C C A 7), enfg 15 N L R B. 15; *N L R B v Reed & Prince Mfg Co*, 118 F (2d) 874 (C C A 1), enfg 12 N L R B 944, cert den 313 U S 595

¹⁰ *Matter of Timken Roller Bearing Company*, 70 N L R B 500. The respondent made no contention in this regard. As noted previously, it did not seek to penalize the strikers, but offered all reinstatement.

¹¹ *Matter of Manville Jencks Corporation*, 30 N L R B 382

¹² *N L R B v Montgomery Ward & Co*, 133 F (2d) 676 (C C A 9), enfg 37 N L. *Wright-Hubbard Industrial Electrical Truck Co, Inc*, 67 N L R B 897
Wright-Hubbard Industrial Electrical Truck Co., Inc, 67 N. L. R. B. 897.

In view of the foregoing, and upon the entire record, the undersigned concludes and finds that on May 1 and 6, 1946, and at all times thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of the employees in an appropriate unit, within the meaning of Section 8 (5) of the Act, thereby prolonging the strike, and that by thus refusing to bargain and by seeking to induce a striker to abandon his concerted activities and return to work, the respondent 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 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 have led 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 the respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Having found that the respondent has 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.

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 unfair labor practice. 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.¹⁴

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. International Association of Machinists, District No. 8, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the respondent, excluding guards, office clerical employees, foremen, and 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. International Association of Machinists, District No. 8, was on April 30, 1946, and at all times thereafter has been the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

¹⁴ See *N. L. R. B. v. Express Publishing Company*, 312 U. S. 426.

4 By refusing on May 1 and 6, 1946, and at all times thereafter, to bargain collectively with International Association of Machinists, District No. 8, as the exclusive representative of all its employees in the aforesaid appropriate 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 said acts, the 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, Charles E Reed & Co., Chicago, Illinois, and its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to bargain collectively with International Association of Machinists, District No. 8, as the exclusive representative of all production and maintenance employees of the respondent, excluding guards, office clerical employees, foremen, and 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 International Association of Machinists, District No 8, to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit

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

(a) Upon request, bargain collectively with International Association of Machinists, District No. 8, as the exclusive representative of all production and maintenance employees of the respondent, excluding guards, office clerical employees, foremen, and other supervisory employees with 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, and if an agreement is reached, embody said understanding in a signed agreement;

(b) Post at its plant at Chicago, Illinois, copies of the notice attached hereto, marked "Appendix A" Copies of said notice, to be furnished by the Regional Director for the Thirteenth 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 a period of 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 Thirteenth Region, in writing, within ten (10) days from the receipt of this Intermediate Report, what steps the respondent has taken to comply therewith.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel

for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 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; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, 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. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, 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 service of the order transferring the case to the Board.

FREDERIC B. PARKES, 2ND,
Trial Examiner.

Dated February 26, 1947.

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 INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT No 8, as the exclusive representative of all our employees and if an agreement is reached we will embody such understanding in a signed agreement. The bargaining unit is composed of:

All production and maintenance employees, excluding guards, office clerical employees, foremen, and 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, or refuse to bargain with said Union as the exclusive representative of the employees in the bargaining unit set forth above.

CHARLES E REED & Co.,
Employer.

Dated _____

By _____
(Representative) (Title)

This notice must remain posted for sixty (60) days from the date of posting, and must not be altered, defaced, or covered by any other material