

### N. *Company knowledge of the Union*

The final matter to be considered in this case involves the company knowledge of the Union and its concern. Mr. T. M. Davidson, port adjutant, National Maritime Union of America, CIO, was called as a witness for the General Counsel. Mr. Davidson testified that on June 4 he had a telephone conversation with Mr. King and after introducing himself he advised King that he had been asked by this group of people to represent them in their labor negotiations but did not recall any other particulars of that conversation. The evidence indicates that this conversation occurred between 10 and 12 o'clock that morning. Also he visited and talked at some length with Mrs. Thomas. Without detailing the evidence, which in the main is not contradicted, I find that the Company had knowledge of the Union's interest in the case, but this knowledge was "after the fact," in other words, after the crews had made their decision and quit their employment. There is no showing of the Company refusing to reinstate its employees because of their membership in, sympathy for, and activities in behalf of the Union, nor of its threatening to tie up Respondent's towboats and not engage in transportation of commodities by river for hire as a contract and common carrier if the Union became the exclusive bargaining representative of its employees for the purpose of discouraging engagements in concerted activities and discouraging membership in, sympathy for, and activity in behalf of the Union. Neither did Respondent discharge the employees listed in the complaint because of their engagement in and concerted activity and because of their membership in and activity in behalf of the Union, nor refuse to reinstate said employees because of such membership and activity in violation of the Act.

In conclusion, I subscribe to Counsel Naimark's point:

General Counsel is aware of the fact that this case here presents a clear question of credibility. The Examiner has a difficult problem in determining whether or not the General Counsel's witnesses are telling the truth or whether Respondent's witnesses are telling the truth.

The resolution of this overall question, though difficult to winnow the chaff from the wheat, to separate the truth from the untruth, is simple to state—the truth is with the Respondent's witnesses.

Accordingly, I will recommend that the complaint be dismissed in its entirety.

### CONCLUSIONS OF LAW

1. Arrow Transportation Company and Tennessee Valley Sand and Gravel Company is and, at all times relevant herein, was engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Respondent has not engaged in and is not engaging in any unfair labor practices within the meaning of the Act.

3. National Maritime Union of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

[Recommendations omitted from publication.]

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SOLAR AIRCRAFT COMPANY *and* LOCAL NO. 52, UNITED TOOL AND DIE MAKERS OF AMERICA, AFFILIATED WITH THE NATIONAL INDEPENDENT UNION COUNCIL. *Case No. 18-CA-507. July 9, 1954*

### Decision and Order

On February 15, 1954, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Union filed exceptions to the Inter-

mediate Report and a supporting brief. The Union's request for oral argument is hereby denied because the record and the exceptions and brief, in our opinion, adequately present the issues and the positions of the parties.

The Board has reviewed the rulings made by the Trial Examiner at the hearing 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 hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

### Intermediate Report

#### STATEMENT OF THE CASE

Charges having been duly filed and served, a complaint and notice of hearing thereon having been issued and served by the General Counsel of the National Labor Relations Board, and an answer having been filed by the above-named Respondent, a hearing involving allegations of unfair labor practices in violation of Section 8. (a) (1), (3), and (5) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, was held in Des Moines, Iowa, on November 30, December 1, 2, and 3, 1953, before the undersigned Trial Examiner.

In substance the complaint alleges and the answer denies that the Respondent: (1) Since January 26, 1953, has refused to bargain collectively with the charging Union as the exclusive representative of all employees in an appropriate bargaining unit; (2) since April 10, 1953, has discriminatorily refused to reinstate 12 named employees because they engaged in protected concerted activities; (3) at various times beginning in January 1953, has threatened and warned its employees against going on strike and has encouraged employees to participate in a back-to-work movement, and (4) by such conduct has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

At the hearing all parties were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence pertinent to the issues, to argue orally upon the record, and to file briefs and proposed findings of fact and conclusions of law. A brief has been received from the Respondent and from General Counsel.

Disposition of a motion to dismiss the complaint, voiced at the close of the hearing and upon which ruling was then reserved, is made by the findings, conclusions, and recommendations appearing below.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

Solar Aircraft Company is a California corporation, with its principal office in San Diego, California. It operates a plant at Des Moines, Iowa, with which this proceeding is concerned, and at which it manufactures jet aircraft engine component parts.

During 1953 it purchased raw materials valued at more than \$1,000,000, for use at this plant, of which more than 90 percent were shipped to it from points outside the State of Iowa, and during the same period made and sold products valued at more than \$1,000,000, 90 percent of which was shipped outside the State of Iowa.

The Respondent is engaged in commerce within the meaning of the Act.

##### II. THE LABOR ORGANIZATION INVOLVED

Local No. 52, United Tool and Die Makers of America, affiliated with the National Independent Union Council, is a labor organization admitting to membership employees of the Respondent at its Des Moines plant.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Setting in which events at issue occurred*

In March 1953—which was about the middle of the period with which this case is concerned—the Respondent had approximately 3,300 employees on its payroll. For some years before 1952, all its production and maintenance employees had been represented in collective bargaining by the International Association of Machinists. Its contractual relationship with this labor organization, so far as the record shows, had been unmarred by unfair labor practices. Following representation proceedings in Case 18-RC-1484, the Board in July 1952, certified the charging union in this case as the exclusive bargaining representative of about 60 tool- and die-makers who theretofore had been represented by the I. A. M. No question as to the appropriateness of the unit found by the Board is raised in this case.

Local 52 made its initial bargaining request the last of July. The Respondent met promptly with the Local's negotiating committee and from that time until January 26, 1953, when the Union suddenly called a strike, the parties held about 45 meetings, some of them covering several hours. Both parties submitted various proposals and proposed contracts during this period. Between January 26 and April 10, when the strike was called off, eight more meetings of the parties were held. Between the latter date and July 29, 1953, when the last negotiating meeting was held five more meetings were held.<sup>1</sup>

B. *Points raised by General Counsel on the bargaining issue*

It appears to be General Counsel's position that not until after the strike began on January 26 did the Respondent refuse to bargain. The complaint alleges that "on or about" that date the Respondent took action, or declined to take action, which he cites as illegal refusal. The specific conduct alleged, however, as the evidence establishes—whatever the interpretation to be made of it—did not occur until after the Local had struck. In his brief General Counsel does not urge refusal to bargain before January 26. Indeed, in his brief General Counsel summarizes the large number of negotiating meetings held between July 31, 1952, and January 26, 1953, as "the customary jockeying and shifting of positions that normally accompanies such negotiations."

Thus, although during the hearing General Counsel declined to commit himself as to whether or not he contended that there was any refusal to bargain before the strike, his ultimate position appears to be that there was not. In any event, the evidence warrants the finding that until the Union called the strike the Respondent negotiated with it in complete good faith, over a period of 6 months and during at least 45 meetings.

General Counsel, in his complaint, alleges the following items of the Respondent's conduct as factors in his broad allegation of refusal to bargain: (1) Withdrawal of its previous contract proposal on January 26, 1953, its failure and refusal on that date and thereafter to negotiate, and its statement to union negotiators that further bargaining was futile; (2) inducing and encouraging a back-to-work movement; (3) attempting to interfere with the internal affairs of the Union; (4) before the termination of the strike refusing to negotiate concerning the return of the strikers; and (5) after termination of the strike failing and refusing to reinstate certain of the strikers.<sup>2</sup> These items will be considered in the above order.

*Failure to negotiate after January 26:* On the day of the strike, but after it had begun, the parties met, with a representative of the Federal Mediation Service present. The Union, according to minutes of the meeting recorded by the Respondent's representatives, offered to accept the Company's latest proposed contract (which

<sup>1</sup> In his brief counsel for the Respondent refers to "more than seventy meetings" between the negotiating committees. From the minutes produced by the Respondent at the hearing the Trial Examiner finds accounted for only the number above cited. It may be that the total of 70 includes more than 1 meeting in given days.

<sup>2</sup> Without objection by General Counsel, a motion by the Respondent was granted to dismiss the allegations of the complaint as to (1) encouraging employees to solicit membership in the I. A. M., and (2) promising a wage benefit if employees would repudiate the Union. Over General Counsel's objection a motion was granted to dismiss an allegation relating to the circulation of a decertification petition. In his brief General Counsel urges reconsideration of this last ruling. Reconsideration has been given, following review of the record, and no substantial reason is revealed to alter the ruling.

had been submitted on January 16) except as to four points. The Respondent's reply, also according to its minutes, was as follows:

The Company stated that we were not sure, at present, whether or not the last proposal submitted by the Company would stand because of the circumstances existing. The Company stated that it would have to review thoroughly all of the proposal, in the light of existing circumstances.

At the hearing, Industrial Relations Manager Hodges, the Company's chief negotiator at all meetings, explained that doubt as to the status of previous proposals was expressed "because actually a strike had been called, and I informed the Union that I did not know if those proposals would stand as written. I made that largely as a strategic move rather than any threat or anything of that nature." The evidence establishes that the proposal was not, however, at that time withdrawn. The Trial Examiner is unable to find that the Company's position at this meeting, as stated above, warrants more than a suspicion of possible bad faith. More reasonably it points to resentment against the precipitate action by the Union in calling the strike at a time when—after 45 extended negotiating meetings—all issues in dispute had been reduced to 2, and upon these an impasse had been reached. Although the Local possessed the plain legal right to strike, in an attempt to force the employer to yield to its two remaining demands, it would be unreasonable to expect that such action would receive the hearty approval of the Company. During the long period of negotiations the Company—as well as the Union—had made concessions, and a review of the minutes of both parties indicates that negotiations were approaching full agreement, when suddenly the strike was called. In short, bearing in mind the fact that for a full 6 months before January 26, the Employer had bargained in good faith, in an earnest effort to obtain a signed agreement with the Local, the Trial Examiner is unable to find that its position of January 26 was unreasonable or an index of bad faith.

The parties again met on February 9, when various proposals by the Union were discussed. According to its minutes the Company, in effect, accused the Local of having bargained in bad faith, citing as points:

. . . slowdown over several months period, attempting to negotiate jurisdiction rather than adhere to NLRB certifications, failure to submit Company proposals to its membership, continuous request for Union meetings during regular shift hours, and many misrepresentations published publicly by the Union.

The Employer's representatives then expressed "grave doubt that any contract negotiated with that Union would have any meaning or substance since there had been no evidence of integrity demonstrated . . ." and stated further ". . . that without the established element of trust, further negotiations would be fruitless." As to this meeting, the Trial Examiner is likewise unable to find that the Respondent actually refused to negotiate, or that it bargained in bad faith. In his brief, General Counsel points to the fact that on this date "there was still no counterproposal from the Respondent." The evidence establishes the fact, but if General Counsel by citing it contends that failure to submit a counterproposal was a failure to bargain, the Trial Examiner must find the contention to be without merit. The January full proposal of the Company had not yet been withdrawn.

On February 24, however, the Respondent's minutes candidly state that it "formally withdrew its own proposals from the bargaining table." In the absence of reasonable justification, such action by either party to contract negotiations would warrant a reasonable conclusion that it expressed an intent to withdraw from further negotiations and to refuse to bargain. Clearly it would support more than a mere suspicion of bad faith. The record does contain an explanation, however, which the Trial Examiner cannot find, upon the basis of the record, is wholly without merit. In substance, Hodges said that "we needed to take a new look" at the January 16 proposed contract "to see whether we could resubmit it in the same form or revised form." And he said that the necessity arose because of certain "classified" information in its possession regarding the cancellation of certain Government contracts—which would probably result in a reduction of force in the tool shop unit. The testimony of the Respondent's officials is undisputed that at this time it was engaged in "100 percent" defense work, and that all of its contracts were "for the production of hot components of jet engines under government contract." The exact nature of the information in the Respondent's possession at that time, or the problems which may or may not have arisen from it are not revealed by the record. Since neither factor is fully revealed, the Trial Examiner considers that the record provides no substantial basis for an inference which, in his brief, General Counsel apparently would have drawn—that there could have been no reasonable relationship between the production problem and the negotiation of a contract with the Union. Subsequent

events establish that Respondent's contention did not rest upon fiction. For within a few days after the February 24 meeting the production force—which had not observed the Union's picket lines—began being reduced, and such reduction has continued until, at the time of the hearing, about 30 percent of its March 1 total employment had been laid off. The issue, it appears to the Trial Examiner, is whether or not the withdrawal of the previous proposals by the Company was made in bad faith—and not whether the nature of the "classified" information was such as to make the withdrawal necessary. And the credible evidence, in the opinion of the Trial Examiner, falls short of sustaining General Counsel's contention that the withdrawal was made in bad faith.

Meetings continued after February 24—indeed it appears that never has the Respondent refused to meet or negotiate with the Local. There is testimony by a union representative that at a meeting on February 26 he "believed" Hodges said that he did not know whether he would ever have a counterproposal to make or not. More credible evidence establishes that Hodges was not present at this meeting, and the Trial Examiner does not believe that the statement was made.

At the 10 meetings held by the parties from March 7 to July 29, the evidence is clear that the Union conditioned all demands submitted by it during this period upon the full and immediate reinstatement of all strikers. As the Local's chief negotiator said during the hearing, "It was always our contention that there was plenty of work for all men in the unit." In view of this union condition upon reaching a final agreement which—as found below was unjustified—the Trial Examiner is not persuaded that the failure of the Respondent to bring forward a new contract proposal after March 7 was bargaining in bad faith.

*The back-to-work movement:* The complaint alleges that the Respondent also exhibited bad-faith bargaining by assisting, inducing, and encouraging "certain of its employees to engage in a back-to-work movement." The Trial Examiner finds in the record no credible evidence to support the claim that the Respondent "induced" any employee to engage in any such movement. No evidence was adduced to show that the Respondent, by letter to employees or otherwise, addressed itself to individuals in circumvention of their bargaining agent in an effort to get them to abandon the strike. It does appear that two union members, anxious to get back to work, did voluntarily approach a member of production management—not of the Company's negotiating committee—on the point, and were merely referred to a local attorney. There is no evidence that at that time this attorney was representing the Respondent, which had its own legal staff. Credible evidence fails to support the allegation of "assistance" or "encouragement," even if it might be inferred that the attorney had been retained by the Respondent. It appears that the lawyer merely answered questions voiced by the employees, pointed out the various legal activities they could engage in, and left the decision up to them. In short, the Trial Examiner finds the evidence insufficient to sustain the allegations of the complaint relating to any "back-to-work" movement.

*Interference with union affairs:* Nor does this allegation find, in the record, a preponderance of credible supporting evidence. Apparently it rests upon evidence as to "advice" given employees who voluntarily visited the office of the same attorney. Such advice was to the effect that if they were not satisfied with their present union leadership—and such dissatisfaction had been made clear as their reason for seeking his advice—they could elect new officers at their next election. If they did not want to do that, he said, they could seek decertification of their Local and seek another bargaining agent. Merely pointing out the legal methods of attaining a legal end, with no promise of benefit or threat of reprisal, falls far short of illegal interference with rights guaranteed employees by the Act.

*Refusal to negotiate concerning and failure to reinstate strikers:* As to the claimed refusal to negotiate the return of the strikers, the credible evidence of General Counsel's own witnesses deprives the contention of merit. As early as March 7, the Respondent's officials informed the union committees and officers that it could not reinstate all the tool- and die-makers then on strike. At the meeting of that date and later it insisted that with the reduction in contracts fewer men of this craft would be needed. When the union representatives demanded that the tool- and die-makers be taken back, if and when the strike ended, in accordance with their seniority within the unit, the company representatives took the position that they should be recalled according to ability to do the specific job to be done. The subject was discussed and negotiated at considerable length on March 10, at which time the Company finally proposed a compromise method; the specific details of which are unimportant here—except in that management's proposal was a recession from its original position. The union representatives agreed to submit the company proposal to the membership. Although it appears that in fact the membership rejected the proposal, the union officials did not report it to management, but only

said that they wanted more time to consider the matter. The testimony of union representatives makes it plain that they never gave a formal answer to the Company's proposed method of recall on March 10. The Trial Examiner finds that there is no merit in General Counsel's contention that the Respondent refused to negotiate on the subject to recall of strikers.

*Failing and refusing to reinstate certain strikers:* In substance, it is General Counsel's contention that by the failure to recall, up to the date of the issuance of the complaint, 12 named individuals who had been on strike until April 10, 1953, the Respondent discriminated against them in violation of Section 8 (a) (3) of the Act and that the same failure constituted an element in the refusal-to-bargain issue. In support of his position, General Counsel established but one fact as to which there is no question—that this number of former strikers had not been recalled. Any inference possible from this bare fact, however, is immediately dispelled by the equally undisputed fact that not only since the date the strike was called off but also since January 26, 1953, when the economic strike began, the Respondent has hired no new tool- and die-makers. Thus, there is absent here a prime factor in almost all discrimination cases—the replacement of a union member by a non-union employee or a striker by a nonstriker.

General Counsel also contends that a conclusion of discrimination must be found because the recalls were not in strict order of seniority. This contention is developed from roots extending in two directions. That before the strike began the Respondent and the Union had agreed upon a seniority list for transfers and recalls, and that even if no agreement had been reached former practice and sound reason demanded the seniority method of recall. Credible testimony does not support the claim that final agreement upon the seniority question had been reached by the parties. Even General Counsel's witnesses admitted that the question kept cropping up in negotiations, and that as late as March 10, there was difference of opinion as to what method of recall should be used. The claim of "practice" is clearly negated by the testimony of witness Ball, for General Counsel, who said that in his 10 years of service there had been no general layoffs in this department. Where there had been no such layoffs, the question of recall would not have been raised. On the final point—that absent a discriminatory motive management reasonably should have recalled the strikers in strict accordance with seniority standing—the evidence in the record is insufficient, in the opinion of the Trial Examiner, to warrant this conclusion. Management officials testified that the selection was made, and still is being made, in accordance with their judgment as to which man is best fitted, by experience and ability, to do the particular job. That there is difference in personal qualifications was readily admitted by the chief union negotiator, as a witness. Opinions may differ, and judgments may err, but it does not follow that a wrong judgment must be illegal.

Nor does the fact that some union officers have not yet been recalled lend more than a degree of suspicion to the question of discrimination. Even that suspicion fades in view of the fact that among those who have been recalled are some 12 top officers—including the president, vice president, secretary, and treasurer—and negotiating committee members.

General Counsel also urges, in effect, that there was no economic reason for failure to recall all of the 60-odd strikers immediately upon their abandonment of the strike on April 10. No credible evidence was adduced to support this contention. On the contrary, the evidence brought forward by the Respondent establishes that, because of cutbacks and contract cancellations, the overall reduction in force at the Des Moines plant began more than a month before the strike was called off, and that the Union was then informed of the plan to reduce the number of tool- and die-makers. As noted heretofore, at the time of the hearing the plant payroll was about 30 percent under its peak of March 1953.

In short, the Trial Examiner finds the evidence insufficient to support the allegations of the complaint that the Respondent has discriminatorily failed and refused to recall any former strikers.

### C Conclusions in summary

In summary, the Trial Examiner concludes that the preponderance of credible evidence does not sustain allegations of refusal to bargain in good faith, of discrimination in recall, and of interference, restraint, and coercion.<sup>3</sup> It will therefore be recommended that the complaint be dismissed in its entirety.

<sup>3</sup> There is some evidence that many weeks before the strike was called 2 or 3 foremen voiced the hope that the tool- and die-workers would not strike and the opinion that if they did some individuals might not be recalled. Accepting the evidence as true, the statements plainly were not coercive.

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

#### CONCLUSIONS OF LAW

1. The operations of the Respondent occur in commerce within the meaning of Section 2 (6) of the Act.
2. Local No. 52, United Tool and Die Makers of America, affiliated with the National Independent Union Council, is a labor organization within the meaning of Section 2 (5) of the Act.
2. The Respondent has not engaged in unfair labor practices, as alleged in the complaint, within the meaning of Section 8 (a) (1), (3), and (5) of the Act.

[Recommendations omitted from publication.]

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LLOYD F. RICHARDSON, SR., LLOYD F. RICHARDSON, JR.,<sup>1</sup> AND WILLIAM L. RICHARDSON, D/B/A RICHARDSON MANUFACTURING COMPANY and LODGE No. 628, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL.  
*Case No. 13-CA-1361. July 9, 1954*

#### Decision and Order

On September 30, 1953, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and finds merit in the Respondent's exceptions.

1. The Trial Examiner found that the Respondent, by discharging employees Bartolomucci, Hambleton, and Hurley, who composed the Union's shop committee, violated Section 8 (a) (3) and (5) of the Act. We do not agree.

On the afternoon of January 27, 1953, Richardson instructed Bartolomucci to place his cut pieces of steel on pallets rather than directly on the floor. The following morning, Richardson observed that Bartolomucci was continuing to stack the cut pieces directly on the floor. He asked Bartolomucci why he had not followed his instructions and Bartolomucci replied the night shift had not placed the cut

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<sup>1</sup> Lloyd F. Richardson, Jr., is a partner and principal figure for the Respondent in this case and is herein called Richardson.