

In the Matter of NORTH AMERICAN REFRACTORIES Co., CLEVELAND,
OHIO and UNITED BRICK & CLAY WORKERS OF AMERICA, LOCAL NO.
512, HAYWARD, KENTUCKY

Case No. C-589.—Decided July 9, 1938

Fire Clay Refractories Manufacturing Industry—Settlement: stipulation providing for reinstatement of employees and payment of back pay—*Order:* entered on stipulation.

Mr. Robert E. Greene and Mr. William S. Gordon, for the Board.
Mr. J. D. Ramsay, of Cleveland, Ohio, for the respondent.
Mr. Henry Clark, of Soldier, Ky., for the Union.
Mr. Langdon West, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by United Brick & Clay Workers of America, Local No. 512, herein called the Union, the National Labor Relations Board, herein called the Board, by Phillip G. Phillips, Regional Director for the Ninth Region (Cincinnati, Ohio), issued its complaint, dated April 20, 1938, against North American Refractories Co., Cleveland, 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), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint and notice of hearing thereon were duly served upon the respondent and the Union.

Concerning the unfair labor practices the complaint alleged, in substance, that by threats, speeches, and other acts, the respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act; that the respondent refused to bargain collectively with the Union as the exclusive representative of the respondent's employees at its Hayward Plant; and that following a strike at the respondent's Hay-

ward Plant brought about by the respondent's refusal to bargain collectively, the respondent refused to reinstate 37 named employees because they joined and assisted the Union and engaged in concerted activities with others of the respondent's Hayward employees for the purposes of collective bargaining and other mutual aid and protection.

On May 5, 1938, counsel for the Board, the respondent and the Union entered into a stipulation in settlement of the case in which, inter alia, respondent waived its right to file an answer and to a hearing on the complaint and agreed to the entry of a consent order by the Board upon its approval of the stipulation. This stipulation was made part of the record in the case by being filed with the Board at Washington, D. C., on May 6, 1938.

On May 10, 1938, the Board, pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that the proceeding be transferred to the Board and continued before it.

The above-mentioned stipulation provides as follows:

I

It is hereby stipulated and agreed by and between the respondent, North American Refractories Co., by its president, and United Brick & Clay Workers of America, Local No. 512, by its president and the attorneys for the National Labor Relations Board, Ninth Region, as follows:

1. Upon charges duly filed by the United Brick & Clay Workers of America, Local No. 512, through Henry Clark, President of said Local, and its duly accredited agent for this purpose, Phillip G. Phillips, agent of the National Labor Relations Board, acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, approved July 5, 1935, and acting pursuant to its Rules and Regulations, Series 1, as amended, Article IV, Section 1, issued its Complaint and Notice of Hearing on the 20th day of April, 1938, against the North American Refractories Co., respondent herein.

2. The Amended Charge, Complaint and Notice of Hearing thereon, as well as a copy of the Rules and Regulations, Series—1, as amended, April 18, 1936, were duly served upon the respondent and upon the United Brick & Clay Workers of America, Local No. 512, on April 21, 1938, in accordance with said Rules and Regulations, Series—1, as amended, Article V, Section 1, which hearing was to begin at 9:30 a. m., on April 28, 1938, in the County Court House, City of Morehead, County of Rowan, State of Kentucky; thus allowing an intervening

period of seven days between the service of the said Amended Charge, Complaint, Notice of Hearing, and copy of Rules and Regulations, and the date of hearing.

3. Respondent, North American Refractories Co., is and has been since September 12, 1928, a corporation organized and existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the City of Cleveland, County of Cuyahoga, State of Ohio, and is now and has continuously since January 1, 1929, been engaged at a place of business in the Town of Hayward, County of Carter, State of Kentucky, hereinafter called the Hayward (Kentucky) Plant, in the production of fire clay refractories and fire clay mortar. As an integral part of its business, respondent owns and operates plants in the States of Ohio, Missouri, Kentucky, Pennsylvania, and Maryland.

4. United Brick & Clay Workers of America, Local No. 512, is a labor organization within the meaning of the National Labor Relations Act.

5. Respondent, North American Refractories Co., is engaged in interstate commerce within the meaning of the National Labor Relations Act.

6. The raw and other materials which the respondent, North American Refractories Co., uses in its business at the Hayward (Kentucky) Plant are as follows: Fire clay, sand, natural gas, electric energy, lubricating oil, etc. The total cost of these raw and other materials used by the respondent in its Hayward (Kentucky) Plant amounted to not less than \$75,000. for the year 1937.

During the year of 1937, the respondent purchased approximately 5 per cent of these aforementioned raw and other materials in states of the United States other than the State of Kentucky, principally in the State of West Virginia, and in the course and conduct of its business causes and has continuously caused approximately 5 per cent of these raw materials used by it in the production of fire clay refractories and fire clay mortar, to be transported in interstate commerce from the above named state to the aforesaid Hayward (Kentucky) Plant in the State of Kentucky, and there these raw and other materials are manufactured by the respondent into fire clay refractories and fire clay mortar.

7. The value of the said fire clay refractories and fire clay mortar produced at the said Hayward (Kentucky) Plant amounted to not less than \$150,000 for the year of 1937; and in the course and conduct of its business at the Hayward (Ken-

tucky) Plant, the respondent causes and has continuously caused approximately 98 per cent of the entire amount of fire clay refractories and fire clay mortar to be transported by rail from its Hayward (Kentucky) Plant in the State of Kentucky, to purchasers in states of the United States other than the State of Kentucky, principally to Illinois, Michigan, West Virginia, Ohio, and New York.

8. Respondent, North American Refractories Co., waives its right to file an answer to the complaint of the National Labor Relations Board, and its right to hearing on said complaint, as set forth in Sections 10 (b) and 10 (c) of the National Labor Relations Act.

II

IT IS FURTHER STIPULATED AND AGREED by and between the respective parties hereto that the National Labor Relations Board may forthwith enter an order in the above entitled case to the following effect:

Respondent, North American Refractories Co., shall

1. Cease and desist:

(a) From in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act;

(b) From discouraging membership in United Brick & Clay Workers of America, Local No. 512, or in any other labor organization of its employees, by discharging, threatening, or refusing to reinstate any of its employees for joining or assisting United Brick & Clay Workers of America, Local No. 512, or any other labor organization of its employees, or for engaging in other concerted activities for the purposes of collective bargaining or other mutual aid and protection;

(c) From in any other manner discriminating against any of its employees in regard to hire and tenure of employment or terms or conditions of employment for joining or assisting United Brick & Clay Workers of America, Local No. 512, or any other labor organization of its employees, or for engaging in other concerted activities for the purposes of collective bargaining or other mutual aid and protection;

(d) From refusing to bargain collectively with United Brick & Clay Workers of America, Local No. 512, as the exclusive

representative of its employees at its Hayward (Kentucky) Plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment.

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

(a) Offer to Willis Adkins, John Arthers, Rosco Arthers, Add Clark, Henry Clark, Milza Crisp, Jessie Conley, Richard Conley, Robert D. Conley, Willis Conley, Elza Davis, Charles Evans, Sturl Evans, Elza Hamm, Hiram Hastings, Hiram Jordan, Henry Lemastre, Sam Maggard, Elbert Messer, George Nickell, Henry Rosebury, Elwood Stafford, Cecil Wells, John Wells, Russell Withrow, Bill Bradley, Albert Clark, Eddie Jones, Arthur Reeder, Bill Reeder, Ed. Reeder,¹ George Tackett, Lonnie Tackett, Orville Elam, Glen Fisher, Hayden Jessie, and Earl Maggard, immediate and full reinstatement to the positions which they held prior to the strike in September, 1936, without prejudice to seniority rights or any other rights and privileges previously enjoyed by them; and in the event that any of the positions held by any of the above-named employees previous to the strike in September of 1936 are no longer in operation or existence, offer to such of the above-named employees whose former positions are no longer in operation or existence, immediate and full reinstatement without prejudice to seniority rights or any other rights and privileges previously enjoyed by them, to positions similar and substantially equivalent to those positions held by such employees prior to the strike in September of 1936;

(b) Pay immediately to the following employees as back pay the amounts listed opposite their respective names:

Willis Adkins.....	\$266. 00	Sam Maggard.....	\$266. 00
John Arthers.....	\$266. 00	Elbert Messer.....	\$266. 00
Rosco Arthers.....	\$266. 00	George Nickell.....	\$266. 00
Add Clark.....	\$266. 00	Henry Rosebury.....	\$266. 00
Henry Clark.....	\$266. 00	Elwood Stafford.....	\$266. 00
Milza Crisp.....	\$266. 00	Cecil Wells.....	\$266. 00
Jessie Conley.....	\$266. 00	John Wells.....	\$266. 00
Richard Conley.....	\$266. 00	Russell Withrow.....	\$266. 00
Robert D. Conley.....	\$266. 00	Bill Bradley.....	\$70. 00
Willis Conley.....	\$266. 00	Albert Clark.....	\$70. 00
Elza Davis.....	\$266. 00	Eddie Jones.....	\$35. 00
Charles Evans.....	\$266. 00	Arthur Reeder.....	\$35. 00
Sturl Evans.....	\$266. 00	Bill Reeder.....	\$35. 00
Elza Hamm.....	\$266. 00	Ed. Tackett.....	\$35. 00
Hiram Hastings.....	\$266. 00	George Tackett.....	\$35. 00
Hiram Jordan.....	\$266. 00	Lonnie Tackett.....	\$35. 00
Henry Lemastre.....	\$266. 00		

¹ Through a typographical error in the stipulation Ed. Tackett was listed as Ed. Reeder. A correction of this error was authorized by the parties.

(c) Enter into immediate negotiations with United Brick & Clay Workers of America, Local No. 512, for the purposes of reaching an agreement in respect to rates of pay, wages, hours of employment, and other conditions of employment covering the employees at its Hayward, Kentucky, Plant, and, in the event an agreement is reached, reduce the same to writing;

(d) Post and keep visible in prominent places in respondent's Hayward, Kentucky, Plant, for a period of thirty (30) days after receipt, copies of this order of the National Labor Relations Board;

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

III

IT IS FURTHER STIPULATED AND AGREED by and between the respective parties that in the event an order of the Board is entered hereon and it becomes necessary, in order to enforce its terms and provisions, to file a petition for enforcement of the same in the appropriate circuit court of the United States Circuit Court of Appeals by the National Labor Relations Board, the respondent, North American Refractories Co., consents and agrees that a decree of said court to the same effect be entered upon said order, without further notice of the application therefor.

IV

All stipulations herein made and the terms and provisions thereof are made subject to the approval of the National Labor Relations Board.

The above stipulation is hereby approved by the Board.

Upon the entire record in the case the Board makes the following:

FINDINGS OF FACT

I. BUSINESS OF THE RESPONDENT

The respondent is a Delaware corporation, having its principal place of business in Cleveland, Ohio. It owns and operates plants in the States of Ohio, Missouri, Kentucky, Pennsylvania, and Maryland. This case is concerned with activities at the respondent's plant located at Hayward, Kentucky, herein called the Hayward Plant, where the respondent is engaged in the manufacture of fire clay refractories and fire clay mortar.

The principal materials used by the respondent in its operations at the Hayward Plant are fire clay, sand, natural gas, electric power, and lubricating oil. During the year 1937 the total cost of these materials amounted to not less than \$75,000, and approximately 5 per cent were shipped to the Hayward Plant from points outside the State of Kentucky, principally from the State of West Virginia.

The clay refractories and mortar produced at the Hayward Plant, during the year 1937, were valued at not less than \$150,000. Approximately 98 per cent of these products were shipped by rail to purchasers in States other than the State of Kentucky.

We find that the aforesaid operations constitute a continuous flow of trade, traffic, and commerce among the several States.

II. THE UNION

United Brick & Clay Workers of America, Local No. 512, is a labor organization affiliated with the American Federation of Labor, admitting to membership the employees of the respondent at the Hayward Plant.

III. THE APPROPRIATE UNIT

We find, as alleged in the said complaint, that the employees of the respondent at its Hayward Plant, exclusive of those employees who have the authority to hire and discharge, constitute a unit appropriate for the purposes of collective bargaining, and that such unit insures to the employees the full benefit of their right to self-organization and collective bargaining and otherwise effectuates the policies of the Act.

IV. REPRESENTATION OF A MAJORITY WITHIN THE APPROPRIATE UNIT

We find that on August 24, 1936, and at all times thereafter, a majority of the employees in the appropriate unit, by having joined the Union, designated it as their representative for purposes of collective bargaining; and that at all times thereafter, the Union was the representative for the purposes of collective bargaining of a majority of the respondent's employees in the appropriate unit.

ORDER

Upon the basis of the findings of fact, stipulation, pleadings, and 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, North American Refractories Co., Cleveland, Ohio, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act;

(b) Discouraging membership in United Brick & Clay Workers of America, Local No. 512, or in any other labor organization of its employees, by discharging, threatening, or refusing to reinstate any of its employees for joining or assisting United Brick & Clay Workers of America, Local No. 512, or any other labor organization of its employees, or for engaging in other concerted activities, for the purposes of collective bargaining or other mutual aid and protection;

(c) In any other manner discriminating against any of its employees in regard to hire and tenure of employment or terms or conditions of employment for joining or assisting United Brick & Clay Workers of America, Local No. 512, or any other labor organization of its employees, or for engaging in other concerted activities, for the purposes of collective bargaining or other mutual aid and protection;

(d) Refusing to bargain collectively with United Brick & Clay Workers of America, Local No. 512, as the exclusive representative of its employees at its Hayward Plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment.

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

(a) Offer to Willis Adkins, John Arthers, Rosco Arthers, Add Clark, Henry Clark, Milza Crisp, Jessie Conley, Richard Conley, Robert D. Conley, Willis Conley, Elza Davis, Charles Evans, Sturl Evans, Elza Hamm, Hiram Hastings, Hiram Jordan, Henry Lemastre, Sam Maggard, Elbert Messer, George Nickell, Henry Rosebury, Elwood Stafford, Cecil Wells, John Wells, Russell Withrow, Bill Bradley, Albert Clark, Eddie Jones, Arthur Reeder, Bill Reeder, Ed. Tackett, George Tackett, Lonnie Tackett, Orville Elam, Glen Fisher, Hayden Jessie, and Earl Maggard, immediate and full reinstatement to the positions which they held prior to the strike in September 1936, without prejudice to seniority rights or any other rights and privileges previously enjoyed by them; and in the event that any of the positions held by any of the above-named employees previous to the strike in September of 1936 is no longer in operation or existence, offer to such of the above-named employees whose former positions are no longer in operation or existence, immediate and full reinstatement without prejudice to seniority rights or any

other rights and privileges previously enjoyed by them, to positions similar and substantially equivalent to those positions held by such employees prior to the strike in September of 1936;

(b) Pay immediately to the following employees as back pay the amounts listed opposite their respective names:

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(c) Enter into immediate negotiations with United Brick & Clay Workers of America, Local No. 512, for the purposes of reaching an agreement in respect to rates of pay, wages, hours of employment, and other conditions of employment covering the employees at its Hayward Plant, and, in the event an agreement is reached, reduce the same to writing;

(d) Post and keep visible in prominent places in the respondent's Hayward Plant, for a period of thirty (30) days after receipt, copies of this order of the National Labor Relations Board;

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