

In the Matter of BEN SAMUELS d/B/A NATIONAL BAG COMPANY and
ST. LOUIS JOINT BOARD, TEXTILE WORKERS UNION OF AMERICA,
CIO

Case No. 14-C-1077.—Decided February 18, 1946

DECISION

AND

ORDER

On November 21, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that he 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. No request for oral argument before the Board at Washington, D. C., was made by any of the parties, and none was held.

The Board has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's brief and exceptions, 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, Ben Samuels d/b/a National Bag Company, St. Louis, Missouri, and his officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with St. Louis Joint Board, Textile Workers Union of America, CIO, as the exclusive representative of all his employees, excluding office and clerical employees, foremen, and all other supervisory employees with authority to hire, pro-

¹ See *N L R B. v. Blair Quarries, Inc.*, 152 F. (2d) 25 (C. C. A 4).

65 N. L. R. B., No. 192.

mote, 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 St. Louis Joint Board, Textile Workers Union of America, CIO, to bargain collectively with him.

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

(a) Upon request, bargain collectively with St. Louis Joint Board, Textile Workers Union of America, CIO, as the exclusive representative of all his employees in the aforesaid appropriate unit, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at his plant at St. Louis, Missouri, 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 Fourteenth Region, shall, after being duly signed by the respondent or his representative, be posted by respondent immediately upon receipt thereof, and maintained by him 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 of the Fourteenth 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. Harry G. Carlson, for the Board.

Mr. Samuel A. Kessler, of St. Louis, Mo., for the respondent.

Mr. Frank J. Swantner, of St. Louis, Mo., for the Union.

STATEMENT OF THE CASE

Upon a first amended charge duly filed on October 22, 1945, by St. Louis Joint Board, Textile Workers Union of America, CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Fourteenth Region (St. Louis, Missouri), issued its complaint dated October 23, 1945, against Ben Samuels d/b/a National Bag Company,¹ herein called respondent, alleging that respondent had engaged in and was engaging in unfair

² Said 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."

¹ The name of respondent was so amended at the commencement of the hearing upon motion of counsel for the Board. The complaint had originally named respondent as "Ben Samuels and Katharine Samuels, co-partners, d/b/a National Bag Company."

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 respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that respondent on or about March 7, 1945, and at all times thereafter, refused, and continues to refuse, to bargain collectively with the Union as the exclusive bargaining representative of 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 26, 1944, had designated and selected the Union, and the Union was certified by the Board on October 6, 1944, as the exclusive bargaining representative of the employees in said unit, thereby interfering with, restraining, and coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act.

Respondent thereafter, on October 31, 1945, filed an answer in which he admitted certain allegations of the complaint, but denied that he had engaged in any unfair labor practices.

Pursuant to notice, a hearing was held at St. Louis, Missouri, on November 5, 1945, before Martin S. Bennett, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and respondent were represented by counsel and the Union by a union official. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the close of the hearing, the Board moved to conform the pleadings to the proof with respect to dates and other such minor variations. There was no objection and the motion was granted. At the close of the hearing, respondent moved to dismiss the complaint for lack of proof. Ruling was reserved. The motion is hereby denied. At the conclusion of the hearing, counsel for the Board and for respondent argued orally before the undersigned. The parties were afforded an opportunity to file briefs. 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

Respondent, Ben Samuels, doing business as National Bag Company, has his sole place of business at St. Louis, Missouri, where he is engaged in the processing and jobbing of textile bags. During the period from March to September 1945, respondent purchased used textile bags valued in excess of \$18,000, of which approximately 80 percent was shipped to him from points outside the State of Missouri. During the same period, respondent sold, used and processed textile bags valued in excess of \$18,000, of which approximately 80 percent was shipped by him to points outside the State of Missouri. Respondent also deals in machine sewing twine, jute, and cotton.²

Respondent admits that he is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

St. Louis Joint Board, Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of respondent.

² This finding is based upon a stipulation of the parties and upon evidence adduced at the hearing.

III. THE UNFAIR LABOR PRACTICES

A. Chronology of events

Sol Samuels did business under the trade name and style of National Bag Company at St. Louis, Missouri, for approximately 15 to 20 years prior to March 1945. His brother, Ben Samuels, was employed by him for 15 years, the last 4 or 5 thereof, as he testified, as manager. Ben Samuels testified that his brother Sol was absent "about two months a year"; that Sol was present "at least four hours a day" when in town; and that he, Ben, was "considered as manager." Employees Mammie Dunlap and Willie Mitchell testified and the undersigned so finds, Ben Samuels was in active charge of the plant.

Union organizational activity commenced at the plant some time prior to June 12, 1944.³ In August 1944, the Union requested recognition on the basis of a card check; it was refused. The Union then filed a petition for investigation and certification of representatives and, after the usual proceedings, the Board on September 6, 1944, issued a Decision and Direction of Election⁴ finding, *inter alia*, that all employees of National Bag Company, excluding office and clerical employees, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. Pursuant to an election conducted on September 26, 1944, under the supervision of the Regional Director for the Fourteenth Region, the Board on October 6, 1944, certified the Union as the exclusive representative for the purposes of collective bargaining of the employees in the unit heretofore indicated.

Subsequent to the certification, the Union mailed a proposed agreement to the Company on October 22, 1944. During November, Ben Samuels, in a telephone conversation, acknowledged receipt of the agreement. Negotiations concerning the provisions of the contract then commenced between the parties. Swantner conferred with Ben Samuels on three or four occasions; on at least one occasion, Sol Samuel was present.⁵ On January 22, 1945, all suggested changes having been incorporated to the complete satisfaction of both parties, a draft of the agreement was sent by the Union to respondent "for acceptance". Between January 22 and February 21, Swantner had several telephone conversations with Ben Samuels who claimed that he was too busy to confer with him. On the last of these occasions, a date was set for the execution of the agreement; however, on the evening prior to this date (approximately February 21), Ben Samuels was called out of town because of the illness of his brother Sol. The latter died on February 25. The plant was then closed for about 2 weeks, reopening on March 7. Just prior to March 7, when telephoned by Swantner, Ben Samuels requested a further extension of time because of his brother's death.

On March 7, 1945, the Probate Court of St. Louis County ordered the sale by the executors of the estate of Sol Samuels to Ben Samuels and Katherine Samuels⁶ of "the merchandise inventory, the machinery, fixtures, equipment and supplies, and trade name 'National Bag Company'." The sale was effected that day.⁷

³ It was so testified by Frank J. Swantner, manager of the Union, who assumed office on that date. The findings as to the events which follow are based upon his testimony and that of Ben Samuels.

⁴ 58 N. L. R. B. 106

⁵ Swantner so testified. Ben Samuels testified that his brother Sol, when in town, was present at all union conferences.

⁶ See footnote 1.

⁷ Ben Samuels testified that although he did not purchase the real estate he leased the same premises. The accounts receivable and payable were not transferred to Ben Samuels.

On April 19, Swantner called Ben Samuels on the telephone and was referred by the latter to his attorney, Samuel A. Kessler. After telephoning Kessler several times and not finding him in, he wrote to Kessler setting April 25 as a deadline for acceptance of the contract by respondent. No reply was received. On May 1, the Union applied to the United States Conciliation Service for assistance. A Conciliator met with the parties on May 14, at which time respondent raised two objections to recognition of the Union; first, that the Union should first organize the employees of two of his competitors, and second, that the certification of October 6 was not binding upon respondent because of the change of ownership of the business.

This was the first time that these two contentions, only the latter of which respondent relies upon in this proceeding, were raised. No objections were raised herein by respondent as to the appropriateness of the unit certified by the Board nor has the union majority been contested.

On July 3, 1945, the Union wrote to respondent requesting an immediate decision as to whether respondent would carry out his agreement to sign a contract with the Union. No reply was received and the Union thereafter filed a charge with the Board.

B. The Union's status as the majority representative in an appropriate unit on March 7, 1945

As set forth above, the Board, on September 6, 1944, found that all employees of the National Bag Company in specified operations constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, and, on October 6, 1944, the Board certified the Union as the exclusive collective bargaining representative of all such employees.

Respondent, on March 7, 1945, purchased the merchandise inventory, machinery, fixtures, equipment, supplies, and trade name; he leased the same plant operated by his predecessor and operated under the same trade name. He reopened on March 7 with the same 10 employees who had worked for his predecessor "with the exception of maybe one or two". The employees continued to do the same type of work and no new job classifications were added. Respondent purchases from and sells to a substantial percentage of the same sources dealt with by his predecessor. It is admitted, and the record indicates, that no substantial changes were effected in the operations of the business or in its personnel, and that this condition existed at the date of the hearing.⁸ The undersigned finds that National Bag Company is, and has been since March 7, 1945, essentially the same enterprise as that operated and owned prior thereto by Sol Samuels.

The certification issued by the Board on October 6, 1944, was but 5 months old on March 7, 1945. Nothing in the record indicates any change in the representative status of the Union.⁹ As heretofore noted, respondent has herein offered no objection to the appropriateness of the unit nor as to the Union's majority therein. The certification as to the representative status of the Union remained effective notwithstanding the fact that a change of management and ownership occurred subsequent to its issuance.¹⁰

⁸ Ben Samuels and employees Mamie Dunlap and Willie Mitchell testified to this effect.

⁹ *Matter of Bohn Aluminum and Brass Corporation*, 57 N. L. R. B. 1684; *Matter of Marshall, Meadows & Stewart*, 63 N. L. R. B. 233 (Supplemental Decision and Order).

¹⁰ *Matter of Syncro Machine Company, Inc.*, 62 N. L. R. B. 985, decided 6/29/45. *Matter of South Carolina Granite Company, et al.*, 58 N. L. R. B. 1448 Cf. *N. L. R. B. v. Adel Clay Products Co.*, 134 F. (2d) 342 (C. C. A. 8), where the Court said, "It is the employing industry that is sought to be regulated and brought within the corrective and remedial provisions of the Act—the strife which is sought to be averted is no less an object of legislative solicitude when contract, death or operation of law brings about change in the employing agency." [Italics supplied.]

On the entire record, the undersigned finds that on March 7, 1945, all of respondent's employees, excluding office and clerical employees, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constituted a unit appropriate for the purposes of collective bargaining.

C. *The refusal to bargain*

Respondent stipulated that on and after March 7, 1945, he refused to bargain collectively with the Union as the representative of his employees in the afore-described appropriate unit. It having been found that the Union upon that date was the collective bargaining representative of all the employees in the aforesaid unit, the undersigned accordingly finds that on March 7, 1945, and at all times thereafter, respondent has refused to bargain collectively with the Union as the exclusive representative of his employees in an appropriate unit, thereby interfering with, restraining, and coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

It is found that 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 of commerce.

V THE REMEDY

Since it has been found that respondent has engaged in unfair labor practices, it will be recommended that he cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It having been found that respondent has refused to bargain collectively with the Union as the exclusive representative of his employees in an appropriate unit, it will be recommended that respondent upon request bargain collectively with the Union.

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

CONCLUSIONS OF LAW

1. St. Louis Joint Board, Textile Workers Union of America, CIO, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All employees of respondent's St. Louis plant, excluding office and clerical employees, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, 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.

3 St. Louis Joint Board, Textile Workers Union of America, CIO, was on March 7, 1945, and at all times thereafter has been, the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4 By refusing on March 7, 1945, and thereafter, to bargain collectively with St. Louis Joint Board, Textile Workers Union of America, CIO, as the exclusive representative of all his employees in the aforesaid appropriate unit, respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act, respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommends that respondent, Ben Samuels d/b/a National Bag Company, St. Louis, Missouri, his officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with St. Louis Joint Board, Textile Workers Union of America, CIO, as the exclusive representative of all his employees, excluding office and clerical employees, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

(b) In any manner interfering with the efforts of St. Louis Joint Board, Textile Workers Union of America, CIO, to bargain collectively with him.¹¹

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

(a) Upon request, bargain collectively with St. Louis Joint Board, Textile Workers Union of America, CIO, as the exclusive representative of all his employees in the aforesaid appropriate unit;

(b) Post at his plant at St. Louis, Missouri, copies of the notice attached hereto, marked "Appendix A". Copies of said notice to be furnished by the Regional Director for the Fourteenth Region, shall, after being duly signed by the respondent or his representative, be posted by respondent immediately upon receipt thereof, and maintained by him 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) File with the Regional Director of the Fourteenth Region on or before ten (10) days of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, respondent notifies said Regional Director in writing that he will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring 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 July 12, 1944, 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, 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.

¹¹ *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426.

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.

MARTIN S. BENNETT,
Trial Examiner.

Dated November 21, 1945.

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, I hereby notify my employees that:

I WILL BARGAIN collectively upon request with the union named below 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, excluding office and clerical employees, foremen and all other supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees, or effectively recommend such action.

I WILL NOT in any manner interfere with the efforts of St. Louis Joint Board, Textile Workers Union of America, CIO, representing my employees, to bargain collectively with me.

BEN SAMUELS D/E/A NATIONAL BAG COMPANY,
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.