In the Matter of BROWN & SHARPE MFG. CO. *and* INTERNATIONAL FEDERATION OF TECHNICAL ENGINEERS, ARCHITECTS AND DRAFTSMEN'S UNION, LOCAL NO. 119, A. F. OF L.

Case No. 1-C-2953.—Decided July 31, 1947

Mr. Thomas H. Ramsey, for the Board.
Mr. Eugene J. Phillips, of Providence, R. I., for the respondent.
Mr. Stanley F. Fisk, of Providence, R. I., for the Union.
Mr. Benjamin B. Lipton, of counsel to the Board.

DECISION
AND
ORDER

On February 7, 1947, Trial Examiner Arthur Leff 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 filed exceptions to the Intermediate Report.

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 the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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, Brown & Sharpe Mfg. Co., Providence, Rhode Island, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Federation of Technical Engineers, Architects and Draftsmen's Union, Local No.

119, A. F. of L., as the exclusive representative of all non-supervisory, time-study men at the respondent's Providence, Rhode Island, plant, in respect to rates of pay, wages, hours of employment or other conditions of employment;

(b) In any manner interfering with the efforts of International Federation of Technical Engineers, Architects and Draftsmen's Union Local No. 119, A. F. of L., to bargain collectively with it on behalf of the employees in the aforesaid appropriate unit.

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

(a) Upon request, bargain collectively with International Federation of Technical Engineers, Architects and Draftsmen's Union, Local No. 119, A. F. of L., as the exclusive bargaining representative of all employees in the unit described herein, in respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant at Providence, Rhode Island, copies of the notice attached to the Intermediate Report, marked "Appendix A."[1] Copies of said notice, to be furnished by the Regional Director for the First 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 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 First Region, in writing, within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

MR JAMES J. REYNOLDS, JR., took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Mr Thomas H. Ramsey, for the Board.

Mr. Eugene J Phillips, of Providence, R. I , for the respondent

Mr. Stanley F. Fish, of Providence, R. I., for the Union.

[1] This notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" and substituting in lieu thereof the words "A DECISION AND ORDER" In the event that this Order is enforced by decree of a Circuit Court of Appeals, there shall be inserted in the notice, before the words "A DECISION AND ORDER," the words "DECREE OF THE UNITED STATES CIRCUIT COURT OF APPEALS ENFORCING

STATEMENT OF THE CASE

Upon a charge duly filed by International Federation of Technical Engineers, Architects and Draftsmen's Union, Local No. 119, A. F. of L., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the First Region (Boston, Massachusetts), issued its complaint dated December 27, 1946, against Brown & Sharpe Mfg. Co., herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act Copies of the complaint accompanied by notice of hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that all time study men at the respondent's Providence plant, excluding all 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; (2) that on or about June 28, 1946, a majority of the employees in the said unit designated the Union as their representative for the purposes of collective bargaining; (3) that at all times since June 28, 1946, the Union has been the exclusive representative of the employees in the said appropriate unit; and (4) that since on or about November 15, 1946, the respondent has refused to bargain collectively with the Union as the exclusive representative of the employees in said unit.

The respondent thereafter filed its answer in which it admitted that it has refused to bargain collectively with the Union as the exclusive bargaining representative of the persons in said unit, but denied that time study men are employees within the purview of the Act, that the unit alleged in the complaint constituted a unit appropriate for the purposes of collective bargaining, and that it had committed any unfair labor practices by refusing to bargain with the Union with respect to time study men in the alleged unit.

Pursuant to notice, a hearing was held January 13, 1946, at Providence, Rhode Island, before the undersigned, Arthur Leff, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented at the hearing by counsel and the Union by a representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties The parties did not avail themselves of the opportunity afforded them to present oral argument before, or to file briefs or proposed findings and conclusions, or both, with the undersigned.

Upon the entire record of the case, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Brown & Sharpe Mfg. Co., a Rhode Island corporation, is engaged at Providence, Rhode Island, in the manufacture, sale and distribution of machine tools, attachments, cutters, sewing machines, iron castings, and other miscellaneous articles The respondent purchases, annually, raw materials consisting of steel, iron, and various other metals, tools and equipment valued in excess of $10,000,000 of which in excess of 50 percent represents shipments from points out-

side the State of Rhode Island. During a similar period, the respondent manufactures finished products valued in excess of $20,000,000, of which more than 50 percent represents shipments to points outside the State. The respondent admits that it is engaged in commerce within the meaning of the Act

II. THE ORGANIZATION INVOLVED

Local 119, International Federation of Technical Engineers, Architects & Draftsmen's Union is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

1. *The appropriate unit; representation by the Union of a majority therein*

On June 6, 1946, the Board issued a Decision and Direction of Election in Case No. 1–R–2798 (68 N. L. R. B. 487), finding, among other things, that all time-study men of the respondent, excluding all 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. On June 18, 1946, the respondent petitioned the Board for an order reopening Case No. 1–R–2798 and for a rehearing therein insofar as said case affected time-study men. The Board granted the respondent's petition, and ordered a further hearing to be held for the purpose of taking evidence respecting the functions and status of the respondent's time-study men, but ordered, at the same time, that the election theretofore directed be held on June 28, 1946, as scheduled, and that the ballots in the time-study men voting group be impounded pending the Board's final determination of the status of such time-study men Following a further hearing with respect to the respondent's time-study men, the Board on August 26, 1946, issued its Supplemental Decision and Direction (70 N. L. R. B. 709), confirming, after examination of the evidence introduced at the reopened hearing, its previous unit finding concerning time-study men, and directing the opening and counting of the impounded ballots.

The tally of ballots cast in the election by secret ballot held on June 28, 1946, which was conducted under the direction and supervision of the Regional Director for the First Region, showed that of approximately 28 eligible voters in the time-study unit, 27 cast valid votes, of which 21 were for the Union, and 6 against No objections to the election were filed by any of the parties within the time prescribed therefor in the Rules and Regulations of the Board. On September 27, 1946, the Board certified the Union as the representative for the purposes of collective bargaining of the time-study employees in the unit heretofore described

The respondent contests the appropriateness of the unit found by the Board The respondent's position in substance, a position upon which it also rests to justify its refusal to bargain, is that time-study men perform essentially "managerial" and "confidential" functions, are not employees within the purview of the Act, and, consequently, may not properly form an appropriate collective bargaining unit entitling their majority representative to recognition under the Act. The identical contentions were urged by the respondent and fully considered by the Board in the representation proceeding, and there specifically ruled upon

adversely to the respondent. In the instant complaint proceeding the respondent adduced no further evidence and advanced no additional arguments but relied entirely upon the record made in the representation proceeding. Under the circumstances the undersigned is constrained to adhere to the law of the case as established by the Board in the earlier representation proceeding.

The undersigned, therefore, finds in accordance with the Board's previous determination that all time-study men at the respondent's Providence plant, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute, and at all times material herein constituted, a unit appropriate for the purposes of collective bargaining. The undersigned further finds that on and at all times after June 28, 1946, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid bargaining unit and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was on June 28, 1946, and at all times thereafter has been 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, and other conditions of employment.

2 *The refusal to bargain*

The complaint alleges and the answer admits that on November 7, 1946, the Union requested the respondent to bargain collectively with it as the exclusive representative of all the employees in the aforesaid appropriate unit, and that on November 15, 1946, as well as at all times thereafter, the respondent refused to do so.

The undersigned finds that the respondent on November 15, 1946, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby 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 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 it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Because of the basis of the respondent's refusal to bargain as indicated by 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 other unfair labor practices. 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 any

other acts in any manner interfering with the efforts of the Union to negotiate for or represent the employees as exclusive bargaining agent in the unit herein found appropriate.

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 Federation of Technical Engineers, Architects and Draftsmen's Union, Local No. 119, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All time-study men at the respondent's Providence plant, excluding all 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 Federation of Technical Engineers, Architects and Draftsmen's Union, Local No. 119, A. F of L, was on June 28, 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.

4. By refusing on November 15, 1946, and at all times thereafter, to bargain collectively with International Federation of Technical Engineers, Architects and Draftsmen's Union, Local No. 119, A. F. of L, as the exclusive representative of all its employees in the aforesaid 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 interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the 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 wtihin 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, Brown & Sharpe Mfg Co, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain with International Federation of Technical Engineers, Architects and Draftsmen's Union, Local No 119, A F of L, as the exclusive representative of all time-study men at the respondnet's Providence plant, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action;

(b) Engaging in any other acts in any manner interfering with the efforts of International Federation of Technical Engineers, Architects and Draftsmen's Union, Local No 119, A. F. of L, to negotiate for or represent the employees in the aforesaid unit as exclusive bargaining agent.

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

(a) Upon request bargain collectively with International Federation of Technical Engineers, Architects and Draftsmen's Union, Local No 119, A F. of L, as the exclusive bargaining 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;

(b) Post at its plant in Providence, Rhode Island, copies of the notice attached to the Intermediate Report herein marked "Appendix A" Copies of said notice, to be furnished by the Regional Director for the First 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 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) File with the Regional Director for the First Region, on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendation.

It is further recommended that unless on or before ten (10) days from the receipt of the Intermediate Report the respondent notifies said Regional Director in writing that it has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

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.

ARTHUR LEFF,
Trial Examiner.

Dated February 7, 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 NOT engage in any acts in any manner interfering with the efforts of INTERNATIONAL FEDERATION OF TECHNICAL ENGINEERS, ARCHITECTS AND DRAFTSMEN'S UNION, LOCAL NO. 119, A. F. OF L., to negotiate for or represent the employees in the bargaining unit described below.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described below 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 time-study men at the Providence, Rhode Island, plant, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

BROWN & SHARPE MFG. CO.
Employer.

Dated _____ By _____
(Representative) (Title)