

are of the opinion that the Unions' objections relating to their alleged lack of opportunity to check the eligibility list<sup>3</sup> or have an observer at the election<sup>4</sup> should be overruled as lacking in merit.

As we have overruled the Unions' objections, and as the Unions failed to receive a majority of the valid ballots cast, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for Local 596, Garage, Parking and Service Station Employees' Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and Local 724, District 1, International Association of Machinists, AFL, and that the said organizations are not the exclusive representative of the Employer's employees in the appropriate unit.]

MEMBER MURDOCK took no part in the consideration of the above Supplemental Decision and Certification of Results of Election.

<sup>3</sup> Cf. *Gerber Products Company*, 95 NLRB 1300.

<sup>4</sup> The presence of observers at an election, other than Board agents, is not required by the Act. *Simplot Fertilizer Company*, 107 NLRB 1211, 1221.

**Youngstown Tent and Awning Company, and/or Youngstown Tent and Awning Company, a Division of Wagner Awning and Manufacturing Company and United Steelworkers of America, CIO.** *Case No. 8-CA-1071. July 13, 1955*

### DECISION AND ORDER

On May 6, 1955, Trial Examiner Alba B. Martin 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 and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner 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 exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>1</sup>

<sup>1</sup> We amend the Trial Examiner's conclusion of law number 3 to read as follows: United Steelworkers of America, CIO, was on December 2, 1954, and has been at all times material thereafter, the exclusive bargaining representative of the employees in the aforesaid appropriate unit in accordance with the provisions of Section 9 (a) of the Act.

## ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Youngstown Tent and Awning Company, and/or Youngstown Tent and Awning Company, a division of Wagner Awning and Manufacturing Company, Youngstown, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Steelworkers of America, CIO, as the exclusive bargaining representative of the Respondent's employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

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

(a) Upon request bargain collectively with United Steelworkers of America, CIO, as the exclusive bargaining agent of all its employees in the bargaining unit described herein, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Youngstown, Ohio, plant, copies of the notice attached hereto marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being signed by the Respondent's representative, be posted by the Respondent 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 Eighth Region in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

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<sup>2</sup> In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order"

## APPENDIX

## NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL bargain collectively upon request with United Steelworkers of America, CIO, as the exclusive representative of all employees in the bargaining unit described herein with respect to wages, rates of pay, hours, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All hourly employees at our Youngstown, Ohio, operations, excluding office and plant clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT engage in any acts in any manner interfering with the efforts of United Steelworkers of America, CIO, to negotiate for, or represent, the employees in the bargaining unit described above.

YOUNGSTOWN TENT AND AWNING COMPANY,  
AND/OR YOUNGSTOWN TENT AND AWNING  
COMPANY, A DIVISION OF WAGNER AWNING  
AND MANUFACTURING 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.

### INTERMEDIATE REPORT

#### STATEMENT OF THE CASE

Upon a charge, an amended charge, and a second amended charge duly filed by United Steelworkers of America, CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Eighth Region (Cleveland, Ohio), issued his complaint, dated April 7, 1955, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Copies of the complaint, the charges, and a notice of hearing were duly served upon Respondent as named in caption above, upon Wagner Awning and Manufacturing Company, and upon the Union.

With respect to the unfair labor practices the complaint alleged in substance that Respondent had refused to bargain collectively with the Union as the exclusive bargaining representative of the Respondent's employees within an appropriate unit, although in an election conducted under the supervision of the Board's Regional Director a majority of the employees in the appropriate unit had designated and selected the Union as their representative for the purposes of collective bargaining.

In its answer as amended, Respondent admitted the appropriateness of the unit, admitted that it had been requested and had refused to bargain with the Union as the exclusive bargaining representative of the employees in the unit. Respondent's position was that it is not engaged in commerce within the meaning of the Act, and that as it is not subject to the Act it has engaged in no unfair labor practices.

Pursuant to notice, a hearing was held on April 25, 1955, at Cleveland, Ohio, before Alba B. Martin, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the Union, Youngstown Tent and Awning Company, and Wagner Awning and Manufacturing Company were represented by counsel. Youngstown Tent and Awning Company and Wagner Awning and Manufacturing Company were represented by the same counsel. 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 hearing the parties entered into a number of stipulations and the General Counsel introduced a number of documents. No witnesses were called by any party. The parties made short statements of their positions. Although afforded an opportunity, no party filed a brief.<sup>1</sup>

Upon the entire record in the case I make the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF RESPONDENT

Youngstown Tent and Awning Company, herein called Youngstown, is an Ohio corporation and a wholly owned subsidiary of Wagner Awning and Manufacturing Company of Cleveland, Ohio, herein called Wagner. Youngstown maintains its principal place of business in Youngstown, Ohio, where it is engaged in the sale of awnings and sale and rental of tents for fairs and carnivals and services connected therewith. It engages in fabrication to a limited degree, consisting mostly of repairs to tents, tarpaulins, canvas pads, curtains, and related products and prepares framework for new awning sales. During the year, September 1, 1952, to August 31, 1953, which period was representative of all times material hereto, Youngstown's gross sales amounted to \$187,924.64, of which amount out-of-Ohio services amounted to \$10,673.30; industrial sales, including services performed inside Ohio, amounted to \$33,547.75; and residential sales, including services performed within Ohio, amounted to \$143,703.59.

Upon the record in the representation case<sup>2</sup> involving this matter, which record was without objection incorporated by reference into the record herein, the Board found that other wholly owned subsidiaries of Wagner engaged in sales and services similar to Youngstown are Canton Tent & Awning Co., Canton, Ohio; Akron Tent & Awning Co., Akron, Ohio; Columbus Tent & Awning Co., Columbus, Ohio; and Wheeling Tent & Awning Co., Wheeling, West Virginia.

Wagner, an Ohio corporation, having its principal office and place of business at Cleveland, Ohio, is engaged in the manufacture and sale of tents, awnings, and related products. During the year, September 1, 1952, to August 31, 1953, which period is representative of all times material hereto, Wagner's gross sales amounted to approximately \$2,837,000, of which approximately \$500,000 represents goods shipped directly out of Ohio and \$400,000 represents goods shipped to concerns within Ohio who themselves produced goods for out-of-Ohio shipment.

Upon the record in the representation case the Board found that Youngstown and Wagner have the same corporate officers and directors and that the officers hold the same positions in each Company. The Board held further that that books and records of both Companies are kept at Wagner offices in Cleveland, that all monies collected at Youngstown are deposited at Youngstown and later transferred to Wagner's account in Cleveland from where all disbursements are made, including Youngstown's payroll. All bills are sent to the central purchasing office in Cleveland for payment.

Upon the record in the representation case the Board found that neither Wagner nor any of its subsidiaries, including Youngstown, have ever had any bargaining relations with any labor organization. The Board held further that Youngstown's manager has the authority to hire and discharge all personnel at Youngstown, to select employees for layoff, and generally, has charge of any labor relations there, that he is responsible for the supervision and management of Youngstown and reports only to the president of Youngstown who is also the president of Wagner, that the Youngstown manager decides the wage rate necessary to pay in that locality, that he does not have the independent authority to grant wage increases but his recommendations within the general wage rate would be automatically approved by the president.

At the hearing herein Youngstown and Wagner made no claim that the Board's above findings in the representation case were incorrect findings on the record, and at the hearing herein Youngstown and Wagner offered no further facts of any kind.

On the entire record in the case, in accordance with the Board's Decision and Direction of Election in the representation case and other prior Board decisions, in view of the integration of the two Companies, the officers holding the same posi-

<sup>1</sup> On May 5, 1955, the parties filed a stipulation correcting two errors in the transcript of the hearing. The corrections suggested in the stipulation are hereby made, and the stipulation is filed with the original exhibits as General Counsel's Exhibit No. 4.

<sup>2</sup> Case No. 8-RC-2804, 110 NLRB 835.

tions in both Companies, and the control exercised over Youngstown by Wagner, I hold that Youngstown and Wagner constitute a single Employer within the meaning of Section 2 (2) of the Act, and also that, in view of the totality of its operations, the Employer is engaged in commerce within the meaning of the Act

#### II. THE ORGANIZATION INVOLVED

United Steelworkers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

#### III. THE UNFAIR LABOR PRACTICES

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

Upon a petition for certification duly filed by the Union in Case No 8-RC-2304, and after hearing held thereon, the Board, on November 9, 1954, issued its Decision and Direction of Election in which it directed an election in a unit of the Respondent's employees consisting of all hourly employees excluding all office and plant clerical employees, professional employees, guards, and supervisors as defined in the Act—the unit found by the Board to be appropriate, and which I likewise find to be appropriate, for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. On December 2, 1954, an election by secret ballot was conducted under the supervision of the Regional Director for the Eighth Region. Upon conclusion of the election, a tally of ballots was furnished to and certified by the observers for the Union and the Respondent. The tally showed that out of approximately 12 eligible voters in the aforesaid appropriate unit, 7 voted in favor of representation by the Union and none voted against it. No objections to the election or to its conduct were filed within the time provided therefor. On December 9, 1954, the Board certified the Union as the bargaining representative of the employees in the said appropriate unit. It is found that on December 2, 1954, and at all times thereafter, the Union was, and now is, by virtue of Section 9 (a) of the Act, 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.

##### *B. The Respondent's refusal to bargain with the Union as the representative of the employees in the appropriate unit*

After receipt by Respondent and the Union of the Board's certification of the Union, dated December 9, 1954, and prior to January 12, 1955, the Union requested Respondent to meet with the Union for the purposes of collective bargaining under the certification. On January 12, 1955, Respondent handed the Union a letter saying in part,

We are refusing to bargain with the union, because we believe the Board was in error in finding that The Youngstown Tent & Awning Company and Wagner Awning & Manufacturing Company constitute a single employer, and that by reason thereof, The Youngstown Tent & Awning Company is engaged in commerce within the meaning of the Act.

It is our intention to seek a Court review of any Board order that might issue because of our refusal to bargain.

At all times since delivery of this letter Respondent has refused to bargain collectively with the Union.

On the record as a whole it is concluded and found that at all times since January 12, 1955, Respondent has refused to bargain with the Union as the exclusive bargaining representative of the employees in an appropriate unit, in violation of Section 8 (a) (5) of the Act, and thereby has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8 (a) (1).

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

It is found that 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

As 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. It having been found that the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, it will be recommended that the Respondent upon request bargain collectively with the Union.

Upon the basis of the above findings of fact, and upon the entire record in the case, I make the following:

#### CONCLUSIONS OF LAW

1. United Steelworkers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The following employees of Youngstown Tent and Awning Company, and/or Youngstown Tent and Awning Company, a division of Wagner Awning and Manufacturing Company, Youngstown, Ohio, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act: all hourly employees excluding all office and plant clerical employees, professional employees, guards, and supervisors as defined in the Act.

3. On December 2, 1954, United Steelworkers of America, CIO, was the exclusive bargaining representative of the employees in the aforesaid appropriate unit in accordance with the provisions of Section 9 (a) of the Act.

4. By refusing on January 12, 1955, and at all times thereafter, to bargain collectively with the Union as the exclusive representative of all its employees in the aforesaid unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (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 (a) (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 omitted from publication.]

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**KTRH Broadcasting Company and National Association of Broadcast Employees and Technicians, CIO.<sup>1</sup> Case No. 39-CA-311. July 13, 1955**

#### DECISION AND ORDER

On October 6, 1953, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged and was engaging in unfair labor practices in violation of Section 8 (a) (1) and (5) of the Act and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.<sup>2</sup> The Board has considered the Intermedi-

<sup>1</sup> The name of the Charging Union was National Association of Broadcast Engineers and Technicians, CIO. Pending the hearing, the name was changed to read as appears in the title.

<sup>2</sup> The Respondent contends that it was prejudiced by the Trial Examiner's ruling quashing subpoenas for two of the Board's employees. We do not agree that this ruling deprived the Respondent of a fair hearing because (1) the Respondent did not comply with the requirements of Section 102.87 of the Board's Rules and Regulations, Series 6, as