

Local 182, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Harold K. Ulrich, its agent and Sitrue Incorporated. *Case No. 3-CP-6. January 31, 1961*

DECISION AND ORDER

On August 8, 1960, Trial Examiner Arthur E. Reyman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a brief in support thereof, relating only to the wording of the notice.

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 entire record in this case, including the Intermediate Report, the exceptions and brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

As the notice which the Trial Examiner attached to his recommended order did not cover those acts of the Respondents found to be violative of Section 8(b)(7)(A), we find merit in the General Counsel's exceptions, and we have accordingly substituted for the Trial Examiner's notice one which is in conformity with our Order.

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 Respondents, Local 182, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Harold K. Ulrich, their officers, agents, successors, and assigns, shall:

1. Cease and desist from picketing or causing Sitrue Incorporated to be picketed, or threatening to picket or cause Sitrue Incorporated to be picketed, where an object thereof is to force or require Sitrue Incorporated to recognize or bargain with Respondent Local 182, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Harold K. Ulrich, its agent, as the representative of employees of Sitrue Incorporated, or to force or require employees of Sitrue Incorporated to accept or select Respondent Local 182, International Brotherhood of Teamsters, Chauffeurs, Warehouse-

¹ As the Respondents have not filed any exceptions to the Trial Examiner's findings, conclusions, and recommendations, we adopt them *pro forma*, as modified herein.

men and Helpers of America and Harold K. Ulrich, its agent, as their collective-bargaining representative, while Sitruie Incorporated is lawfully recognizing in accordance with the Act any other labor organization and a question concerning representation of employees of Sitruie Incorporated may not appropriately be raised under Section 9(c) of the Act.

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

(a) Post in conspicuous places in the Respondent's business offices, meeting halls, and places where notices to its members are customarily posted, copies of the notice attached hereto marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by official representatives of the Respondents, be posted by the Respondents immediately upon receipt thereof and be maintained by them for 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(b) Return forthwith to the Regional Director for the Third Region signed copies of the aforementioned notice for posting by Sitruie Incorporated, the Company willing, in places where notices to employees are customarily posted.

(c) Notify the Regional Director for the Third Region, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.

²In 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 MEMBERS OF LOCAL 182, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND TO ALL EMPLOYEES OF SITRUIE INCORPORATED

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, as amended, we hereby notify you that:

WE WILL NOT, under conditions prohibited by Section 8(b) (7) of the Act, picket or cause to be picketed, or threaten to picket or cause to be picketed, Sitruie Incorporated, Utica, New York, where an object thereof is to force or require the aforesaid Company to recognize or bargain with us as the representative of its employees or to force or require its employees to accept or select us as their collective-bargaining representative while Sitruie Incorporated is lawfully recognizing in accordance with the Act

any other labor organization and a question concerning representation of the said employees may not appropriately be raised under Section 9(c) of the Act.

LOCAL 182, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,
Labor Organization.

Dated_____ By_____

(Representative) (Title)

Dated_____

(HAROLD K. ULRICH, Agent)

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 AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This is a proceeding under Section 10(b) of the National Labor Relations Act, as amended (61 Stat. 131, Sec. 151, *et seq.*; Public Law 86-257, 1959), heard before the duly designated Trial Examiner of the National Labor Relations Board, herein called the Board, in Utica, New York, on June 28, 1960, on the complaint of the General Counsel of the Board and answer of Local 182, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Harold K Ulrich, its agent, herein called the Teamsters or Respondents.

The issue litigated was whether the Respondents violated Section 8(b)(7)(A) of the Act, by commencing the picketing of the Capron plant of Sitruie Incorporated on or about May 20, 1960, with the object of forcing Sitruie to recognize Teamsters as the collective-bargaining representative of its receiving and shipping employees and the employees to accept Teamsters as their collective-bargaining representative at a time when Sitruie had lawfully recognized United Papermakers & Paperworkers, AFL-CIO, and its Local Unions 363 and 363A as the representative of such employees and a question concerning representation of such employees could not appropriately be raised under Section 9(c) of the Act.

Although Respondents Teamsters and Ulrich filed an answer to the complaint through their attorney on June 16, 1960, and although the Trial Examiner delayed the opening of the hearing at the Federal Building, Utica, New York, from 10 a.m. eastern daylight saving time until 10:30 a.m. eastern daylight saving time on June 28, 1960, no representative of the Respondents appeared at or participated in the hearing. This was so notwithstanding unsuccessful efforts on several occasions by counsel for the General Counsel to reach Respondents' attorney by telephone in Utica where his offices are maintained.

The parties represented at the hearing waived oral argument but agreed to submit proposed findings of fact and conclusions of law on or before August 1, 1960. Upon default of appearance by or on behalf of the Respondents, Teamsters Local 182 and Harold K. Ulrich, and after the hearing of witnesses, the Trial Examiner suggested that he would consider proposed findings of fact and conclusions, if submitted, and if reasonable. Counsel has submitted such proposed findings and conclusions on behalf of United Papermakers and Paperworks, AFL-CIO, and its Local Unions Nos. 363 and 363A, which are adopted and agreed to by counsel for Sitruie Incorporated. Upon the entire record of the case and after observation of witnesses, I adopt the proposed findings and conclusions as my own, except as modified below.

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Sitruie Incorporated, herein called Sitruie, is, and has been at all times material herein, a corporation duly organized under the laws of the State of New York. Its principal office and place of business is located at Capron Road, Utica,

New York. It is engaged in the manufacture, sale, and distribution of paper products and during the 12 months preceding the hearing sold and shipped from its Utica plant finished products valued in excess of \$50,000 to points outside the State of New York. It employs from 330 to 400 people and its sales average about \$50,000 a month.

Superfine Paper Mills, Inc., herein called Superfine, is, and has been at all times material herein, a corporation duly organized under the laws of the State of New York, with its principal office and place of business at Main Street, Clayville, New York, where it also engages in the manufacture, sale, and distribution of paper products. During the 12 months preceding the hearing the value of its finished products shipped to points outside New York exceeded \$50,000. Doeskin Products, Inc., herein called Doeskin, is, and has been at all times material herein, a corporation duly organized under the laws of the State of Delaware, with its principal office and place of business at 41 East 42d Street, New York, New York. It engages in the sale and distribution of toilet tissue, facial tissues, and related products and within the 12-month period preceding the hearing sold and shipped from New York points finished products valued in excess of \$1,000,000 to points outside the State of New York.

The three companies, Sitruie, Superfine, and Doeskin, are, and have been at all times material herein, affiliated businesses with common officers, ownership, directors, and operators, and constitute a single integrated business enterprise, with a common labor policy affecting the employees of all three companies.¹ Each company individually and the three companies collectively are an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The facts set forth hereinabove with reference to the business of the employer are alleged in the complaint and either admitted in the answer of the Respondents or were affirmed by the testimony of Mr. Nowinski, the comptroller for Sitruie.

II. THE LABOR ORGANIZATIONS INVOLVED

The Unions are, each of them, labor organizations within the meaning of the Act. Respondent Ulrich is and at all times material herein has been secretary-treasurer of Respondent Teamsters and an agent for Teamsters acting in its behalf, as admitted in the answer filed by Respondents on June 16, 1960.

III. THE UNFAIR LABOR PRACTICES

This case stems from an effort by Respondents beginning in late April 1960 to force Sitruie to recognize Teamsters as the bargaining representative for Sitruie's receiving and shipping employees, by threatening to picket the employer and actually commencing picketing on May 20, 1960, notwithstanding the fact that another union was lawfully recognized and a petition for an election could not be timely filed. There is no dispute on the determinative facts of the case.

Papermakers and its Local Unions 363 and 363A have acted as the exclusive collective-bargaining representatives for all production and maintenance employees at Sitruie and Superfine, with the usual statutory exclusions, since approximately 1938. Contracts varying in duration from 1 to 2 years and usually expiring on May 31 of the termination year have been traditional. The agreement in effect at the time the alleged unfair labor practices occurred was due to expire on May 31, 1960.

Negotiations between Sitruie and Superfine, on the one hand, and Papermakers and Local Unions 363 and 363A, on the other hand, began at Utica on April 28, 1960, and meetings between the parties were held thereafter from time to time on April 29, May 3, 11, 12, and 13. Following ratification by each local union, a new collective-bargaining contract was signed on May 20, 1960, effective until May 31, 1962.

On April 29, 1960, Teamsters wrote a letter to the plant manager for Sitruie and Superfine, Howard W. Rowan, Jr., demanding the right to bargain for the shipping and receiving employees at the Sitruie plant alone. Mr. Rowan received this letter on May 2, and immediately called company counsel for legal advice. The same day Rowan called Ulrich, the Teamsters' secretary-treasurer, and told him that counsel had advised that the Company could not legally recognize Teamsters as

¹ Sitruie and Superfine are actually subsidiaries of Doeskin. The officers and directors of the three companies are the same except that a Mr. Miller is executive vice president of Sitruie and a Mr. Schneider is executive vice president of Doeskin. Mr. Schneider is also a director of Doeskin but not of Sitruie.

the bargaining agency for the shipping and receiving employees. Ulrich complained that the Company's lawyer had "misinformed" Rowan and that Ulrich would call back after talking to his own lawyer. Ulrich did call back in the afternoon and told him that the advice was "lousy." He continued that they ought to sit down and get something done, and Rowan said he was sorry that he couldn't. Rowan's testimony continued that Sitruie had over-the-road and local contracts with the Teamsters which covered only the truckdrivers. He stated that the receiving and shipping employees whom the Teamsters sought to represent were not authorized to drive trucks. He again reiterated that he had told Ulrich it would be illegal to discuss with him anything pertaining to the shipping and receiving people.

On May 10 or 11, Rowan met Teamsters agents Ulrich and Belden at the shipping docks at Sitruie. He warned them not to come into the plant without permission. They responded in a rather surly tone by accusing him of "picking on" the Teamsters and claimed that the "people belong to" the Teamsters. Rowan told them he couldn't talk about the problem and "walked them out of the plant."

On Friday, May 13, negotiations between the Employer and the Papermakers had resulted in an agreement, subject only to ratification by the Local Unions. The following Monday morning, May 16, Ulrich called the plant and left a message with Mike Damsky, personnel director, for Rowan to the effect that if Rowan did not meet with the Teamsters by 2:30 p.m. that day, there would be a picket line in front of the plant. Rowan and Damsky met with Ulrich and Belden at 2:30 p.m. in Rowan's office. Rowan stuck to his position that he could not lawfully recognize the Teamsters; Ulrich became quite abusive, accused the Company of "conniving" with the Papermakers, and repeated his threats to put up a picket line if the Company signed a contract with the Papermakers. Rowan told him he expected to sign the agreement on Friday, May 20, after both Local Unions had ratified it. Ulrich indicated he would not put up the picket line until the contract was signed but extracted a promise from Rowan that Rowan would call him before he actually signed.

At 11:45 a.m. on May 20, Rowan called Ulrich and said he had decided to sign the contract that day. Ulrich called him a "two-timer," a "double-dealer" and said the picket line would be up Monday. However, by the afternoon of May 20, when Rowan returned from lunch the picket line was already up.

Picketing continued from May 20 to June 1, when it was terminated as a result of a temporary restraining order obtained by the General Counsel for the Board. Pickets were placed at front and rear entrances of the Sitruie plant. About 30 employees from shipping and receiving (out of a total of around 60) left their jobs and some of them joined in the picketing. A few production employees also went out and some participated in the picketing. The pickets carried signs stating that Sitruie was "unfair" to the Teamsters. (Exhibits 7, 8.) Picketing resumed for about 24 hours on June 2 or 3, but stopped again and has not been resumed since that time.

On June 20, 1960, United States District Judge Brennan issued an Order Extending Temporary Restraining Order effective "until the Board determines that a question concerning representation of the shipping and receiving employees of Sitruie, Incorporated may appropriately be raised under Section 9 of the Act." (Exhibit 9.)

Plant Manager Rowan testified that at all times relevant to the issue in this case 100 percent of the employees within the bargaining unit represented by Papermakers had signed checkoff authorization cards on file with Sitruie authorizing deduction of dues and their payment to Papermakers. No checkoff revocations were filed with Sitruie authorizing deduction of dues and their payment to Papermakers. No checkoff revocations were filed with the Company prior to May 31, 1960.

Concluding Findings

The legislative history of Section 8(b)(7)(A) conclusively establishes a congressional intention to broaden the Taft Act ban against recognition picketing as contained in Section 8(b)(4)(C). This provision of the Taft Act barred recognition picketing where the object was to force bargaining with one union when another union had been certified as the bargaining representative. The new provision makes it quite clear that Congress sought to ban any recognition picketing where an incumbent union is lawfully recognized, regardless of whether it has been certified as the bargaining representative by the Board.

In determining whether Section 8(b)(7)(A) has been violated, three essential findings are necessary:

1. That the object of the threats to picket and the picketing was to force the employer to recognize the Teamsters and the employees to accept the Teamsters as their bargaining representative.

2. That the incumbent union was "lawfully recognized" by the Employer.

3. That a question concerning representation could not appropriately be raised under Section 9(c) of the Act.

There can be no doubt as to the object of the picketing. It was explicitly stated in Teamsters' letter of April 29. It was repeated in Ulrich's telephone and other conversations with Rowan on May 2, 10 or 11, 16, and 20. It was made obvious in the actual picketing between May 20 and June 1 and by the picket signs which were carried. The Teamsters was seeking to force itself upon both the Employer and the employees, and this is precisely what Congress sought to prohibit by the enactment of Section 8(a)(7)(A).

Neither is there any doubt about the legality of the recognition of Papermakers by the Employer. The original recognition occurred in 1938 for the same unit as now exists. At the time of the hearing and for some months before, 100 percent of the employees in the unit were on checkoff. Production and maintenance units of the type involved here have repeatedly been found appropriate by the Board in cases too numerous to mention. Indeed, it may be questioned if a unit confined to shipping and receiving employees alone could be found appropriate under any circumstances, and this may account for the Teamsters' reluctance to file a petition before the 60-day "insulation period" began on April 1, 1960.

Obviously no question concerning representation could be raised under 9(c) of the Act at the time the Teamsters began its unlawful activities. The parties began negotiations in good faith less than 60 days before the expiration date of their contract without any notice of the Teamsters' claims. They reached agreement and signed the new agreement 10 days before the contract-bar date—a petition filed at any time within this period would have been dismissed as untimely. *Deluxe Metal Furniture Company*, 121 NLRB 995.

Accordingly it must be found that Respondents by threats to picket and by actually picketing for recognition between April 29 and June 1, 1960, and until restrained by court order, acted without legal justification and in violation of Section 8(b)(7)(A) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondents, set forth in section III, above, occurring in connection with the operations of the Employer 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

It having been found that the Respondents engaged in unfair labor practices in violation of Section 8(b)(7)(A) of the Act by threatening to picket and by actually picketing Sitruie on and after April 29, through June 1, 1960, for the purpose of forcing recognition of Respondents as the bargaining representative of Sitruie's shipping and receiving employees, notwithstanding the fact that United Papermakers and Paperworkers, AFL-CIO and its Local Unions 363 and 363A are lawfully recognized by Sitruie as such bargaining representative and a question concerning representation may not now appropriately be raised, it is recommended that the Respondents cease and desist from engaging in such unlawful activities.

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

CONCLUSIONS OF LAW

1. Sitruie Incorporated is an Employer within the meaning of Section 2(2) of the Act and a Party to the Contract.

2. The Unions are, each of them, labor organizations within the meaning of Section 2(5) of the Act.

3. United Papermakers and Paperworkers, AFL-CIO, and its Local Unions 363 and 363A on April 29, 1960, and at all times material herein, were and now are lawfully recognized as the exclusive representative of all production and maintenance employees in accordance with the Act, including shipping and receiving employees.

4. The object of the threats to picket and the actual picketing which occurred between April 29 and June 1, 1960, was to force recognition of Respondents as the bargaining representative of shipping and receiving employees, even though the incumbent unions were lawfully recognized and a question concerning representation could not appropriately be raised under Section 9(c) of the Act.

5. By the acts described herein, Respondent Teamsters and Respondent Ulrich and each of them did engage in and are engaging in unfair labor practices within the meaning of Section 8(b)(7)(A) of the Act.

6. The acts of Respondent Teamsters and Respondent Ulrich described herein 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 flow of commerce.

[Recommendations omitted from publication.]

**Granwood Furniture Company and Furniture and Bedding
Workers Union, Local 18-B, UFWA, AFL-CIO. Case No.
13-CA-3307. January 31, 1961**

DECISION AND ORDER

On October 14, 1960, Trial Examiner Owsley Vose issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed with respect to them. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

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, the brief, and the entire record in this case, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner.

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, Granwood Furniture Company, Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from coercively questioning employees as to their union sympathies, membership, and activities, threatening employees with reprisals because of such activities, and in any like or related manner interfering with, restraining, or coercing its employees in the

¹ Member Rodgers would not rely on the Trial Examiner's inference that because of the small size of its plant the Respondent had knowledge of the union activities of Bahan and Jackson, although he concurs in the Trial Examiner's finding, based on other evidence, that Respondent did, in fact, know that they were union adherents.