Stant Lithograph, Inc. and Local 13, Amalgamated Lithographers of America. Case No. 5-CA-1676. April 5, 1961

DECISION AND ORDER

On August 12, 1960, Trial Examiner Louis Plost issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in a certain unfair labor practice 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 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 and brief, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions.

As set forth in the Intermediate Report, Local 13, Amalgamated Lithographers of America, herein called the Lithographers, was certified by the Board, on February 2, 1959, as collective-bargaining agent for Respondent's employees. Thereafter approximately 25 meetings between these parties produced agreement on 10 out of 19 clauses in the Lithographers' proposed contract. On December 15. 1959, the Lithographers filed a charge against Respondent alleging, inter alia, a violation of Section 8(a) (5) of the Act. On January 28, 1960, Respondent and the Lithographers signed a settlement agreement, which required Respondent to bargain in good faith with the Lithographers. On January 29, 1960, the Regional Director of the Board approved the settlement agreement. Thereafter negotiation meetings of 2 hours each were held on February 17 and 23 and March 1, 1960. A fourth meeting was scheduled for March 11, 1960. day before this scheduled meeting, the Respondent was informed by an employee that the Washington Printing Pressmen, Assistants and Offset Workers Union (Locals 351-42-530), herein called the Pressmen, intended to file a petition for a representation election. On March 11 the Respondent's attorney notified the Lithographers that the Respondent would not bargain further with the Lithographers. It is this refusal to bargain which led to the filing of the charge in this case.

Respondent contends that it was obligated under the *Midwest Piping* doctrine to refrain from bargaining with the Lithographers after it was notified, on March 10, 1960, that the Pressmen intended to file

¹ Midwest Piping & Supply Co., Inc., 63 NLRB 1060.

¹³¹ NLRB No. 3.

a petition for a representation election. We find no merit in this contention.

It is well settled that after an employer enters into a settlement agreement requiring it to bargain in good faith with a union the employer is under an obligation to honor that agreement for a reasonable time after its execution.² Here the Respondent met with the Lithographers only three times and spent only 6 hours in negotiations with the Lithographers between the date of the settlement agreement and Respondent's refusal to bargain further. The record shows that no impasse was reached in these negotiations; in fact, as noted, the parties had scheduled another meeting for March 11, 1960. Under these circumstances, we find that, on that date, Respondent had not discharged its obligation under the settlement agreement to bargain for a reasonable time with the Lithographers.

It is equally well settled that the *Midwest Piping* doctrine, as reaffirmed in *Shea Chemical Corporation*, is applicable only where a real question concerning representation exists. Here, since Respondent was still under an obligation to bargain with the Lithographers for a reasonable time, the Pressmen's petition could not and did not raise a real question concerning representation. Accordingly, we find that by refusing to bargain with the Lithographers on and after March 11, 1960, the Respondent violated Section 8(a) (5) and (1) 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, Stant Lithograph, Inc., Washington, D.C., its officers, agents, successors, and assigns, shall:

1. Cease and desist from refusing to recognize or to bargain collectively with Local 13, Amalgamated Lithographers of America, as the exclusive representative of all its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment.

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

(a) Upon request, bargain collectively with Local 13, Amalgamated Lithographers of America, as the exclusive representative of all the employees in the appropriate unit with respect to wages, rates of pay, hours of employment, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

² Poole Foundry and Machine Company, 95 NLRB 34, enfd. 192 F 2d 740 (CA. 4); Consolidated Textile Company, Inc. (Ella Division), 106 NLRB 580 ² 121 NLRB 1027, 1029.

- (b) Post at is plant in Washington, D.C., copies of the notice attached hereto marked "Appendix." Copies of such notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the Respondent's authorized representatives, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted and including each of Respondent's bulletin boards. Reasonable steps shall be taken by the Respondent to insure that said notice is not altered, defaced, or covered by any other material.
- (c) Notify the Regional Director for the Fifth Region, in writing, within 10 days from the date of this Decision and Order, what steps the Respondent has taken to comply herewith.

CHAIRMAN McCulloch took no part in the consideration of the above Decision and Order.

APPENDÎX

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, as amended, we hereby notify our employees that:

WE WILL, upon request, bargain collectively with Local 13, Amalgamated Lithographers of America, as the exclusive representative of all our employees in the bargaining unit described below with 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. The appropriate bargaining unit is:

All lithographic production employees at our Washington, D.C., plant, excluding all other employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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."

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon a charge filed March 16, 1960, by Local 13, Amalgamated Lithographers of America, herein called the Union, that Stant Lithograph, Inc., Washington, D.C., herein called the Respondent, has been engaged in and is engaging in unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the Regional Director for the Fifth Region (Baltimore, Maryland), issued a complaint and notice of hearing on May 3, 1960, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, as amended, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

On May 20, 1960, the Respondent filed an answer denying in effect that it had engaged in any of the unfair labor practices alleged averring an affirmative defense.

In substance the complaint alleged that since February 10, 1959, the Union represented a duly certified appropriate collective-bargaining unit of the Respondent's employees and that the Respondent, since March 11, 1960, has refused to bargain collectively with the Union as the exclusive representative of said appropriate unit, in violation of the Act, more particularly Section 8(a)(1) and (5) thereof. Pursuant to notice, a hearing was held before Louis Plost, the duly designated Trial Examiner, on June 21, 1960, at Washington, D.C.

At the hearing all parties were represented and were afforded full opportunity.

At the hearing all parties were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to argue orally on the record, and to file briefs and proposed findings and conclusions. At the close of the hearing the Respondent moved to dismiss the complaint, ruling was reserved, and is disposed of by the final findings in this report. The General Counsel made an oral argument on the record, the Respondent indicated it would file a brief. A brief was received from the Respondent on July 25, 1960.

After the close of the hearing (July 13, 1960), the General Counsel moved to correct the transcript. The Respondent in writing notified the Trial Examiner that it did not oppose the motion. The motion is granted. The motion as submitted is attached to the file of exhibits in the transcript of the proceedings as Trial Examiner's Exhibit No. 1.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, Stant Lithograph, Inc., is, and has been, at all times material herein, a corporation organized under and existing by virtue of the laws of the District of Columbia, with its principal office and place of business in Washington, D.C., where it is engaged in the business of lithographic printing. The Respondent, in the course and conduct of its business operations, as described above, during the preceding 12-month period (a representative period), shipped products valued in excess of \$50,000 from its place of business directly to points located outside the District of Columbia.

II. THE LABOR ORGANIZATION INVOLVED 1

Local 13, Amalgamated Lithographers of America, is a labor organization within the meaning of Section 2(5) of the Act and admits employees of the Respondent to membership.

III. THE UNFAIR LABOR PRACTICES

The Refusal To Bargain

1. The appropriate unit and the Union's representation therein

The parties are in agreement that:

All lithographic production employees at Respondent's Washington, D.C., plant, excluding all other employees, office clerical employees, guards, profes-

It appeared at the hearing that the Intervenor has no interest in the matter which would entitle it to be made a party.

sional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subsection (b), of the Act.

It is not disputed that on February 2, 1959, the Regional Director for the Board's Fifth Region conducted a consent election among the Respondent's employees comprising the above-described unit for the purpose of designating a bargaining representative and that on February 10, 1959, certified the Union as the duly designated bargaining representative for said appropriate unit, the election and certification being made in Case No. 5-RC-2660.

The complaint alleges and the answer admits that a charge was filed by the Union December 15, 1959 (11 months after its certification), asserting that the Respondent was engaging in conduct violative of Section 8(a)(1) and (5) of the Act (Case No. 5-CA-1647) and thereafter on January 28, 1960, the parties involved herein:

Entered into a Settlement Agreement in settlement of the said charge filed by the Union in said Case No. 5-CA-1647, one of the terms of which Settlement Agreement required the Respondent to bargain collectively upon request with the Union as the exclusive representative of all employees in the unit herein above described with respect to rates of pay, hours of employment or other conditions of employment and if an understanding is reached, to embody such understanding in a signed agreement.

It is further admitted that on and after January 28, 1960, the Union requested the Respondent to bargain with it as the exclusive representative of the herein described appropriate unit and that:

On or about March 11, 1960, and at all times thereafter, down to and including the date of the issuance of this Complaint, Respondent did refuse and continues to refuse to bargain collectively with the Union as the exclusive representative of all the employees of Respondent in the unit described above.

The Respondent's above-related conduct is alleged to be violative of Section

8(a)(1) and (5) of the Act.

Bernard Voitch, the Union's president, testified that after the execution of the January 28, 1960, settlement agreement 2 the parties met for negotiation, together with a Federal mediator, on February 17 and 23 and March 1, 1960; that the Union had requested and the Respondent had refused more frequent meetings; that during the course of these meetings the Union had presented its proposals, the Respondent had presented counterproposals, the parties having agreed on 10 of 19 proposed sections of a contract by March 1; and that at the March 1 meeting another session was agreed upon for March 8, 1960. However, the Respondent by telegram changed the date to March 11, on which date Voitch was informed by the Respondent's attorney that the Respondent would not meet with the Union. He testified:

I received a telephone call at approximately 9:05 in the morning from Miss Helen Humphrey, who told me Mr. Stant was not going to meet with us that day. I asked her why not, and she told me that Mr. Stant had told her someone was going to file a petition with the Labor Board that day, and, therefore, he would not meet with us.

I asked her at that point whether he actually was refusing to meet with us and she gave me an affirmative answer.

Voitch further testified that the meeting set for March 11 was not held nor has there been any meeting held since then, although the Union made formal written

request for such meetings.3

There is no dispute that on March 15, 1960 (4 days after the Respondent's final refusal to bargain with the Union), the Washington Printing Pressmen, Assistants and Offset Workers Union, Locals 351, 42, and 530, filed a petition for certification of representatives for the same unit represented by the Union. On April 21, the Regional Director for the Fifth Region dismissed the petition. On May 23 the Board sustained the Regional Director's dismissal.

The record discloses that on March 17, 1960, the Union, by letter, requested a meeting with the Respondent. (General Counsel Exhibit No. 5.)

On March 23, the Respondent, by telegram informed the Union that it should communicate with the Respondent's attorney. (General Counsel's Exhibit No. 6)

² General Counsel's Exhibit No. 2

General Counsel's Exhibits Nos. 5 and 7.

On March 23, the Union requested, by letter to the Respondent's attorney, that a meeting be held for "negotiation." (General Counsel's Exhibit No. 7.)

On March 28, 1960, the Respondent's attorney wrote the Union (General Counsel's Exhibit No. 8):

MARCH 28, 1960.

Mr. Bernard P. Voith. Local 13. Amalgamated Lithographers of America, 1003 K Street NW., Washington 1, D.C.

DEAR MR. VOITH: Mr. Stant of Stant Lithograph, Inc., has referred to me your letter of March 17, 1960, requesting a further meeting with him.

As you doubtless know, on March 15, 1960, a petition was filed by the Washington Printing Pressmen, Assistants & Offset Workers Union requesting the Board to conduct an election among his employees. Since there appears to exist a question concerning the representation of his employees, Mr. Stant may not, under the law, continue to negotiate with either union until a determina-tion of that question has been made by the Board. Accordingly, he will be unable to resume negotiations with you until that matter has been resolved.

Very truly yours,

HELEN F. HUMPHREY.

On May 2, the Union called the Respondent's attention to the dismissal of the Pressmen's petition. (General Counsel's Exhibit No. 9.)

On May 3, the Respondent, by its attorney wrote the Union (General Counsel's Exhibit No. 10):

Mr. BERNARD P. VOITH, President, Local 13. Amalgamated Lithographers of America, 1003 K Street NW., Washington 1, D.C. Re Stant Lithograph, Inc.

DEAR MR. VOITH: Nothwithstanding the fact that the Fifth Regional Office of the National Labor Relations Board has dismissed the petition filed by the Printing Pressmen's Union, Mr. Stant doubts that you presently represent a majority of his employees in an appropriate unit.

Furthermore, the Printing Pressmen have served us with a copy of an appeal

from dismissal of their petition which is still pending before the Board.

Under the circumstances, Mr. Stant believes that it would serve no useful purpose and, indeed, be in violation of the law if he were to resume negotiations with your organization at this time.

Very truly yours,

Helen F. Humphrey. (S) HELEN F. HUMPHREY.

2. The Respondent's contention

The Respondent called no witnesses, however the answer avers:

AND AS AN AFFIRMATIVE DEFENSE Respondent Stant further alleges that on March 10, 1960 Respondent was advised by an employee that a sub-stantial number of his employees no longer wished to be represented by the charging party and that they would file a petition promptly with the National Labor Relations Board requesting a new election to determine their wishes in regard to a bargaining representative, and that thereafter the employer was informed that a petition had been filed in Case No. 5-RC-3061 by the Washington Printing Pressmen, Assistants and Offset Workers Union (Locals 351-42-530), which petition raised a bona fide question concerning the representation of the employees of Respondent, and that at all times after March 10, 1960 the Respondent had a bona fide doubt as to whether a majority of his employees in the unit alleged above were represented by the charging party.

In a very interesting brief the Respondent argues the points raised in its answer. f course neither the unsupported answer or the brief are evidence The Respond-Of course neither the unsupported answer or the brief are evidence ent sets up a premise from which it argues that because the complaint herein alleges an 8(a)(5) violation from and after March 11, 1960, and does not "reach back to include the period covered by ALA's [the Union's] prior charge which led to the settlement agreement of December 28, 1959" the Regional Director has in fact dismissed any charge of misconduct prior to March 11, 1960.4

The Trial Examiner permitted testimony as to the previous charge in Case No. 5-CA-1647, as well as the settlement agreement growing out of it, as "background."

Moreover these matters are not in dispute, being admitted by the answer.5

The Trial Examiner admits that his evaluation of the record is of course affected by Case No. 5-CA-1647, the settlement agreement above referred to, and also by the dates which are pertinent to a complete understanding of the record.

The Respondent's brief argues that "for the purpose of this proceeding" it must

be presumed that "the Respondent is innocent of any unfair labor practice prior to March 11, 1960"; that there has been no proof of lack of good faith; and that it is not shown the Respondent's doubt of the Union's majority status was not entirely

Citing Midwest Piping (63 NLRB 1060) as a firm landmark, from which the Respondent feared to in any manner depart, the brief then argues: "There is nothing in the record to warrant a conclusion that the Settlement Agreement extended or en-

larged Respondent's statutory obligation by one iota."

Of course this is merely stating the obvious. If, as the Respondent contends, the settlement agreement in Case No. 5-CA-1647 required bargaining "only to the extent and for the time necessary to remedy a prior refusal to bargain," by citing good but inappropriate law, the Respondent cannot escape the fact that only three meetings took place from the execution of the settlement agreement until the Respondent's refusal to bargain because of its claimed good-faith doubt of the Union's majority which claimed good-faith doubt continued after the Regional Director dismissed the petition filed by the Union's rival and after the Director's dismissal was affirmed by the Board.

The General Counsel relies on Pool Foundry & Supply Co., Inc.,6 which the Trial

Examiner finds to be applicable herein.

It has been well established that an employer cannot decide for itself whether a union has lost its bargaining status as a certified bargaining representative, and so deciding refuse to deal with it further, since that is a matter for determination by the Board.7

The Trial Examiner finds no merit in the Respondent's contention.

Conclusion

The Trial Examiner finds, on the entire record, that by refusing to bargain with the Union on and after March 11, 1960, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) 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

It having been found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent refused to bargain in violation of the Act, it will be recommended that, upon request, the Respondent bargain collectively with the Union, and, if an understanding is reached, that such understanding be embodied in a signed agreement.

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

The right to "condone" is not attributed to the Regional Director by the Respondent.

It should be pointed out that the settlement agreement specifically stated that the Respondent did not admit engaging in unfair labor practices.

^{6 95} NLRB 34, enfd. 192 F. 2d 740 (C.A. 4), cert. denied 342 U.S. 954

⁷ N L R.B v. Sanson Hosiery Mills, Inc., 195 F. 2d 350 (C.A. 5).

CONCLUSIONS OF LAW

1. The Respondent, Stant Lithograph, Inc., is, and has been, at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 13, Amalgamated Lithographers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All lithographic production employees at the Respondent's Washington, D.C., plant, excluding all other employees, office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. The Union, Local 13, Amalgamated Lithographers of America, was, on March 11, 1960, and, at all times since, 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.

5. By refusing on and after March 11, 1960, to bargain collectively with the afore-

said Union as the exclusive representative of the employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid unfair labor practice the Respondent is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and the Respondent has engaged in and is engaging in unfair labor

practices within the meaning of Section 8(a)(1) of the Act.

7. 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.]

Fontainebleau Hotel Corporation d/b/a Hotel Fontainebleau and Hotel Employees Union, Local 255, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO. Case No. 12-CA-1544. April 6, 1961

DECISION AND ORDER

On December 22, 1960, Trial Examiner Lloyd Buchanan issued his: Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfairlabor 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, together with a supporting brief.1

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-

member panel [Members Rodgers, Leedom, and Fanning].

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 and brief, and the entire record in this

The Respondent's request for oral argument is hereby denied as the record, including: the exceptions and the brief, adequately presents the issues and positions of the parties.

¹³¹ NLRB No. 6.