

unquestioned in that case—was illegal, the General Counsel rested exclusively upon the fact that the Board had found, in an earlier complaint proceeding, that the employer had in fact unlawfully withheld similar merit raises from these very same employees exactly 1 year before. In reversing the Trial Examiner and dismissing the complaint, the Board said: "An examination of the record herein reveals that the General Counsel introduced no independent evidence showing that the Respondent knew that the Charging Parties were engaging in union or other protected activities at the time the wage increases were granted nor *any independent evidence establishing that the Charging Parties were denied wage increases because of their activities or membership*—all essential elements of the unfair labor practice findings made herein." [Emphasis supplied.] The Board then added: "While evidence, whether record or in the form of prior Board findings, concerning the conduct which occurred prior to the statutory 6-month period may be utilized as background evidence to evaluate a Respondent's subsequent conduct, it is well established that Section 10(b) of the Act precludes the Board from giving independent and controlling weight to such evidence."

I think it clear in the instant case that the General Counsel suggests I give independent and controlling evidence to the prior unfair labor practices of the Respondent to reach a conclusion that 1 year later its failure to recall Smith was motivated by the same illegal intent. Indeed, the General Counsel's position on this point is clear on the record.

TRIAL EXAMINER: . . . What evidence is there in this record, Mr. Butler, within the 6-month period that tends to indicate the reason why the Company did not call Mr. Smith to come back to work, was because he was union minded?

MR. BUTLER: Sir, I do not think that the General Counsel must show evidence which occurred within the 6-month period to sustain its allegations.

* * * * *

There is nothing that occurred in the six months previous to the filing of the charge which the General Counsel complains of other than the refusal to reinstate Mr. Smith.

The charge was filed on September 2, 1960. I deem the General Counsel's above statement a virtual concession that "the evidence of what happened within the period beginning 6 months before the filing of the original charge . . . is not sufficient standing alone to support a finding of [illegal] discrimination."³ As the Supreme Court stated: ". . . a finding of violation which is inescapably grounded on events predating the limitations period is directly at odds with the purposes of the Section 10(b), proviso."⁴ I find that the evidence in this record is insufficient to support the complaint as a matter of law.⁵

[Recommendations omitted from publication.]

³ *Breckenridge Gasoline Company*, 127 NLRB 1462

⁴ *Local Lodge 1424, International Association of Machinists, AFL-CIO, et al v. NLRB*. (Bryan Manufacturing Co.), 362 U.S. 411.

⁵ *Cf. Paramount Cap Manufacturing Co.*, 116 NLRB 993.

The Lord Baltimore Press, Inc. and Amalgamated Lithographers of America, Local 18. Case No. 5-CA-1679. May 22, 1961

DECISION AND ORDER

On June 21, 1960, Trial Examiner William F. Scharnikow issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in 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.

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 [Chairman McCulloch and Members Leedom and Fanning].

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 the case, and hereby adopts the findings, 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, the National Labor Relations Board hereby orders that the Respondent, The Lord Baltimore Press, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with Amalgamated Lithographers of America, Local 18, as the exclusive representative of all its employees in the following appropriate unit: All lithographic department employees employed at the Respondent's Baltimore, Maryland, location, excluding all other employees, professional employees, guards, and supervisors as defined in the Act.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form a labor organization, to join or assist Amalgamated Lithographers of America, Local 18, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, or to refrain from engaging in any such activities.

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

(a) Upon request, bargain collectively with Amalgamated Lithographers of America, Local 18, as the exclusive representative of all employees in the appropriate unit, in respect to rates of pay, wages, hours of employment, and other terms or conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant at Baltimore, Maryland, copies of the notice attached to the Intermediate Report marked "Appendix A."¹ Copies

¹ This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" the words "A Decision and Order" 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."

of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after having been duly signed by the Respondent, be posted by 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. Reasonable steps shall be taken by the Respondent to insure that such notices are 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 Order, what steps it has taken to comply therewith.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

The complaint alleges, but the answer of The Lord Baltimore Press, Inc., herein called the Respondent, denies that on and since February 1, 1960, the Respondent has committed an unfair labor practice affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519), by refusing to bargain collectively with Amalgamated Lithographers of America, Local 18, herein called the Union, as the exclusive bargaining representative of an appropriate employee unit consisting of all lithographic department employees employed at the Respondent's Baltimore, Maryland, location, excluding all other employees, professional employees, guards, and supervisors as defined in the Act.

Actually, the only issue raised by the Respondent in the present case concerns the validity of an employee representation election in Case No. 5-RC-2767 (not published in NLRB volumes), upon the basis of which the Board, over the Respondent's objections, certified the Union to be the exclusive bargaining representative in the aforesaid appropriate unit. All the other essentials of the complaint are either admitted in the answer or were established by stipulation or uncontradicted evidence at a hearing held before the duly designated Trial Examiner at Baltimore, Maryland, on May 16, 1960. Since the hearing, I have received briefs from the General Counsel and the Respondent.¹

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Lord Baltimore Press, Inc., is a Maryland corporation with its principal office in New York City. It has a place of business in Baltimore, Maryland, where it is engaged in the manufacture of folding cartons, labels, bookwork, and related printed matter. In its Baltimore operations during the 12 months preceding the issuance of the complaint, the Respondent shipped products valued at more than \$50,000 directly to points located outside the State of Maryland. I find that the Respondent is engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Lithographers of America, Local 18, is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICE

A. *The certification of the Union and the Respondent's refusal to bargain*

On April 28, 1959, the Union filed a petition in Case No. 5-RC-2767 for certification as the exclusive bargaining representative of the lithographic department

¹ Counsel for the Respondent, by letter to me dated June 16, 1960, requested that I direct the correction of eight obvious errors in the transcript of the hearing. The request is granted. The letter has been included with the exhibits as Trial Examiner's Exhibit No. 1.

employees at the Respondent's Baltimore plant. On May 8, 1959, the Respondent and the Union entered into a stipulation for certification upon consent election, setting forth specifically their agreement that the departmental unit was appropriate for the purposes of collective bargaining; that an election by secret ballot should be conducted among the employees in this unit under the supervision of the Board's Regional Director for the Fifth Region to determine whether they desired to be represented by the Union; that the votes be counted by the Regional Director or his agents and a tally of ballots furnished to each of the parties; and that all subsequent procedure be in conformity with the Board's Rules and Regulations.

The election was held under the Regional Director's supervision on June 11, 1959. According to the tally of ballots, which was served upon both the Respondent and the Union, 129 ballots were cast of which 76 were votes cast for representation by the Union and 53 were votes cast against such representation.

On June 16, 1959, the Respondent filed objections to the conduct of the election asserting (1) that before the election, but without knowledge on the Respondent's part, one of its supervisors had engaged in organizing and other activities on behalf of the Union; and (2) that the Union had also issued false and misleading propaganda to the employees. On these grounds, the Respondent requested that the election be set aside.

On September 23, 1959, the Board's Regional Director issued his report on the Respondent's objections, setting forth and accepting the substance of the statements of the various "witnesses" presented by the Respondent in support of the objections, but nevertheless overruling the objections, and recommending that the Union be certified as exclusive bargaining representative.

On October 9, 1959, the Respondent filed with the Board its exceptions to the Regional Director's report. It urged the Board, "even upon the basis of the factual account set forth in the [Regional Director's] Report on Objections," to find that the employees' right "to cast a free and unrestrained vote in the election . . . seriously impaired," and, therefore, to set the election aside.

On November 27, 1959, the Board issued its decision and certification of representatives. It affirmed the Regional Director's conclusion that there had been no showing by the Respondent of any ground which would warrant setting aside the election. The Board concluded that the Respondent's exceptions raised no material issue. Accordingly, it overruled the Respondent's objections to the conduct of the election, and, in accordance with the result of the election, certified the Union as the exclusive bargaining representative of the employees in the stipulated appropriate bargaining unit.

By letter dated February 1, 1960, President William S. Colton of the Union requested Vice President A. William Chapman of the Respondent to arrange a meeting for the purpose of their entering into negotiations. By letter, dated March 8, 1960, Vice President Chapman rejected the Union's request, stating:

After thorough consideration of your request for a collective bargaining meeting, we are of the opinion that the National Labor Relations Board was wrong in overruling our objections to the election in this case. We are still convinced that no proper election was held and that the Board was in error in certifying your union under the circumstances.

For this reason we must decline to recognize your organization as the representative of employees of the Company.

B. Conclusions

From the foregoing, it appears, and I find, that since March 8, 1960, the Respondent has refused to bargain collectively with the Union although, on November 27, 1959, the Union was certified by the Board as the exclusive bargaining representative of the Respondent's employees in an appropriate unit of lithographic department employees at the Respondent's Baltimore establishment. At the hearing, and again in his brief, the Respondent has explained that it challenges the validity of the election upon which the Board, in issuing this certification, based its finding that the Union was selected by a majority of the employees in the bargaining unit. It not only argues that the Board's and the Regional Director's rejections of its objections to the conduct of the election were erroneous, but also that the Board and the Regional Director erred in not providing a hearing on these objections in the representation case, and that I also acted improperly in rejecting the Respondent's offer to prove the basis for its objections to the election during the hearing in the present complaint case.

But I am of the opinion that the issue which the Respondent thus seeks to litigate in the present complaint case has already been decided by the Board in the repre-

sentation case, and that I am bound by this decision and cannot properly permit relitigation of the issue. Accordingly, I find that, as shown by the vote in the election conducted by the Regional Director on June 11, 1959, the Respondent was selected by a majority of the Respondent's employees in the appropriate Baltimore unit. In accordance with the Board's certification, findings, and conclusions in the representation case and the Respondent's admitted refusal to bargain, I further conclude that, on and since March 8, 1960, the Respondent has committed unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, by refusing to bargain collectively in good faith with the Union as the exclusive bargaining representative of the Respondent's employees in an appropriate bargaining unit consisting of the lithographic department employees employed at the Respondent's Baltimore, Maryland, location, excluding all other employees, professional employees, guards, and supervisors as defined in 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 set forth in section I, above, have a close, intimate, and substantial relationship 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 within the meaning of Section 8(a)(1) and (5) of the Act, I will recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. Amalgamated Lithographers of America, Local 18, is a labor organization within the meaning of Section 2(5) of the Act.

2. All lithographic department employees employed at the Respondent's Baltimore, Maryland, location, excluding all other employees, professional employees, guards, and supervisors as defined in the Act, have constituted, and now constitute, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

3. The above-named Union was on or about November 27, 1959, and at all material times since that date has been the exclusive representative of all employees in the aforesaid appropriate unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. By refusing, on and since March 8, 1960, to bargain collectively in good faith with the above-named Union as the exclusive representative of its employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

5. 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.]

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 refuse to bargain collectively with Amalgamated Lithographers of America, Local 18, as the exclusive representative of the employees of the bargaining unit described below.

WE WILL, upon request, bargain with Amalgamated Lithographers of America, Local 18, as the exclusive representative of all the employees in the bargaining unit described below 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.

The bargaining unit is:

All lithographic department employees employed by us at our Baltimore, Maryland, location, excluding all other employees, professional employees, guards, and supervisors as defined in the Act.

THE LORD BALTIMORE PRESS, INC.,
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.

**Dal-Tex Optical Company, Inc. and International Union of
Electrical, Radio and Machine Workers, AFL-CIO**

**Dal-Tex Optical Company, Inc. and Willie B. Green. Cases Nos.
16-CA-1359, 16-CA-1359-2, and 16-CA-1358. May 23, 1961**

DECISION AND ORDER

On December 29, 1960, Trial Examiner Leo F. Lightner 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. Thereafter, the Respondent filed exceptions to the Intermediate Report.¹

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel [Members Rodgers, Leedom, and Fanning].

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

ORDER

Upon the entire record in these cases, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Dal-Tex Optical Company, Inc., Dallas, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against employees because they have given testimony, or appeared for the purpose of giving testimony, under the Act.

¹ No briefs were filed by any of the parties.