

A. O. Smith Corporation, Granite City Plant and William T. Randolph, Thomas L. Willmore, James L. Hall, Arley Potts, Anton Becker, William E. Watts, Ruben Luther, Frank Becker, William R. Hogan, Clyde Woolverton, Henry L. Kent, Thomas E. Gipson, Clarence E. Shaw, Frederick J. Bailey, Albert W. Ennis, Conrad F. Bauer, Harry W. Nichols, William G. Whitson, Harold R. Garner, Sr., Elroy Paschedag, Albert Rowden, Arthur Ray Miller, and Calvin J. Cissell

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Local Union No. 575 and William T. Randolph, Thomas L. Willmore, James L. Hall, Arley Potts, Anton Becker, William E. Watts, Ruben F. Luther, Frank Becker, William R. Hogan, Clyde Woolverton, Henry L. Kent, Thomas E. Gipson, Clarence E. Shaw, Frederick J. Bailey, Harry W. Nichols, William G. Whitson, Harold R. Garner, Sr., Elroy Paschedag, Albert Rowden, and Arthur R. Miller. *Cases Nos. 14-CA-1757, 14-CA-1759, 14-CA-1760, 14-CA-1761, 14-CA-1762, 14-CA-1763, 14-CA-1764, 14-CA-1765, 14-CA-1766, 14-CA-1767, 14-CA-1768, 14-CA-1769, 14-CA-1770, 14-CA-1771, 14-CA-1774, 14-CA-1775, 14-CA-1777, 14-CA-1778, 14-CA-1781, 14-CA-1782, 14-CA-1789, 14-CA-1804, 14-CA-1828, 14-CB-526, 14-CB-530, 14-CB-531, 14-CB-532, 14-CB-533, 14-CB-534, 14-CB-535, 14-CB-536, 14-CB-537, 14-CB-538, 14-CB-539, 14-CB-540, 14-CB-541, 14-CB-542, 14-CB-545, 14-CB-546, 14-CB-548, 14-CB-549, 14-CB-552, and 14-CB-562. May 25, 1962*

SUPPLEMENTAL DECISION AND ORDER

On July 21, 1961, the Board issued its Decision and Order in the above-entitled proceeding¹ finding, *inter alia*, that Respondent Company had unlawfully assisted Respondent Union and ordering Respondent Company to withdraw and withhold recognition from Respondent Union as the representative of its employees until the Union was certified as such representative by the Board. Thereafter both Respondents filed motions for reconsideration of the foregoing order and for the reopening of the record to receive evidence concerning changed conditions since the close of the hearing on February 2, 1959. On October 6, 1961, the Board ordered that the record in the proceeding be reopened for the purpose of receiving additional evidence concerning the ousting of "Herzing and his group" from positions of power within Respondent Union, and the activities of the said group in organizing a rival union to supersede Respondent Union as bargaining representative. Pursuant to the Board's Order, a reopened

¹ 132 NLRB 339

137 NLRB No. 39.

hearing was held on November 20 and 21, 1961, before Trial Examiner Thomas N. Kessel. On February 7, 1962, the Trial Examiner issued a Supplemental Intermediate Report and Recommendations in which, as set forth in the copy thereof attached hereto, he recommended that the motions for modification of the Board's Order be denied. Thereafter both Respondents filed exceptions to the Supplemental Intermediate Report and supporting briefs.² Respondent Union also filed a motion to strike the recommendations of the Trial Examiner upon the ground that the Trial Examiner had acted beyond the scope of the remand order in making such recommendations. General Counsel filed a brief in opposition to the said motion. The motion is denied.

The Board has reviewed the rulings of the Trial Examiner made at the reopened hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case and adopts the findings³ but not the recommendations of the Trial Examiner, for the following reasons:

All the acts of assistance rendered to Respondent Union by Respondent Company occurred after Respondent Union was validly certified by the Board as bargaining representative of the Company's employees. At the present time there are three separate representation petitions on file with the Board's Regional Office seeking elections among employees of Respondent Company. There is no contract bar to immediate elections. All three petitioning unions—District 50, United Mine Workers, Independent Auto Frame Workers of America, and District 9, International Association of Machinists—have indicated that they desire immediate elections. The Board's Order, of which Respondents complain, is the obstacle to holding such elections. The Regional Director has informed the Board that, notwithstanding noncompliance with the Board's Decision and Order, he believes that free elections can be held at this time to determine the employees' choice of bargaining representatives. Since free elections are the objective of the Board's Order requiring the withdrawing of recognition from the assisted union, we believe it expedient, in the interest of the employees and of the disposition of this case, to grant the motions of Respondents to delete those provisions of the original order which require Respondent Company to withdraw and withhold recognition from Respondent Union and to cease giving effect to any collective-bargaining contract with that labor organization pending new elections. We shall also direct that the Regional Director proceed with the immediate processing of the pending representation petitions.

² Respondent Company also filed a request for oral argument. The request is denied as the record, including the exceptions and briefs, adequately presents the issues and the positions of the parties.

³ In his Supplemental Intermediate Report, the Trial Examiner incorrectly listed Granville Welch as among the former members of the Herzog group who still held office in Respondent Union. The report is corrected to delete Welch's name from among such group.

[The Board granted the motions of Respondents for reconsideration of the Decision and Order issued herein and deleted paragraphs (b) and (c) of Section A, 1 and paragraph (a) of Section A, 2 of the Order, and paragraphs 3 and 4 of Appendix A attached to the Order; and ordered that the Regional Director proceed with the processing of the pending representation petitions.]

MEMBERS RODGERS and BROWN took no part in the consideration of the above Supplemental Decision and Order.

International Typographical Union, AFL-CIO, and its agent, Robert F. Ameln and The Greenfield Printing and Publishing Co.

Dayton Typographical Union No. 57, International Typographical Union, AFL-CIO, and its agent, J. E. McMillin and The Greenfield Printing and Publishing Co. *Cases Nos. 9-CP-2 and 9-CP-3. May 28, 1962*

DECISION AND ORDER

On August 11, 1960, Trial Examiner Thomas S. Wilson issued his Intermediate Report in this case, concluding that the Respondents had not engaged in the alleged unfair labor practices and recommending that the complaint be dismissed in its entirety, as set forth in the Intermediate Report attached hereto. Thereafter the General Counsel, the Charging Party, and the Respondents filed exceptions to the Intermediate Report and supporting briefs.

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 briefs, and the entire record in this case, and hereby adopts the evidentiary findings but not the conclusions or recommendations of the Trial Examiner, as indicated below.

The relevant evidentiary facts established by the record and found by the Trial Examiner are as follows:

On March 20, 1959, the Respondents Ameln and McMillin called on the Company's president, Moon, and advised him that the Local Union represented a substantial majority of the Company's employees and requested recognition and the negotiation of a contract. Ameln also informed Moon that the Union was not in compliance with Sections 9(f), (g), and (h) of the Act, and could not petition for a Board-conducted election to prove its majority status. The Company refused the request to recognize the Union.