

Amalgamated Lithographers of America, Independent, and Local Union No. 14, Amalgamated Lithographers of America, Independent and Lithographers Association of Philadelphia. *Cases Nos. 4-CC-173-1 and 4-CC-173-2. July 26, 1962*

DECISION AND ORDER

Upon unfair labor practice charges filed on May 5, 1961, by Lithographers Association of Philadelphia, herein called the Association, against the Amalgamated Lithographers of America, Independent, and Local Union No. 14, herein called the Respondents, the General Counsel of the National Labor Relations Board, by the Regional Director for the Fourth Region, issued a complaint alleging that the Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Sections 8(b) (4) (i) and (ii) (A) and (B) and 2(6) and (7) of the Act. Copies of the complaint, charges, and notice of hearing were served upon the Respondents and the Association.

With respect to the unfair labor practices, the complaint, as amended,¹ alleged that the Respondents had successfully induced employees to engage in a partial, and later a complete, strike with an object of forcing the inclusion in a collective-bargaining agreement of clauses unlawful under Section 8(e), thereby violating Section 8(b) (4) (i) and (ii) (A) and (B). On July 6, 1961, the Respondents filed an answer denying the material allegations of the complaint.²

On October 2, 1961, all parties entered into a stipulation waiving a hearing and the taking of testimony or the submission of further evidence before a Trial Examiner, the making of findings of fact and conclusions of law by a Trial Examiner, and the issuance of an Intermediate Report and Recommended Order, and agreeing that the Board make findings of fact and conclusions of law on the basis of the

¹ On August 22, 1961, the complaint was amended by deleting the allegation attacking a "New Machines or Processes" clause in the contract in question. Upon appeal to the General Counsel by the Association, the amendment was sustained. The Association continues to protest the amendment.

We find no merit in the Association's protest. Section 3(d) of the Act gives the General Counsel the final authority in the matter of investigating charges, issuing complaints, and prosecuting such complaints before the Board. And Section 102.17 of the Board's Rules and Regulations, Series 8, expressly provides for the amendment of complaints prior to hearing. The case of *Marine Engineers' Beneficial Association No. 13 (Taylor & Anderson, et al) v. NLRB*, 202 F. 2d 546 (C.A. 3), relied upon by the Association, does not support its position as it deals with an entirely different problem, namely, a charging party's right to a hearing upon an issued complaint in lieu of a settlement agreement to which it does not consent.

² The contention that the Landrum-Griffin Act is unconstitutional is rejected, as the Board must assume the constitutionality of the Act it is required to administer in the absence of a binding court decision to the contrary. *Rite-Form Corset Company, Inc.* 75 NLRB 174. Moreover, the Court of Appeals for the Fifth Circuit has recently upheld the constitutionality of the law. *Employing Lithographers of Greater Miami, Florida (Miami Post Co.) v. N.L.R.B.*, 301 F. 2d 20 (C.A. 5).

facts contained in the stipulation, the allegations in the complaint, as amended, and the Respondents' answer.

On October 19, 1961, the Board approved the stipulation and transferred the case to, and continued it before, the Board. Thereafter, the Respondents and the Association filed briefs.

Upon the basis of the stipulation, and upon the entire record in the case,³ the Board makes the following:

FINDINGS OF FACT

I. BUSINESS OF THE EMPLOYER

The Association is, and has been at all times material herein, a division of Printing Industries of Philadelphia, Inc., a corporation duly organized under the laws of Pennsylvania. The Association is composed of 31 firms engaged in the printing and printing service industries. During the last year, in the course and conduct of their business operations, the employer-members of the Association have individually purchased and received materials which were shipped to their places of business in Philadelphia, from sources outside Philadelphia, valued in excess of \$50,000. During the same period, the employer-members of the Association have individually sold and shipped from their places of business to points located outside Pennsylvania products valued in excess of \$50,000.

The complaint alleges, the answer admits, and we find that the Association is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Amalgamated Lithographers of America and its Local 14 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE FACTS

The stipulation of the parties states that the Respondents began negotiations with the Association for a new collective-bargaining agreement on February 22, 1961. The Respondents first proposed that the agreement contain a provision substantially identical to the expiring section 1(c) of the representation clause. They also proposed a new trade shop and outside work clause to replace the previous one which had been held illegal by the Board.⁴ On or about May 2, 1961, the Respondents proposed an alternate trade shop and outside work

³ The Respondents' request for oral argument is denied as the record, exceptions, and briefs adequately present the issues and positions of the parties.

⁴ *Amalgamated Lithographers of America and Local 78, etc.* (*Employing Lithographers of Greater Miami, Florida, et al*), 130 NLRB 968, enfd., *supra*, footnote 2; *Amalgamated Lithographers of America (Ind) and Local No. 17, etc.* (*The Employing Lithographers, etc.*), 130 NLRB 985.

clause. Beginning on or about April 6, 1961, and continuing until approximately May 3, 1961, the Respondents engaged in a partial strike against the employer-members of the Association in support of their contract and economic demands by inducing their members to refuse to work overtime. In further support of their demands, the Respondents engaged in a complete strike against the employer-members of the Association from May 4 through 17, 1961. On this last date, the Regional Director for the Fourth Region filed a petition for injunctive relief under Section 10(1) of the Act. On May 18, 1961, the Respondents entered into a stipulation, approved and signed by the district judge, in which they agreed to, and did, withdraw their disputed contract demands.

The clauses at issue are :

Representation—Section 1(c) :

(c) The Company agrees that in the event any of the jobs or work under this contract are removed from the jurisdiction of the Amalgamated Lithographers of America by the action of the Company, the Union may in its discretion either terminate this Agreement or re-open it in all respects with the right to strike if the parties fail to agree upon a new contract.

Trade Shop and Outside Work

The Employer represents that if it obtains lithographic preparatory work (lithographic production prior to press) or press work from the outside, it obtains all such work from sources under contract with the Amalgamated Lithographers of America. The Union reaffirms that it would be strongly opposed to any change in the Employer's method and manner of production which would involve obtaining any lithographic production work from non-Amalgamated sources and that it will use all legal means available to it to dissuade the Employer from making any such change. The Employer acknowledges the integrated nature of the lithographic industry and the continuing technological developments, and agrees that any such changes by the Employer may affect or may lead to an effect upon the employment of workers covered by this agreement or the stability of their Welfare or Pension Funds. Therefore, the Employer will give the Union immediate notice of its intention to obtain any of the aforesaid lithographic production work from sources not under contract with the Amalgamated and will meet promptly to consider mutually agreeable changes in the contract relating to hours, apprentice ratios, overtime provisions or new clauses such as establishment of severance pay funds or retraining programs.

Alternate Proposal

Trade Shop and Outside Work

(a) The Employer represents that if it obtains any lithographic preparatory work (lithographic production prior to press) or press work from the outside, it obtains all such work from sources under contract with the Amalgamated Lithographers of America. The Union reaffirms that it would be strongly opposed to any change in the Employer's method and manner of production which would involve obtaining any lithographic production work from non-Amalgamated sources and that it will use all legal means available to it to dissuade the Employer from making any such change. The Employer acknowledges the integrated nature of the lithographic industry and the continuing technological developments, and agrees that any such changes by the Employer may affect or may lead to an effect upon the employment of workers covered by this agreement or the stability of their Welfare or Pension Funds. Therefore, the Employer will give the Union immediate notice of its intention to obtain any of the aforesaid lithographic production work from sources not under contract with the Amalgamated and will meet promptly to consider mutually agreeable changes in the contract relating hours, apprentice ratio, overtime provisions or new clauses such as establishment of severance pay funds or retraining programs.

(b) Notwithstanding any of the provisions of this Article, the employer shall have the right to work on any of the above-specified work theretofore used in production by any employer under contract with the Amalgamated Lithographers of America.

Trade Shop

(a) The parties agree that all the terms of this contract have been negotiated on the assumption that all lithographic production work will be done under the approved Union wages and conditions. In the event the Company requests any employee to handle any lithographic production work made in any shop which was not under contract with the Amalgamated Lithographers of America and not authorized to use the Union label of the Amalgamated, then the Union in its discretion by notice in writing, may reopen the contract for negotiations as to the whole or any part thereof. In the event of failure to agree on all terms within 30 days after such reopening, the Union shall have the right to terminate the contract forthwith by giving written notice to the company.

(b) Notwithstanding any of the provisions of this Article, the employer shall have the right to work on any of the above-

specified work theretofore used in production by any employer under contract with the Amalgamated Lithographers of America.

The above paragraphs (a) and (b) shall be effective and a part hereof only when they are finally adjudicated legal or if Section 8(e) of the Landrum-Griffin Act is finally ruled unconstitutional. In that event paragraph numbered (Trade Shop and Outside Work) shall be deemed replaced in its entirety by these paragraphs.

DISCUSSION

The legality of clauses like section 1(c) of the representation clause and the trade shop and outside work provisions was litigated in the companion New York case and is the subject of a Decision and Order issued this day in that case holding such clauses prohibited by Section 8(e).⁵ A clause like the trade shop clause also was held unlawful in the earlier *Miami* and *San Francisco* cases.⁶ It accordingly follows, and we find, that all the clauses in issue herein are prohibited by Section 8(e) of the Act. Since the Respondents stipulated that an object of their conduct described above was to force or require the Association to enter into a contract containing the disputed clauses, which would cause a cessation of business with members of a particular class, we find that the Respondents violated Section 8(b) (4) (i) and (ii) (A) and (B).⁷

IV. EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondents set forth above, occurring in connection with the business of the Association described 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

Having found that the Respondents have engaged in unfair labor practices, we shall order them to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the foregoing findings of fact, and upon the entire record in this case, the Board makes the following:

⁵ *Amalgamated Lithographers of America, et al. (Lithographers & Printers National Association, Inc)*, 137 NLRB 1663.

⁶ *Supra*, footnote 4. For the reasons stated in the *Miami* case, *supra*, at 978, the illegality of the strike to obtain this trade shop clause is not affected by the purported deferral clause.

⁷ For the reasons stated in Member Fanning's dissenting opinion in *Amalgamated Lithographers of America (Ind) and Local No. 17, etc. (The Employing Lithographers, etc.)*, *supra*, at footnote 15, Members Fanning and Brown dissent from the finding that Section 8(b) (4) (B) was violated in this case. Accordingly, they would dismiss this allegation of the complaint.

CONCLUSIONS OF LAW

1. The Lithographers Association of Philadelphia is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Lithographers of America, Independent, and Local Union No. 14, are labor organizations within the meaning of Section 2(5) of the Act.

3. By engaging in, inducing, and encouraging employees of members of the Lithographic Association of Philadelphia to engage in a partial and a complete strike, and by threatening, coercing, or restraining the Association by means of a partial strike, a complete strike, and picketing, for the purpose in both cases of forcing or requiring the Association to enter into an agreement containing section 1(c) of the representation clause, the trade shop and outside work clause, and the alternate trade shop and outside work clause, set forth above, all of which are prohibited by Section 8(e), the Respondents have violated Section 8(b)(4)(i) and (ii)(A) of the Act.

4. By engaging in, inducing and encouraging employees of members of the Lithographers Association of Philadelphia to engage in a partial and a complete strike, and by threatening, coercing, or restraining the Association by means of a partial and a complete strike, for the purpose in both cases of forcing or requiring the Association to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, the Respondents have violated Section 8(b)(4)(i) and (ii)(B) 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.

ORDER

Upon the entire record in this case, and pursuant to Section 10(e) of the Act, as amended, the National Labor Relations Board hereby orders that Respondents, Amalgamated Lithographers of America, Independent, and Local Union No. 14, their officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Engaging in, inducing or encouraging employees of members of the Lithographers Association of Philadelphia to engage in, a partial and a complete strike or threatening, coercing, or restraining the Association by means of a partial strike, a complete strike, and picketing, for the purpose in either case of forcing or requiring the Association to enter into any agreement which is prohibited by Section 8(e).

(b) Engaging in, inducing or encouraging employees of members of the Lithographers Association of Philadelphia to engage in, a partial and a complete strike or threatening, coercing, or restrain-

ing the Association by means of a partial and a complete strike, for the purpose in either case of forcing or requiring the members of the Association to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processors, or manufacturer, or to cease doing business with any other person.

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

(a) Post in Respondents' business offices and meeting halls, copies of the notice attached hereto marked "Appendix."⁸ Copies of said notice, to be furnished by the Regional Director for the Fourth Region, shall, after being duly signed by official representatives of Respondents, be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for the Fourth Region signed copies of the aforementioned notice for posting by members of the Lithographers Association of Philadelphia, if the Association members agree, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, shall, after being signed by Respondents, as indicated, be forthwith returned to the Regional Director for disposition by him.

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

⁸ 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 OUR MEMBERS AND TO ALL EMPLOYEES OF MEMBERS OF
LITHOGRAPHERS ASSOCIATION OF PHILADELPHIA

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 give notice that:

WE WILL NOT engage in, or induce or encourage employees of members of the Lithographers Association of Philadelphia to engage in, a partial and a complete strike or threaten, coerce, or restrain the Association by means of a partial strike, a complete strike, and picketing, for the purpose in either case of forcing or requiring the Association to enter into any agreement which is prohibited by Section 8(e).

WE WILL NOT engage in, or induce or encourage employees of members of the Lithographers Association of Philadelphia to engage in, a partial and a complete strike or threaten, coerce, or restrain the Association by means of a partial and a complete strike, for the purpose in either case of forcing or requiring the members of the Association to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processors, or manufacturer, or to cease doing business with any other person.

AMALGAMATED LITHOGRAPHERS OF
 AMERICA, INDEPENDENT,
Labor Organization.

Dated _____ By _____
 (Representative) (Title)

LOCAL UNION NO. 14, AMALGAMATED LITHO-
 GRAPHERS OF AMERICA, INDEPENDENT,
Labor Organization.

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.

Employees may communicate directly with the Board's Regional Office, 1700 Bankers Securities Building, Philadelphia 7, Pennsylvania, Telephone Number, Pennypacker 5-2612, if they have any question concerning this notice or compliance with its provisions.

International Ladies' Garment Workers' Union and Federation of Union Representatives, Petitioner. *Case No. 2-RC-11158.*
July 26, 1962

THIRD SUPPLEMENTAL DECISION, ORDER GRANTING MOTION, AND DIRECTION

On October 16, 1961, the Petitioner filed a motion for further supplemental decision, direction, and order in which it requested the Board to direct the Regional Director to open and then set aside the ballots of the three challenged voters who have been the subject of an unfair labor practice proceeding, and to certify the Petitioner if one or more of these ballots was cast for the Petitioner.¹ Thereafter,

¹ In a prior Supplemental Decision, Direction, and Order in this case, issued October 3, 1961 (not published in NLRB volumes), the Board, *inter alia*, adopted, *pro forma*, the Regional Director's recommendation to hold these ballots in abeyance pending the out-