

other persons, Respondent Unions, Respondent Association, and Respondent Employers and each of them have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8(e) of the Act

4 The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

Florida Agricultural Supply Company, a division of Plymouth Cordage Company and United Transport Service Employees, AFL-CIO, Local 3000. Case No. 12-C.A-2462. March 11, 1963

DECISION AND ORDER

This proceeding is brought under Section 10(b) of the National Labor Relations Act. Upon a charge filed by Local 3000, United Transport Service Employees, AFL-CIO, hereinafter called the Union, the General Counsel of the National Labor Relations Board by the Regional Director for the Twelfth Region issued a complaint dated October 19, 1962, against Florida Agricultural Supply Company, a division of Plymouth Cordage Company, hereinafter called Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing were duly served upon Respondent.

With respect to the unfair labor practices, the complaint alleges, in substance, that on August 17, 1962, the Regional Director for the Twelfth Region issued a certification in Case No. 12-RC-1455¹ designating the Union as the exclusive collective-bargaining representative of a unit of employees at the Respondent's insecticides plant in Jacksonville, Florida; that on August 23, 1962, and at various times thereafter, the Union has requested Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, as the exclusive collective-bargaining representative of the employees in the certified unit; and that on September 21, 1962, and all times thereafter, Respondent unlawfully refused to bargain collectively with the Union as the collective-bargaining representative of all employees in the aforesaid unit. Thereafter, Respondent filed an answer denying material allegations of the complaint, and also denying that it unlawfully refused to bargain.

On October 26, 1962, all parties to this proceeding entered into a stipulation and jointly requested the transfer of this proceeding directly to the Board for findings of fact, conclusions of law, and is-

¹ Not published in NLRB volumes

141 NLRB No. 22.

suance of a decision and order based thereon. In the stipulation the parties agreed that the stipulation of facts together with the charge, complaint, answer, and the record in Case No. 12-RC-1455 should constitute the entire record in this case. The parties further stipulated that they waived a hearing before a Trial Examiner, the making of findings of facts and conclusions of law by a Trial Examiner, and the issuance of an Intermediate Report and Recommended Order.

On November 7, 1962, the Board issued an order approving the stipulation and making it a part of the record herein, and transferring the case to the Board for a decision and order. Thereafter, on December 6, 1962, the aforesaid parties entered into a supplemental stipulation, requesting that the Board accept said stipulation as a supplement to the previous stipulation filed herein. On December 10, 1962, the Board issued an order approving the supplemental stipulation and making it likewise a part of the record herein. Thereafter, the Respondent filed a brief with the Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Fanning and Brown].

Upon the basis of the stipulation, supplemental stipulation, and the entire record in the case, including the Respondent's brief, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent is now, and has been at all times material herein, a Massachusetts corporation, licensed to do business in Florida, and is engaged in the manufacture of insecticides at its Jacksonville, Florida, plant. During the last 12 months the Respondent has received in excess of \$50,000 worth of goods, supplies, and materials, for manufacturing operations at its Jacksonville, Florida, plant, directly from points outside the State of Florida.

The Respondent admits, and we find, that it is, and has been at all times material herein, an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

On May 4, 1962, the Florida Agricultural Supply Company Workers' Union, Independent, filed a petition in Case No. 12-RC-1455 seek-

ing to represent a unit of employees at the Respondent's Jacksonville, Florida, plant, Hearing on this petition was held on May 18, 1962, and on July 23, 1962, the Board issued a Decision and Direction of Election, directing the Regional Director for the Twelfth Region to conduct an election in the following unit:

All employees at the Employer's Jacksonville, Florida, plant, including local drivers, mechanics, and seasonal employees who have already worked 10 weeks and are presently employed and those who have a reasonable expectancy of working 10 weeks during the present season, but excluding all other seasonal employees, over-the-road drivers, office clericals, salesmen, chemists, laboratory technicians, guards, and all other supervisors as defined in the Act.

On August 9, 1962, an election was held in the above unit. The Union (Intervenor in the representation case) received a majority of the votes cast in that election. On August 17, 1962, the Union was certified as the collective-bargaining representative of the employees in this unit. On August 23, 1962, and at various times thereafter, the Union made requests to the Respondent for collective bargaining with respect to employees in the certified unit. On September 21, 1962, and at all times thereafter, Respondent refused to recognize and bargain collectively with the Union because the certified unit included, among the other employees, two mechanics, William H. Walton and Bobby D. Goolsby. The Respondent's refusal to bargain gave rise to the instant proceeding.

It is the Respondent's contention that it did not commit unfair labor practices by refusing to bargain as to Walton and Goolsby because said mechanics are supervisors and should have been excluded from the appropriate unit. This same contention was made by the Respondent in the representation proceeding, but was there rejected by the Board.

As was found by the Board in the representation proceeding (Case No. 12-RC-1455), the record therein shows that Walton spends about 70 percent of his time doing general maintenance work. He spends 25 percent of his time in seasonal supervisory duties. Walton takes on these supervisory duties during Respondent's peak season which lasts from April to August, at which time Walton has full supervision over some five employees. His pay is comparable to that of other foremen. Five percent of Walton's time is spent substituting for the mechanic foreman in the latter's absence because of illness or vacation. Goolsby performs the same type of mechanical work as Walton, and he also is expected to serve as a foreman during the peak season. He is paid 10 to 15 percent more than the average production employee.

The Board said of Walton and Goolsby in its Decision and Direction of Election:

As they perform rank and file functions for most of the year and are expected to serve regularly as supervisors only during peak seasons, we shall include them in the unit with respect to their rank and file duties. *The Great Western Sugar Company*, 137 NLRB 551.

The Respondent's defense herein is concerned solely with the Board's original unit determination. It appears from the record that, aside from a supplemental stipulation² entered into by the parties on December 6, 1962, the Respondent has raised no matter not previously considered and rejected by the Board in the aforementioned representation proceeding. The Board has considered the evidence contained in the supplemental stipulation and finds it to be insufficient to justify a redetermination of the appropriate unit.

As the Respondent admittedly refused to bargain with the Union for all employees in the appropriate unit on and after September 21, 1962, we find that the Respondent has violated Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The Respondent's refusal to bargain, set forth in section III, above, occurring in connection with the operations of the Respondent set forth in section I, has a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

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

CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.
2. The Respondent is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

² The supplemental stipulation recites that the wages and benefits received by Walton and Goolsby are the same during the entire year, whether they are acting as supervisors during the peak season of the year, or whether they are performing duties as mechanics during the rest of the year.

3. All employees at the Respondent's Jacksonville, Florida, plant, including local drivers, mechanics, and seasonal employees who have already worked 10 weeks and are presently employed, and those who have a reasonable expectancy of working 10 weeks during the present season, but excluding all other seasonal employees, over-the-road drivers, office clericals, salesmen, chemists, laboratory technicians, guards, and all supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since August 17, 1962, the Union has been and continues to be the exclusive bargaining representative of all the employees in the aforementioned unit for the purpose of collective bargaining within the meaning of Section 9(c) of the Act.

5. By refusing, on and after September 21, 1962, to bargain collectively with the Union as the exclusive representative of all the employees in the aforesaid unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing to bargain with the Union, the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in an unfair labor practice within the meaning of Section 8(a)(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, Florida Agricultural Supply Company, Division of Plymouth Cordage Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with United Transport Service Employees, AFL-CIO, Local 3000, as the exclusive representative of all employees in the above-described appropriate unit.

(b) In any like or related manner interfering with the efforts of the above-named labor organization to bargain collectively.

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

(a) Upon request, bargain collectively with United Transport Service Employees, AFL-CIO, Local 3000, as the exclusive bargaining representative of all the employees in the aforesaid appropriate unit, including William H. Walton and Bobby D. Goolsby, with respect to wages, rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its insecticides plant in Jacksonville, Florida, copies of the attached notice marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for the Twelfth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and be maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

³ 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 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 NOT refuse to bargain collectively with United Transport Service Employees, AFL-CIO, Local 3000, as the exclusive representative of all employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with the efforts of the United Transport Service Employees, AFL-CIO, Local 3000, to bargain collectively.

WE WILL, upon request, bargain collectively with United Transport Service Employees, AFL-CIO, Local 3000, as the exclusive bargaining representative of all employees in the bargaining unit described below with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

The bargaining unit is:

All employees at the Employer's Jacksonville, Florida, plant, including local drivers, mechanics, and seasonal employees who have already worked 10 weeks and are presently employed, and those who have a reasonable expectancy of working 10 weeks during the present season, but excluding all other seasonal employees, over-the-road drivers, office clericals, salesmen, chemists, laboratory technicians, guards, and all supervisors as de-

fined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

FLORIDA AGRICULTURAL SUPPLY COMPANY,
Employer.

Dated _____ By _____
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, Ross Building, 112 East Cass Street, Tampa 2, Florida, Telephone No. 223-4623, if they have any question concerning this notice or compliance with its provisions.

Kenneth A. Zick, d/b/a United States Molded Shapes and Lodge 980 of the International Association of Machinists, AFL-CIO.
Case No. 7-CA-3640. March 12, 1963

DECISION AND ORDER

On October 1, 1962, Trial Examiner James A. Shaw issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in and was not engaging in unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Intermediate Report. Thereafter, the General Counsel filed exceptions and a brief in support of these exceptions.

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 Leedom, Fanning, and Brown].

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 this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent consistent with our decision herein.

1. The complaint alleged, and the Respondent's answer admitted, that the Respondent failed and refused to bargain with the Union in an appropriate unit.¹

The Trial Examiner found, however, that Respondent did not thereby violate Section 8(a)(5) and (1) of the Act. We agree with his

¹ The appropriateness of the unit is not disputed.