

**Worcester Stamped Metal Company and United Steelworkers of America, AFL-CIO. Case No. 1-CA-4324. May 15, 1964**

**DECISION AND ORDER**

On February 18, 1964, Trial Examiner C. W. Whittemore issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed, as set forth in the attached Decision. Thereafter, the General Counsel filed exceptions to the Decision and a supporting brief.

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 Leedom and Jenkins].

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 Decision and the entire record in the case, including the exceptions and brief, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

[The Board dismissed the complaint.]

**TRIAL EXAMINER'S DECISION**

**STATEMENT OF THE CASE**

Upon a charge filed by the above-named labor organization on October 1, 1963, the General Counsel of the National Labor Relations Board on November 15, 1963, issued and served his complaint and notice of hearing. The above-named Respondent Company thereafter filed an answer dated December 3, 1963. The complaint alleges and the answer denies that the Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended. Pursuant to notice, a hearing was held in Worcester, Massachusetts, on December 16, 17, and 18, 1963, before Trial Examiner C. W. Whittemore.

At the hearing all parties were represented and were afforded full opportunity to present evidence pertinent to the issues, to argue orally, and to file briefs. Briefs have been received from General Counsel and the Respondent.

Disposition of the Respondent's motion to dismiss the complaint, upon which ruling was reserved at the conclusion of the hearing, is made by the following findings, conclusions, and recommendations.

Upon the record thus made and from his observation of the witnesses, the Trial Examiner makes the following:

**FINDINGS OF FACT**

**I. THE BUSINESS OF THE RESPONDENT**

Worcester Stamped Metal Company is a Massachusetts corporation, with principal office and place of business at 9 Hunt Street, Worcester, Massachusetts, where it is engaged in the manufacture, sale, and distribution of light and heavy stamped metal and related products.

The Respondent annually purchases and receives materials valued at more than \$50,000 from points outside the Commonwealth of Massachusetts and annually ships products valued at more than \$50,000 to point outside the same Commonwealth.

The complaint alleges, the answer admits, and it is here found that the Respondent is engaged in commerce within the meaning of the Act.

## II. THE CHARGING UNION

United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

### A. *Setting and issues*

For many years the Union has been the bargaining agent of production and maintenance employees at Worcester Stamped. The latest contract between the parties was due to expire in mid-October 1963, but was extended into January 1964. Since the hearing closed in December 1963, the record does not disclose whether, at the date of this Decision, such contract has been further extended.

About 2½ years before the hearing Worcester Stamped became, and now is, a wholly owned subsidiary of Rice Barton Corporation, a concern which apparently either directly or through its subsidiaries controls a number of other enterprises.

In midsummer 1963, Rice Barton purchased, through its subsidiary Worcester Stamped, the American Emblem Company, a New York corporation located in Utica, New York.

American Emblem's equipment was moved to Worcester, and was set up in one section of the upper floor of the Worcester Stamped two-floor building. None of American Emblem's Utica rank-and-file employees (who had been represented by another AFL-CIO affiliate) were brought on to Worcester. An entirely new crew of employees were hired locally for American Emblem by Rice Barton, not by Worcester Stamped. American Emblem began its operations, finishing and polishing metal stampings made for it by Worcester Stamped as more fully described below, in the latter part of August 1963.

On September 19 representatives of the Union and Worcester Stamped met for their first negotiating meeting looking toward a new contract.

The Union's initial demand was to be furnished with the names, job classifications, and pay rates of the American Emblem employees. The Respondent Worcester Stamped immediately took the position, maintained at all times thereafter, that the Union was not the bargaining agent for American Emblem's employees, and declined to provide the information requested.

This demand and refusal are the basis of the Union's charge and General Counsel's complaint. General Counsel contends that: (1) the American Emblem operations are actually an "accretion" to the unit at Worcester Stamped, the employees of which, it is in effect admitted, are represented by the Union; and (2) because the Union is the exclusive representative of the employees of Worcester Stamped, it was unlawful for the Respondent to decline to furnish the requested information.

### B. *The alleged refusal to bargain*

#### 1. Factors tending to support the claim of "accretion"

Among the facts relied upon by General Counsel to support his contention are the following:

(a) With one exception the corporate officers of Worcester Stamped and American Emblem are the same individuals, as are members of the two boards of directors.

(b) One individual, M. Bonine, is the general manager of both operations.

(c) At top level, manufacturing problems of both companies are referred to one individual, a vice president of the parent corporation, Rice Barton.

(d) As noted, the equipment and employees of both concerns are housed under a single roof.

(e) About 30 percent of all hammer and press work performed by Worcester Stamped is for American Emblem.

(f) Some toolroom repair work on American Emblem equipment is done by Worcester Stamped employees—there being but one toolroom and tool crib on the premises.

(g) Some maintenance services on American Emblem equipment is performed by Worcester Stamped employees.

(h) Receiving of raw materials and shipping of products for both concerns is performed by Worcester Stamped employees.

(i) All male employees of both companies use the same locker and toilet facilities, and all employees use the same parking lot, first-aid room, and plant entrance.

## 2. Factors opposing the claim

Included among the facts tending to rebut the contention of "accretion" are:

(a) Upon beginning operations in Worcester American Emblem employees were hired—not by Worcester Stamped—but by Rice Barton.

(b) About 70 percent of stampings turned out by Worcester Stamped are for customers other than American Emblem.

(c) There is no similarity in the job classifications at, or work performed by, American Emblem and Worcester Stamped. The latter produces the simple stampings of metal, by use of presses and hammers. American Emblem employees engage in a large number of special operations in plating, polishing, and finishing its final products—generally termed as a "jewelry type of business."

(d) At the time the Union demanded, in effect, that it be recognized as the exclusive representative of all American Emblem's employees, as well as of Worcester Stamped, American Emblem already had 58 employees on its payroll, while Worcester Stamped then had 56.

(e) By December 3, 1963, shortly before the hearing, American Emblem had 115 employees, while Worcester Stamped had 69.

(f) About half of American Emblem's employees are female; all of Worcester Stamped are male.

(g) General Counsel makes no claim, and there is no proof, that any of American Emblem's employees have ever authorized the Union to be their bargaining representative.

(h) American Emblem controls and operates an assembly division, known as "Perma," some 4 or 5 blocks distant from the Worcester Stamped premises, where from 5 to 20 employees work. As needs require, exchange of employees occurs between American Emblem and "Perma," but not between American Emblem and Worcester Stamped.

(i) Personnel records for American Emblem are kept by Rice Barton; Worcester Stamped maintains its own personnel records.

## C. Conclusions

Reasoning from the generally accepted definition that "accretion" means "increase by adhesion or inclusion" the Trial Examiner perceives here a somewhat perplexing problem. Not unlike that which may well have puzzled, during their days at sea, both Jonah and his whale—or the whale and his Jonah. Who has accreted, or has been accreted, by whom?

General Counsel has alleged "accretion" of American Emblem by Worcester Stamped. If such "accretion" is found to exist, Board policy seems to require that employees of the "accreted" must be included among the employees of the "accretor" in its appropriate unit and be represented by the latter's lawful and exclusive bargaining representative, if such has been established.

An able and exhaustive analysis of Board decisions involving the problem of accretion is contained in Trial Examiner Samuel L. Singer's Intermediate Report, adopted by the Board, in *The Great Atlantic and Pacific Tea Company*, 140 NLRB 1011. At page 1023 Trial Examiner Singer cited and summarized numerous cases on the point. It appears needless to quote them here. A single statement contained in the report, apparently approved by the Board, is sufficient. He said: "The point is that these factors (of differentials and variations among employees in the same bargaining unit), in themselves, are not decisive—the entire picture must be scrutinized to determine the appropriate unit in the particular case."

This Trial Examiner is neither omniscient nor an IBM computer. What this "picture" of multiplex factors denotes, in terms of "accretion," would seem to depend not only upon the viewpoint, or optic angle, but also upon both the organic and emotional disposition of the viewer.

It happens that the Trial Examiner is disposed to appraise the relevant factors from the viewpoint, assumed, of course, of the some 115 American Emblem employees. To decide that this larger number of employees must accept as their

bargaining agent one already selected by fewer than 70 employees of Worcester Stamped would appear to be, by mandate, depriving them of the statutory right accorded them as long ago as 1935 of selecting, as principals, their own bargaining agent.

It may well be that the Board would determine the all-embracing unit claimed by the Union and General Counsel to be appropriate for the purposes of collective bargaining, but it is doubtful if it would certify any Union as the bargaining agent of such unit without according the vast majority of employees involved the right, by election, to record their choice.

In short, the Trial Examiner is not convinced that General Counsel has proven, by a preponderance of the evidence, that the "accretion," if any, here existing is of a nature or degree sufficient to warrant the conclusion that the Respondent has violated Section 8(a)(5) and (1) of the Act by declining, in effect, to bargain with the Union as the exclusive representative of all employees in a unit consisting of maintenance and production employees of both Worcester Stamped and American Emblem.<sup>1</sup>

It will therefore be recommended that the complaint be dismissed in its entirety.

#### RECOMMENDED ORDER

Having concluded that the evidence is insufficient to establish a violation of Section 8(a)(5) and (1) of the Act, the Trial Examiner recommends that the complaint in its entirety be dismissed.

<sup>1</sup> It has appeared unnecessary to set out here undisputed details of conferences between a Rice Barton and a union representative, before the actual purchase of American Emblem, the substance of which indicates that the parent concern itself wished to have the Union represent employees of the company it was to absorb. Neither an employer nor a labor organization, nor the two acting in concert, have any right under the Act except as provided in Section 8(f), not applicable here, to select and determine the bargaining agent of employees.

**Perfect Service Gas Company, Inc. and Local 863, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** *Cases Nos. 22-CA-1366 and 22-CA-1527.*  
*May 15, 1964*

#### DECISION AND ORDER

On October 14, 1963, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding, finding that the Respondent had not engaged in unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the attached Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision and a supporting brief. The Respondent filed a brief in reply to the General Counsel's exceptions and in support of the Trial Examiner's Decision.

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 [Members Fanning, Brown, and Jenkins].

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 entire