

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 Respondent Union engaged in conduct in violation of Section 8(b)(2) and (1)(A) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action that will effectuate the purposes of the Act. I shall recommend that Respondent Union be required to notify Bosqui in writing that it withdraws its objections to Bosqui's employment of Charging Party Street as a proofreader, and shall furnish a copy of this notice to Charging Party Street. I shall also recommend that the Respondent Union be required to make Charging Party Street whole for any loss of pay suffered by reason of the discrimination against her by payment to her of a sum of money equal to that part of the loss for which she has not been compensated pursuant to the settlement agreement of August 4, 1965, between Bosqui and the General Counsel, with interest at 6 percent per annum, computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

Upon the foregoing findings of fact and the entire record, I hereby make the following:

#### CONCLUSIONS OF LAW

1. Respondent San Francisco Typographical Union No. 21 is a labor organization within the meaning of Section 2(5) of the Act.
2. Bosqui is an employer, and is engaged in commerce and operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.
3. Respondent Union caused, or attempted to cause, Bosqui Uniform Printing and Supply Company, an employer, to discriminatorily discharge Charging Party Marilyn Mary Street in violation of Section 8(a)(3) and (1) of the Act, by demanding in violation of Section 8(b)(2) and (1)(A) of the Act, that it discontinue employing her as a proofreader, because she crossed its picket lines during its September 11, 1963–July 31, 1964, strike against members of Graphic Arts Employers Association, San Francisco, and worked in a struck plant, and was not one of its journeymen members.
4. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

### American Stores Packing Co., Acme Markets, Inc. and International Union of Operating Engineers, Local No. 1, AFL-CIO.

*Case No. 27-CA-1182. May 3, 1966*

#### SUPPLEMENTAL DECISION AND ORDER

On May 23, 1963, the National Labor Relations Board issued its Decision and Order,<sup>1</sup> finding that the Respondent had engaged in and was engaging in unfair labor practices in violation of Section 8(a)(5), (3), and (1) of the National Labor Relations Act, as amended. On March 15, 1965, the United States Court of Appeals for the Tenth Circuit filed its opinion in *N.L.R.B. v. American Stores Packing Co.*,<sup>2</sup> in which it affirmed the Board's findings of fact and conclusions of law and ordered enforcement of the Board's Order.

<sup>1</sup> 142 NLRB 711.

<sup>2</sup> Not officially reported.

However, on September 16, 1965, the court, acting on a petition for rehearing, ordered<sup>3</sup> its previous opinion withdrawn and remanded the case to the Board for reconsideration, in the light of the Supreme Court's opinion in *American Ship Building Company v. N.L.R.B.*<sup>4</sup> Thereafter, pursuant to the Board's permission extended to all parties, the General Counsel and Respondent submitted briefs to the Board with respect to its reconsideration of the case.

This proceeding grew out of the Union's and Respondent's negotiations toward an agreement to succeed their contract expiring on February 2, 1962. The Board, either specifically or in affirming the Trial Examiner, found that the Respondent refused to bargain in good faith with the Union from December 20, 1961, until the signing of a contract in April 1962, and thereby violated Section 8(a)(5) and (1) of the Act; the Respondent in violation of Section 8(a)(3) and (1) locked out its employees on February 23 in support of its so-called bargaining position; the employees struck on February 26; and Respondent in violation of Section 8(a)(3) and (1) refused on March 22 to reinstate upon their unconditional request its striking employees until a contract was signed. The court in its opinion of March 15, 1965, affirmed the factual findings in support of the Board's decision and held that such findings supported the Board's conclusions that the Respondent violated the Act, as set forth above.

In its opinion of September 16, 1965, the court, as noted, remanded the case solely for the purpose of permitting the Board to consider the impact upon its decision of the Supreme Court's *American Ship Building* opinion. The remand opinion did not even suggest that consideration of the Trial Examiner's or the Board's findings of fact was warranted. Accordingly, we reject as without merit the Respondent's position that the entire complaint should be dismissed, or that a rehearing before a different Trial Examiner is required for purposes of obtaining new findings of fact, including credibility resolutions, and new conclusions of law.

The Respondent now contends that under the Supreme Court's holding in *American Ship Building* its refusal to reinstate of March 22 should be regarded as a lockout, that its lockouts of February 23 and March 22 were lawful, and that in consequence the findings of 8(a)(3) violations of the Act in our original decision must fall. In its *American Ship Building* opinion the Supreme Court held that an employer did not violate Section 8(a)(1) or (3) of the Act "when, after a bargaining impasse has been reached, he temporarily shuts down his plant and lays off his employees for the sole purpose of

<sup>3</sup> 351 F. 2d 308.

<sup>4</sup> 380 U.S. 300

bringing economic pressure to bear in support of his legitimate bargaining position.”<sup>5</sup> The Court noted in its opinion that it was dealing with a situation involving no unlawful conduct other than the alleged illegal lockout, thus specifically distinguishing cases “where the Board has concluded on the basis of substantial evidence that an employer has used a lockout as a means . . . to evade his duty to bargain collectively.”<sup>6</sup> In the present case we do not have before us a situation where the only questioned conduct is the Respondent’s lockout. Rather, as noted above, the lockout following Respondent’s unlawful refusal to bargain from the inception of negotiations. More specifically, the dispute developed as a result of Respondent’s unlawful insistence that bargaining be limited to exclude certain mandatory and proper subjects and was not over a legitimate economic position. It is thus apparent that the situation here differs significantly from that before the Court in *American Ship Building*.

The Respondent contends, however, that under the *American Ship Building* opinion the finding that it did not bargain as required by the Act must be reversed. We regard this contention as foreclosed by the court’s opinions.<sup>7</sup> In any event, in reaching our result on the point we reaffirm the Trial Examiner’s conclusion of refusal to bargain which rested in part on *five* specified factors, only one of which was the Respondent’s announcement on March 22 that no employee represented by the Union—all of whom had unconditionally applied for reinstatement—would be recalled to work until a bargaining contract had been reached.<sup>8</sup>

We assume for the purposes here that if the Respondent on February 23 and March 22 were bargaining with the Union in good faith, it could legally lock out its employees. We nevertheless conclude that the Respondent’s bad-faith bargaining throughout this period requires a different result. Thus, the other four factors relied upon by the Trial Examiner, all of which occurred prior to the March 22 lockout, show that the Respondent was not willing to negotiate as prescribed

<sup>5</sup> 380 U.S. at 318.

<sup>6</sup> 380 U.S. at 308.

<sup>7</sup> The court of appeals in its March 15, 1965, opinion concluded that the finding was supported by substantial evidence. The September 16, 1965, opinion withdrew the earlier opinion only for reconsideration in light of the Supreme Court’s *American Ship Building* opinion, which involved no 8(a)(5) issue.

<sup>8</sup> The other four factors were:

(1) [the Company’s] refusal to discuss any of the Union’s proposals after the first few bargaining sessions, (2) its announcement that before any bargaining contract would be agreed to by Respondent, the Union had to play in Respondent’s “ball park” and negotiate along the proposals submitted by it, (3) [Plant Manager] Blane’s remark at the March 14 bargaining meeting that the Union committee could sit until “hell freezes over” before Respondent would agree to any contract terms proposed by the Union, and (4) its oft-repeated demand for the withdrawal of the charge which the Union had filed with the Board on February 23 . . . before it would enter into a bargaining contract with the Union. . . .

by the Act, that it was unwilling to consider seriously any union proposals, and that it did not as required by the Act approach the bargaining table with an open mind and sincere desire to reach a mutually satisfactory agreement.<sup>9</sup> We find, accordingly, that Respondent's conduct prior to its March 22 refusal to reinstate demonstrates fully that it did not before that date bargain in good faith. Further, there is nothing in the record to suggest that the Respondent in subsequent negotiations retreated from its unlawful intransigent position in negotiations. It is evident that any so-called bargaining impasse that may have been reached—as the Respondent in its brief contends was the situation on February 22—resulted not from a good-faith disagreement over economic matters but from Respondent's refusal to negotiate in a lawful manner.

The record also shows that the lockout or refusal to reinstate was not for a purpose of the kind held lawful in the *American Ship Building* case. Thus, on February 23, in announcing the lockout to the employees, Schwabe, for the Respondent, stated that the Company was taking over the plant and that he saw no need for further negotiations as the Union did not want to play in the Respondent's "ball park." He then conditioned their working upon the Union's abandoning its plan to engage in a lawful strike intended, according to credited testimony, to "get the Company back into bargaining on the Union's proposal as well as their own." And on March 22, the Respondent refused to reinstate the striking employees, who through their Union had unconditionally requested reinstatement, until the Union signed a contract. But for the parties to reach any agreement the Union would first have had to acquiesce in the Respondent's unlawful exclusion of the Union's proposals from the matters that might be considered at the bargaining table. Consequently, we find that the Respondent locked out its employees, and refused to reinstate them, not for "the sole purpose of bringing pressure to bear in support of [its] legitimate bargaining position," but rather as a means of evading its duty to bargain by attempting through coercive pressure on the employees to compel union acquiescence in Respondent's unlawful restriction of the scope of bargaining. Accordingly, we conclude that the February 23 lockout and the March 22 refusal to reinstate were not lawful lockouts under the Supreme Court's holding in *American Ship Building* and that the Respondent by engaging in such conduct violated Section 8(a)(3) and (1) of the Act.

In our previous decision we concluded that the employees were out on strike between February 26 and March 22. In its brief the Respondent erroneously states that we found the strike to be an economic one.

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<sup>9</sup> See for example *N.L.R.B. v. Insurance Agents' International Union, AFL-CIO (Prudential Ins. Co.)*; 361 U.S. 477, 496; *N.L.R.B. v. Herman Sausage Company Inc.*, 275 F. 2d 229, 231 (C.A. 5).

In that decision we did state that the employees' absence from work during the noted period "was voluntary, and not caused by the Respondent," but in so stating we were simply expressing our disagreement with the Trial Examiner's conclusion that the employees' absence during this period was caused by the Respondent's locking them out. We were not characterizing the strike as either an economic or unfair labor practice strike, for, at least as we then viewed the law, the exact nature of the strike could not have affected the results of our decision. However, the facts clearly show, and we now expressly find, that the employees were unfair labor practice strikers, both because the strike was caused by a breakdown of negotiations occasioned by the Respondent's unlawful insistence on limiting the scope of negotiations and because, as noted above, it was aimed at forcing the Respondent to comply with its statutory obligation to bargain over the Union's lawful proposals. As unfair labor practice strikers, the employees upon their unconditional request were clearly entitled to reinstatement.<sup>10</sup>

There is nothing in the *American Ship Building* opinion to suggest that the Supreme Court viewed the lockout as a legitimate bargaining weapon against unfair labor practice strikers or as permissible in support of unlawful bargaining demands. We accordingly reaffirm our previous finding that the refusal to reinstate on March 22 was unlawful under Section 8(a) (3) and (1) of the Act.

### ORDER

In view of the foregoing, the Board reaffirms its Order of May 23, 1963, in this proceeding.

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<sup>10</sup> See for example *Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270; *N.L.R.B. v. Wichita Television Corporation, Inc., d/b/a KARD-TV*, 277 F. 2d 579, 584 (C.A. 10), cert. denied 347 U.S. 966.

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**Northwest Engineering Company and United Steelworkers of America, AFL-CIO**

**Northwest Engineering Company and United Steelworkers of America, AFL-CIO, Petitioner. Cases Nos. 30-CA-18 and 30-RC-5. May 3, 1966**

### SUPPLEMENTAL DECISION AND ORDER

On September 21, 1964, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding,<sup>1</sup> in which it found that Respondent had violated Section 8(a) (1) of the National

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<sup>1</sup> 148 NLRB 1136.

158 NLRB No. 48.