

Litho-Graphic Press, Inc. and Local 1, Amalgamated Lithographers of America. Case 29-CA-358. June 10, 1966

DECISION AND ORDER

On April 8, 1966, Trial Examiner David S. Davidson issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the General Counsel filed exceptions to the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Fanning 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 Trial Examiner's Decision, the exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the addition noted hereinafter.

[The Board adopted the Trial Examiner's Recommended Order with the following modification:

[Add the following as the second indented paragraph in the notice:

[WE WILL NOT in any like or related manner interfere with the efforts of the above-named Union to bargain collectively on behalf of the employees in the appropriate unit.]

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

On the basis of a charge filed on July 26, 1965, by Local 1, Amalgamated Lithographers of America, affiliated with the International Typographical Union, the General Counsel issued a complaint against Respondent Litho-Graphic Press, Inc., alleging that Respondent has refused to bargain with the Charging Party in violation of Section 8(a)(5) and (1) of the Act. Respondent denies the commission of any unfair labor practices.

This proceeding was heard before Trial Examiner David S. Davidson in Brooklyn, New York, on March 14, 1966.¹ At the close of the hearing the parties made brief

¹ At the hearing Fred Dove Alter, president of Respondent, represented Respondent. Both before and after the opening of the formal hearing Alter was advised of his right to be represented by counsel and he stated that he had chosen to proceed without counsel with knowledge of his right to be represented.

oral statements of their respective positions. They were given until March 28, 1966, to supplement their statements with written briefs if they so desired. No briefs were filed.

Upon the entire record in this case, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT

Respondent is a New York corporation with its principal place of business in Hicksville, New York, where it engaged in business as a general commercial lithographer. During its fiscal year ending April 1, 1965, a representative period, Respondent in the course of its business purchased and caused to be transported and delivered to its Hicksville plant, goods and materials valued in excess of \$50,000 from various enterprises located in the State of New York, each of which other enterprises had received said goods and materials in interstate commerce directly from outside the State of New York. I find, as Respondent admitted at the hearing, that Respondent is and has been an employer engaged in commerce and in operations affecting commerce within the meaning of the Act and that assertion of jurisdiction is warranted.²

II. THE LABOR ORGANIZATION INVOLVED

Local 1, Amalgamated Lithographers of America, affiliated with the International Typographical Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The facts*

On March 4, 1963, Local 1, Amalgamated Lithographers of America, was certified in Case 2-RC-12434 as the representative of Respondent's lithographic production employees following an election in which they voted six to three in favor of such representation.

Thereafter, Allen Olmstead, director of organizing and financial secretary of Local 1, Amalgamated Lithographers of America, met on a number of occasions over a period of approximately 1 year with Respondent President Alter in an effort to negotiate a collective-bargaining agreement. Although no agreement was reached, no further meetings were held after early 1964.³

In the spring of 1965, Olmstead and Alter had two conversations about the negotiations, one as a result of a chance encounter.⁴ In May, Olmstead met Alter while visiting the plant of another employer. Olmstead asked about the contract, and according to Alter, he replied, "We would see. I am not too anxious." According to Olmstead, Alter replied, "Never, if I can do it that way." Later in May, Olmstead telephoned Alter at Respondent's plant and asked Alter to resume negotiations. According to Alter, he replied that he was satisfied to leave things at "status quo." According to Olmstead, Alter replied that he did not see any reason why he should continue negotiations, but would think it over and let Olmstead know. There was no further contact between Olmstead and Alter until after the charges were filed. I credit Alter as to both conversations. His memory appeared more certain than Olmstead's, and his candor was beyond question.

Thereafter, the charge in this proceeding was filed. At some point after the filing of the charge and before November or December 1965,⁵ Olmstead again met with

² *Siemons Mailing Service*, 122 NLRB 81.

³ In accord with the testimony of Alter, whose memory as to the dates of the initial negotiations appears to have been more accurate than Olmstead's, I find that the initial negotiations did not continue after a telephone conversation between Olmstead and Alter in March 1964, and that there was no further contact between them thereafter during 1964.

⁴ Alter and Olmstead differed as to the sequence and timing of the two conversations. In view of my impression that Alter's recollection of dates was generally more vivid than that of Olmstead, who undoubtedly had negotiations with many employers other than Respondent during this period, I credit Alter's testimony as to the sequence and timing of the conversations.

⁵ The date 1964 which appears at p. 13, l. 17 of the transcript is, in context, an obvious error.

Alter and attempted to persuade him to resume negotiations. At that time, as Alter testified, his position was that since Olmstead had filed charges with the Board, he would await resolution of the charges before telling him whether or not he would resume negotiations.⁶

At the time of the certification, Local 1 was affiliated with Amalgamated Lithographers of America, which was then a separate unaffiliated International Union. Between the time of the certification and the spring of 1965, Local 1 disaffiliated from Amalgamated Lithographers of America, which in turn was in the process of merging with the International Photo Engravers Union of North America.⁷ Subsequently, but before May 1965, Local 1, which retained the words "Amalgamated Lithographers of America" as part of its name, affiliated with International Typographical Union. Local 1 continues to operate as an autonomous local union, retaining basically the same officers that it had prior to the change in its affiliation, and has enforced its previously existing contracts. Both the disaffiliation and affiliation actions were submitted to vote of the Local 1 membership by mailed ballot. A substantial portion of the Local's membership participated in both votes and voted overwhelmingly in favor of both actions. No other organization has claimed rights as the successor to the original Local 1, Amalgamated Lithographers of America.

Between the time of the certification and the filing of the charge, the number of employees in the unit expanded from 9 to 13 and there was some turnover among the original 9 employees in the unit. After the charge was filed, Respondent apprised the General Counsel that he had a good-faith doubt as to Respondent's majority and questioned the Charging Party's status as successor to the certified union, apparently following consultation with the secretary of an association to which Respondent belongs. Alter did not, however, raise either of these matters in his conversations with Olmstead in May.

Alter at no time after the 1963 election sought to ascertain from his employees whether a majority desired representation by Local 1, and with a few exceptions had no indication from employees as to their desires. In fact, as was stipulated at the hearing, during May 1965, when Olmstead talked with Alter, and in July, when the charges were filed, 8 of the 13 employees in the unit were members of the Charging Party.

B. Concluding findings

1. Respondent's obligation to bargain with the Charging Party

As the Board has recently stated:⁸

[I]n unfair labor practice cases the Board has consistently held that there is an irrebuttable presumption that the majority status of a certified union continues for 1 year from the date of certification; that thereafter the presumption is rebuttable, and an employer may lawfully refuse to bargain only if it can show by objective facts that it has a reasonable basis for believing that the union has lost its majority status since its certification.

On the facts set forth above, I find that the Charging Party properly claims rights as the successor to the union which was certified in the representation case. The facts show that the continuity of the organizational existence of Local 1 has been preserved, there is no confusion as to the identity of the successor to the certified union, the changes in its affiliation have been voted by the membership of the Local, and the Local continues to function autonomously in its day-to-day affairs with no substantial change in its leadership. In these circumstances, I am satisfied that the Charging Party is the successor to the certified union and may claim all the rights which flow from the certification to represent Respondent's lithographic production employees in the certified unit.⁹

⁶ Alter also testified, "On a number of occasions I have indicated to [Olmstead] that I was not interested in continuing contract talks, but this came after the charge that the NLRB made and I stated to him that the reason I wasn't interested is because I wanted the NLRB to clear the air with regard to this charge, which I felt was not applicable and the conversations were around that."

⁷ See *Local No 1, Amalgamated Lithographers of America v. Brown*, 59 LRRM 2965 (N Y S Ct., 1965).

⁸ *United States Gypsum Company*, 157 NLRB 652

⁹ *Minnesota Mining and Manufacturing Company*, 144 NLRB 419, *Emery Industries, Inc (Dice Road)*, 148 NLRB 51; *The Pacific Telephone and Telegraph Company*, 113 NLRB 478, 518-520; *Cochran Co., Inc.*, 112 NLRB 1400, 1408

As more than a year has elapsed since the certification, the question remains to be decided whether Respondent had reasonable basis grounded in objective facts to believe that the Union had lost its majority status when Olmstead sought to resume negotiations. On the one hand, the evidence shows that in the 2 years since certification no agreement was reached and negotiations were apparently abandoned by the Charging Party after the first year. The unit grew from 9 to 13 employees, and some of the original employees had left Respondent and were replaced by newly hired employees. On the other hand, Respondent had made no effort to determine whether the Charging Party's majority continued and had received no information to give him an opinion one way or the other. Moreover, when Olmstead presented Respondent with the request to renew negotiations in May, Alter freely admitted that he did not then question the continuing majority of the Union and did not think to do so until after the complaint herein issued when he sought advice in framing an answer. As the facts adduced at the hearing made clear, had Alter questioned Local 1's majority in May 1965, Local 1 was in a position to establish that its majority did in fact continue. In these circumstances I conclude that despite the lack of diligence of Local 1 in pursuing its bargaining rights, the presumption that it continued to represent a majority was not rebutted.

2. Respondent's alleged refusal to bargain

Respondent contends that it did not refuse to bargain because Alter's responses to Olmstead were not categorical refusals to bargain. While I am inclined to agree that Alter's response to Olmstead at their chance meeting in May was not a refusal to bargain, I do not so view his response during his subsequent telephone conversation with Olmstead. At the chance meeting Alter said he would see about bargaining, but also that he was not anxious to bargain. When Olmstead called later to repeat his request to renew bargaining, it was clear that whatever accident led to the earlier encounter, Olmstead intended to pursue his request seriously. Having temporized at the time of their earlier encounter, Alter's reply to Olmstead's later telephone call that he was satisfied to leave things at the "status quo" could reasonably be construed only as a rejection of further bargaining by Alter after reflection, particularly in view of his earlier comment that he was not anxious to bargain.

It is not necessary, however, to rely solely on the May telephone conversation to find that Respondent refused to bargain in violation of the Act, for Respondent freely concedes that after the charges herein were filed, Respondent refused to bargain with the Charging Party because of the pendency of the charges and so informed Olmstead. It is well settled that the filing of charges does not relieve an employer of the obligation to bargain and a refusal to bargain because charges are pending violates the Act.¹⁰

Accordingly, I conclude that commencing during May 1965, and at all times thereafter, Respondent has refused to bargain with the Charging Party and has thereby violated Section 8 (a) (5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, 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 thereof.

V. THE REMEDY

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

CONCLUSIONS OF LAW

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

¹⁰ *Meyer Fabes, et al, d/b/a Gateway Luggage Mfg. Co*, 122 NLRB 1584, 1587, footnote 6. *N L R B. v. International Shoe Corporation of Puerto Rico*, 357 F.2d 330 (C.A. 1), enfq 152 NLRB 699.

3. All lithographic production employees of Respondent employed at its Hicksville, New York, plant, excluding office and clerical employees, cutters, watchmen, and all other employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since May 1, 1965, the Charging Party has been and now is the exclusive representative of the employees in the said unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on and since an undetermined date in May 1965 to bargain collectively with the Charging Party as the representative of the employees in the above unit, the Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby recommend that the Respondent, Litho-Graphic Press, Inc., Hicksville, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith concerning rates of pay, hours of employment, and other terms and conditions of employment with Local 1, Amalgamated Lithographers of America, affiliated with the International Typographical Union, as the exclusive representative of the employees in the appropriate unit described in paragraph 3 of the section of the Decision entitled "Conclusions of Law."

(b) In any like or related manner interfering with the efforts of the above-named Union to bargain collectively on behalf of the employees in the appropriate unit

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named Union as the exclusive representative of all employees in the appropriate unit, and embody in a signed agreement any understanding reached.

(b) Post at its plant at Hicksville, New York, copies of the attached notice marked "Appendix."¹¹ Copies of such notice, to be furnished by the Regional Director for Region 29, shall, after being signed by an authorized representative of the Respondent, be posted immediately upon the receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the said Regional Director, in writing, within 20 days from the date of the receipt of this Trial Examiner's Decision, what steps the Respondent has taken to comply herewith.¹²

¹¹ In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

¹² In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read, "Notify the Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner 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 Local 1, Amalgamated Lithographers of America, affiliated with the International Typographical Union, as the exclusive representative of all the employees in the bargaining unit described below.

WE WILL, upon request, bargain with Local 1, Amalgamated Lithographers of America, affiliated with the International Typographical Union, as the exclusive bargaining representative of all the employees in the bargaining unit described

below with respect to rates of pay, wages, 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 lithographic production employees at our Hicksville, New York, plant, excluding office and clerical employees, cutters, watchmen, and all other employees, guards, and supervisors as defined in the Act.

LITHO-GRAPHIC PRESS, INC.,
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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 16 Court Street, Fourth Floor, Brooklyn, New York, 11201, Telephone 596-5386.

**Jer Marai Lingerie Co. and Los Angeles Dress and Sportswear
Joint Board, International Ladies' Garment Workers' Union,
AFL-CIO. Case 21-CA-6828. June 10, 1966**

DECISION AND ORDER

On March 23, 1966, Trial Examiner James R. Hemingway issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint. Thereafter, the Respondent and the Charging Party each filed exceptions and supporting briefs. The General Counsel did not file exceptions or a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations 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 Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the Trial Examiner's findings,¹ conclusions, and recommendations, as modified herein.²

¹ In the absence of exceptions thereto, we adopt *pro forma* the Trial Examiner's finding that Respondent did not otherwise violate Section 8(a)(1) of the Act as alleged in the complaint.

² It appears from the record that some of Respondent's employees do not speak nor have a complete command of English. Therefore, we shall require that the notice be printed in both English and Spanish.