

Miller Brewing Company and International Association of Machinists and Aerospace Workers (AFL-CIO). Case 31-CA-540

July 20, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND BROWN

On May 17, 1967, Trial Examiner Wallace E. Royster 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. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a brief in support thereof, and the General Counsel filed cross-exceptions and a supporting 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.

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, cross-exceptions, and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.¹

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, Miller Brewing Company, Azusa, California, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.²

¹ Respondent contends that it was not obligated to bargain with the Union during the contract term about the plant rules on the ground, *inter alia*, that the published rules were a mere codification of existing plant rules. In support of this contention, Respondent relies on *Mason & Hughes, Inc.*, 86 NLRB 848, 850. We find, on the basis of the facts involved, that Respondent's reliance on *Mason & Hughes* is misplaced. In that case, at page 850, the Board held only that "... the mere posting of existing rules . . ." does not of itself constitute an unlawful refusal to bargain (emphasis supplied). In this case, on the other hand, the violation is grounded not on the posting of existing rules, but on the Trial Examiner's finding that Respondent refused to bargain with the Union, at the latter's request, about the substance and merits of the rules. There can be no doubt, as the Trial Examiner found, that the contents of plant rules are mandatory subjects of bargaining on request, where, as here, the subject has not been waived. Accordingly, we agree with the Trial Examiner that Respondent was required to bargain about these rules when the Union requested it to do so on October 7, 1966, and that, by refusing to bargain

on and after that date, Respondent violated Section 8(a)(5) and (1) of the Act.

² The Trial Examiner's Recommended Order, ¶ 2(b), second sentence, is hereby modified to read as follows:

Copies of said notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent, shall be posted and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees in the bargaining unit are customarily posted.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

WALLACE E. ROYSTER, Trial Examiner: The charge in this matter was filed on October 26, 1966, and the complaint based on it was issued the following December 29. At issue is whether Miller Brewing Company, herein the Respondent, has failed in bargaining obligations imposed by Section 8(a)(5) of the National Labor Relations Act, herein the Act, by promulgating plant rules governing employee conduct and contemporaneously refusing to bargain about them with the representative of some of the affected employees, International Association of Machinists and Aerospace Workers (AFL-CIO), herein the Union.

Evidence pertinent to the issue was presented before me in Los Angeles, California, on February 28, 1967.

Upon the basis of the record in the case, in consideration of the briefs filed, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a brewer operating breweries in Milwaukee, Wisconsin, and in Azusa, California. Its annual purchases and sales cause the movement of materials and products having a value in excess of \$50,000 in channels of interstate commerce. It is conceded and I find that the Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

In 1950 the Board certified the Union as the bargaining representative for a unit comprising certain categories of employees on the payrolls of members of California State Brewers Institute, Southern Division (now California Brewers Association and herein the Association). Effective May 1, 1966, the Respondent acquired the brewery theretofore operated by General Brewing Corporation, an Association member. The Respondent at the same time became a member of the Association and a party to the collective-bargaining agreement then in effect between the Association and the Union.¹

¹ The bargaining unit (associationwide) of machinists, their helpers, and apprentices is conceded to be appropriate. The majority status of the Union is not contested.

The mentioned agreement does not purport to set forth any comprehensive rules governing employee conduct, but does allude to safety practices and reserves to the Respondent the right to discharge any employee who, without permission from the Respondent, distributes literature in the plant during working hours. A grievance procedure culminating in binding arbitration is provided for the resolution of disputes "as to the meaning and application of the provisions" of the contract. Throughout the years the Union has never requested the Association to bargain with it concerning plant rules.

In September 1966, the Respondent published and distributed to its employees a booklet listing a number of rules for their observance. Under the heading "Major Rules" conduct meriting discharge for the first offense was described. "General Rules" purporting to describe lesser offenses were formulated under 19 headings. "Safety Rules" were listed separately.

Following this distribution, a representative of the Union, A. S. Hammond, telephoned Respondent's plant manager, Kenneth M. Lewis, and asked Lewis to "sit down and discuss and negotiate on these work rules." Lewis declined to do so saying that the Respondent had no obligation to bargain about them. Hammond then wrote to Lewis saying that in the opinion of the Union the Respondent had acted unilaterally to effect a change in working conditions; that the publishing of the rules constituted a refusal to bargain; and that, if they were not rescinded, an unfair labor practice charge would be filed. The Respondent did not answer this letter.

From any view of the facts, argues the Respondent, no unfair labor practice has been committed. The Association is the bargaining representative of the several employers and the Respondent has no obligation to deal with the Union except through the Association. Hence the bargaining demand upon the Respondent was ineffectual. If any duty to bargain existed it should have been pressed upon the Association. I think that this argument lacks substance. No doubt the Respondent could have sent the Union to the Association for relief, assuming that the Association was empowered to grant it, but it did not do so. Its refusal to discuss the matter was flat and unequivocal. Lewis said that he had been informed by his superiors that there was no duty to bargain and that in consequence he would not do so. Furthermore, the collective-bargaining contract contemplates that each individual employer will handle its own grievances with the Union. If the request of the Union was that the Respondent consider a grievance (the grievance being that the Respondent had published rules governing employee conduct), then no contract procedure was offended and the Union had knocked on the proper door.

Other employers in the bargaining unit had published plant rules without protest from the Union and the Union had never, during bargaining sessions at contract renewal time, asserted a right to be heard in that connection. These circumstances, in the view of the Respondent, constituted a waiver of whatever right the Union might otherwise have had to deal with the Respondent in such matters, at least during the term of the existing contract. Furthermore, says the Respondent, the published plant rules are a codification of those already existing and, this being so, the Union had, tacitly at least, consented to their existence.

The right of an employer to issue and implement plant rules is not really in controversy here. As Respondent's counsel suggests, it is not likely that there is any plant

with more than a few employees which does not have requirements that employees conform to some standards of deportment in the plant society. It is the employer who determines the content of plant rules and the penalties for breach. But this truism does not end the matter, for the question remains whether he must bargain with employee representatives about making such determinations. One can, of course, readily place this in a frame of nonsense by asking if an employer must really consult with a union about notifying his employees that he will not tolerate murder and arson on his premises; that felonious assaults are forbidden; and that thievery and embezzlement will constitute grounds for discipline. Most of the rules published by the Respondent are seemingly unexceptionable and forbid conduct that a rational person would assume to be interdicted, published rule or no. Perhaps bargaining as to such prohibitions could be required only to satisfy form.

But a bargaining representative is empowered to deal with an employer "in respect to rates of pay, wages, hours of employment, or other conditions of employment." The last clause is an elastic one unquestionably designed to bring within the orbit of collective bargaining a wide range of subjects not easily delimited.

Because an employer has the right and the duty to manage his operation it may often be impractical to require that no plant rules issue until a union has been afforded opportunity to bargain about them. The policies and purposes of the Act may be satisfied if the employer does bargain about such matters upon request. The Respondent here has refused to do so. I think that this refusal cannot be justified upon the ground that the Union had never before protested about plant rules, had never sought to bargain about them, and had offered no objection to the rules published by other employer members of the Association. The Union had never expressly waived any bargaining right in this area and may have thought that the rules existing prior to those published by the Respondent were unobjectionable. Although it is no doubt true that many and perhaps most of the rules issued by the Respondent were no more than a restatement of those previously in effect under the operation of its predecessor, some of them were new to the employees at least in the matter of penalty. One of them, General Rule 13, prescribes penalties for refusing to work overtime. Arguably, at least, this is in derogation of provisions governing overtime then existing in the contract between the Union and employer members of the Association. I conclude that the Respondent was required to bargain about these rules when the Union requested that it do so.²

The argument advanced by the Respondent that in any event it was inappropriate for the Union to seek relief from it rather than with the Association has no merit. It was the Respondent, not the Association, who issued the rules. The further argument that the Union should have pursued the grievance procedures of the contract is unpersuasive. The Union was asserting that as bargaining representative it had a right to be heard on the content of plant rules. I believe, and find, that it had such a right.

I find that by refusing the request of the Union to meet and to negotiate in regard to the plant rules, the Respondent has refused to bargain with the Union and has thereby violated Section 8(a)(5) of the Act.

² See *Hilton Mobile Homes*, 155 NLRB 873, 874

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent in refusing to discuss or negotiate plant rules with the Union 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's refusal to discuss or negotiate in respect to plant rules constituted an unlawful refusal to bargain with the Union, I recommend that upon request of the Union the Respondent meet with the Union to discuss and negotiate any questions regarding the promulgation or content of such rules.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I reach the following:

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All machinists, their helpers, and apprentices employed by members of the Association constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. The Union at all times material has been and now is the exclusive bargaining representative of employees in the appropriate unit.

5. By refusing to discuss and negotiate with the Union on the subject of plant rules, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By this refusal, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed in Section 7 of the Act and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. 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

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that Miller Brewing Company, Azusa, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing on request of International Association of Machinists and Aerospace Workers (AFL-CIO), to discuss and negotiate with that organization about the promulgation and content of plant rules affecting employees in the bargaining unit described herein who work at Respondent's plant.

(b) In any like or similar manner interfering with, restraining, or coercing employees in the exercise of their bargaining rights.

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

(a) On request of the Union, negotiate and discuss with it the promulgation and content of plant rules affecting those employees covered by the bargaining unit and in Respondent's employ.

(b) Post at its plant in Azusa, California, copies of the attached notice marked "Appendix."³ Copies of said notice to be furnished by the Regional Director for Region 31, after being signed by the Respondent, shall be posted and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees in the bargaining unit 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 Region 31, in writing, within 20 days from date of receipt of this Decision, what steps have been taken in compliance.⁴

³ 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."

⁴ In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps 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 upon request of International Association of Machinists and Aerospace Workers (AFL-CIO) discuss and negotiate the promulgation and content of plant rules affecting workers in our plant who are included in the bargaining unit represented by that labor organization.

MILLER BREWING 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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 10th Floor, Bartlett Building, 215 West Seventh Street, Los Angeles, California 90014, Telephone 688-5801.