

Enterprise Association of Steam, Hot Water, Hydraulic, Sprinkler, Pneumatic Tube, Ice Machine and General Pipefitters of New York and Vicinity, Local Union No. 638 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO and HV & AC Contractors' Association, Inc. Case 29-CB-339

March 15, 1968

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

On December 7, 1967, Trial Examiner Melvin Pollack issued his Decision in this 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, Respondent filed exceptions to the Trial Examiner's Decision and the Charging Party filed a reply.

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, and the entire record in this case, including the Respondent's exceptions and Charging Party's reply, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

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, Enterprise Association of Steam, Hot Water, Hydraulic, Sprinkler, Pneumatic Tube, Ice Machine and General Pipefitters of New York and Vicinity, Local Union No. 638 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order.

170 NLRB No. 44

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

MELVIN POLLACK, Trial Examiner: Upon a charge filed on March 20, 1967, by HV & AC Contractors' Association, Inc., herein called the Association, an amended complaint was issued on July 31, 1967, alleging that the Respondent Union had violated Section 8(b)(3) of the National Labor Relations Act, as amended, by refusing to sign a written agreement with the Association embodying terms and conditions of employment agreed on by the parties, by bargaining directly and individually with members of the Association, and by causing the employees of contractor John Grace & Co., Inc., to stop work in order to force that contractor and the other members of the Association to bargain individually with the Union.

A hearing was held before me at Brooklyn, New York, on September 18, 1967. At the conclusion of the hearing, the General Counsel presented oral argument. Briefs filed by the General Counsel, the Association, and the Respondent Union have been carefully considered. Upon the entire record in this case and my observation of the demeanor of the witnesses as they testified, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE ASSOCIATION; THE LABOR ORGANIZATION INVOLVED

The members of the Association, a New York corporation, are employers engaged in the installation and servicing of heating, ventilating, and air-conditioning equipment. During the year preceding the issuance of the complaint, each member of the Association received from out-of-State suppliers goods and materials valued in excess of \$50,000. I find that the Association and each of its members are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE UNFAIR LABOR PRACTICES

A. Sequence of Events

The Union is the collective-bargaining representative of steamfitters employed by members of the Association and also represents steamfitters employed by the Mechanical Contractors Association of New York, Inc. Prior to the events described below, the Association had no collective-bargaining agreement with the Union but its members observed the terms of a trade agreement effective July 1, 1963-June 30, 1966, between the Union and the Mechanical Contractors Association. In February 1966, the Union and the Mechanical Contractors Association began negotiations on a new contract.

On April 20, 1966, and again on April 27, the Association's attorney, Erwin Popkin, sent letters to President Thomas J. Murray of the Union requesting that the Union set the "date, time, and place" for negotiations on a contract to be effective July 1, 1966, and that the Union submit to the Association in advance of negotiations its proposed changes or modifications "to the present collective-bargaining agreement." By letter dated May 25, 1966, Secretary-Treasurer James A. Mulligan of the Union advised Attorney Popkin that the Union would "be pleased to negotiate with you concerning an agreement to take effect on July 1st, 1966," and that the meeting had been set for 11 a.m., June 2, at the Union's office. Mulligan enclosed with the letter a copy of the Union's proposals to the Mechanical Contractors Association for modification of the contract expiring on June 30, 1966. Following additional correspondence, a meeting was set for June 28 at the Union's office.

At the June 28 meeting, Joseph Kenner, Sidney Walzer, and John Vittiglio of the Association met with Robert Kennedy, John J. Wilcox, and Cornelius Dunleavy of the Union. The Association representatives said they "had come down to negotiate" and that they "were fully empowered to do so." The union men said they were "the negotiating committee" for the Union. The Association representatives inquired about the Union's negotiations with the Mechanical Contractors Association and were advised that the Union had withdrawn its demand for a 4-day week. The union representatives asked if the Association was interested in an industry promotion fund. The Association representatives replied that the members of the Association had been discussing the matter, that they thought it was an excellent idea, and that the Association would have no objection "if such a fund would be incorporated in the contract." The Association representatives suggested that the parties "get into a more detailed discussion." Following an interruption, the union representatives said the negotiations with the Mechanical Contractors Association had been underway for some time, that an agreement would probably be reached soon, and that it was "pointless" to discuss the same things with the Association at this late date. A union representative asked if the Association would accept any agreement reached with the Mechanical Contractors Association. After a caucus, the Association representatives said they would accept "the same contract." The parties agreed they had a "deal" and shook hands.

On July 8, 1966, Secretary-Treasurer Mulligan of the Union sent the Association a letter transmitting a copy of a memorandum of agreement negotiated by Respondent and the Mechanical Contractors Association on July 6, 1966. The memorandum of agreement, effective until June 30, 1969, made certain changes in the 1963-1966 contract and provided that "All other items of the present Trade

Agreement remain as is." The letter of transmittal stated:

In accordance with our understanding, the enclosed two page copy of a memorandum of agreement embodying the terms and conditions of the new Trade Agreement negotiated by our Union and Mechanical Contractors Association of New York, Inc., shall be binding between our respective Associations until a more formal agreement is drawn and executed.

Kindly sign the enclosed copy of this letter, indicating your acceptance of the terms of the above mentioned agreement, and return same to me.

On July 18, 1966, the Association returned the memorandum agreement signed by its president, Joseph Kenner, together with letters from each of the Association's members authorizing the Association to negotiate a collective-bargaining agreement with the Union.

The Association thereafter sent the Union a series of letters requesting the Union to forward a formal collective-bargaining agreement for execution. In February 1967, Neil Carty, a union delegate, telephoned Jules Nestle, who had succeeded Joseph Kenner as the Association's president in October 1966, at his home. Nestle said the Association wanted the formal agreement referred to in the Union's letter of July 8 transmitting the memorandum of agreement between the Union and the Mechanical Contractors Association. Carty requested a meeting at which the Union could explain its objections to a formal contract with the Association. Nestle replied in effect that the Association felt that it needed the contract which it had agreed upon with the Union.

On March 8, 1967, John J. Tracey, the Union's business agent, sent each member of the Association a letter requesting that it sign and return the two copies of the Union's "Working Agreement," effective July 8, 1966, to June 30, 1969, enclosed with the letter. By letter dated March 10, 1967, and at a meeting with the Union later in March, the Association took the position that it had a contract with the Union and there was no reason for its members to sign individual contracts. The Union's representatives insisted that it would be to the long-term advantage of the Association's members not to push the signing of a formal agreement by the Union and the Association. The parties agreed to discuss the matter again at a time and place to be fixed by the Union.

On Thursday, April 20, 1967, Walter Gould, a union delegate, told President John Vittiglio of the John Grace Company that he would pull a work stoppage at the Company's Meadowbrook's Hospital jobsite unless Vittiglio signed the individual "Working Agreement" mailed to him. Vittiglio refused to sign. Gould visited the Meadowbrook jobsite on Friday morning, April 21, and the union men stopped work. At a meeting later that

day, Business Agent Tracey told the Association's representatives that unless its members signed individual contracts by Wednesday, April 26, the Union's men would be pulled off the Association members' jobsites.

The Grace Company's employees returned to work on Monday, April 24. The next day, Delegate Cummings of the Union advised President Nestle of the Association that his employees would not report to work the next day unless he signed the independent contract previously sent to him. No work stoppage occurred, however, as the New York State Supreme Court of Nassau County enjoined the Union from pulling out the employees of the Association's members.

B. Analysis and Conclusions

The Union advised the Association on May 25, 1966, that it would engage in bargaining negotiations with the Association; on June 28, the Association agreed to a union proposal that it accept as its contract any agreement reached by the Union with the Mechanical Contractors Association; and on July 8, the Union forwarded to the Association for acceptance a memorandum of agreement on a new contract reached with the Mechanical Contractors Association, which "shall be binding between our respective Associations until a more formal agreement is drawn and executed." The Association signed and returned the memorandum of agreement on July 8, but the Union thereafter refused the Association's requests for a formal contract, insisted that the members of the Association execute individual contracts, and caused a work stoppage at a jobsite of the John Grace Company in order to force this Company and other members of the Association to enter into individual contracts with the Union.

I find no merit in the Union's contention that its representatives had no authority to meet and negotiate a contract with the Association's representatives on June 28 or thereafter. The Union relies on a motion approved at a union meeting on May 25, 1966, that no action should be taken by its trade board on the Association's request for contract negotiations "until discussed by and approved by the body." At a June 15 meeting, however, the membership passed a motion "to invite the [Association] to a meeting with our trade board and possibly the Mechanical Contractors." As this action was taken after a "long discussion" on whether the Association should be "recognized to negotiate our new agreement," I find that the union membership authorized its trade board to enter into contract negotiations with the Association. In any event, the Union's secretary-treasurer invited the Association to bargaining negotiations, the meeting of June 28 was held at the Union's offices, the Union's representatives at this meeting held themselves out as having authority to negotiate

a contract with the Association, and the Union's secretary-treasurer subsequently transmitted the memorandum of agreement reached with the Mechanical Contractors Association to the Association for its acceptance. I find from these circumstances that the Union's representatives reached a binding agreement with the Association on behalf of the Union. Cf. *International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW), AFL-CIO (Maremont Automotive Products)*, 134 NLRB 1337, 1338. Accordingly, I conclude that by failing and refusing after July 18, 1966, to execute a "more formal agreement" embodying the terms of the July 8 memorandum agreement, by attempting to bypass the Association and deal directly and individually with its members, and by engaging in a work stoppage in order to force the members of the Association to sign individual contracts, the Union has refused to bargain within the meaning of the Act, thereby violating Section 8(b)(3).

CONCLUSIONS OF LAW

1. The Association and each of its members are employers within the meaning of Section 2(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. The Union has refused to bargain with the Association within the meaning of Section 8(b)(3) of the Act.
4. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

It having been found that the Union has engaged in unfair labor practices within the meaning of Section 8(b)(3) of the Act, my Recommended Order will require that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings and conclusions and the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, there is hereby issued the following:

RECOMMENDED ORDER

The Respondent Union, its officers, agents, and representatives shall:

1. Cease and desist from refusing upon the request of the Association to prepare, execute, and submit to the Association for its acceptance a formal contract embodying the terms and conditions of employment agreed on by the parties in the memorandum agreement of July 8, 1966; from dealing or attempting to deal directly and individually with members of the Association in

derogation of its obligation to bargain with the Association; from threatening to engage in or engaging in work stoppages in order to force members of the Association to sign individual contracts; and from in any like or related manner refusing to bargain with the Association in accordance with the requirements of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Upon the request of the Association, forthwith prepare, execute, and submit to the Association for its acceptance a formal contract embodying the terms and conditions of employment agreed upon by the parties in the memorandum agreement of July 8, 1966.

(b) Post at the Union's offices and meeting halls, copies of the attached notice marked "Appendix."¹ Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by an official representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by the Union to insure that said notices are not altered, defaced, or covered by any other material.

(c) Mail to the Regional Director for Region 29 signed copies of the notice for posting by members of the Association, said Employers being willing, at all locations where notices to their employees are customarily posted.

(d) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.²

¹ 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."

² 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 MEMBERS OF ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC, SPRINKLER, PNEUMATIC TUBE, ICE MACHINE AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY,

LOCAL UNION No. 638 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

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 you that:

WE WILL, if requested to do so by HV & AC Contractors' Association, Inc., prepare, execute, and submit to said Association for its acceptance a formal contract embodying the same terms and conditions of employment agreed upon on July 8, 1966, with the Mechanical Contractors Association of New York, Inc.

WE WILL NOT attempt to bargain directly and individually with the members of said Association and WE WILL NOT threaten or engage in work stoppages to force members of the Association to sign individual contracts, in disregard of our obligation to bargain with the Association.

ENTERPRISE ASSOCIATION OF STEAM, HOT WATER, HYDRAULIC, SPRINKLER, PNEUMATIC TUBE, ICE MACHINE AND GENERAL PIPEFITTERS OF NEW YORK AND VICINITY, LOCAL UNION No. 638 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO (Labor Organization)

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 members 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 596-3535.