

**General Tire and Rubber Company d/b/a Astoria General Tire Co. and Local 138, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 29-CA-956**

March 20, 1968

## DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND JENKINS

On November 21, 1967, Trial Examiner Robert E. Mullin issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, 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 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 and brief, and the entire record in the case, 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, General Tire and Rubber Company, d/b/a Astoria General Tire Company, Long Island City, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

## TRIAL EXAMINER'S DECISION

### STATEMENT OF THE CASE

ROBERT E. MULLIN, Trial Examiner: This case was heard in Brooklyn, New York, on July 20,

1967, pursuant to a charge, duly filed and served,<sup>1</sup> and a complaint issued on May 31, 1967. The complaint alleged that the Respondent engaged in unfair labor practices proscribed by Section 8(a)(1) and (5) of the Act. In its answer, the Respondent conceded certain facts as to its business operations, but it denied all allegations that it had committed any unfair labor practices.

At the conclusion of the hearing, the General Counsel presented oral argument as to the legal issues in dispute. The other parties waived oral argument. On September 13, 1967, the General Counsel, and, on September 14, 1967, the Respondent, submitted briefs on the facts and the law.

Upon the entire record in the case, including the briefs of counsel, and from my observation of the witnesses, I make the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The Respondent, an Ohio corporation, with its principal office and place of business in Akron, Ohio, maintains a branch office and retail service outlet in Queens County, State of New York, where it is engaged in the sale, distribution, and repair of tires, tubes, batteries, and related products. The Queens store is the only location involved in the present matter. During the year preceding the issuance of the complaint, a representative period, the Respondent manufactured, sold, and distributed from its Akron plant products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from this plant in interstate commerce directly to States of the United States other than Ohio.

Upon the foregoing facts, the Respondent concedes, and the Trial Examiner finds, that General Tire and Rubber Company is engaged in commerce within the meaning of the Act.

#### II. THE LABOR ORGANIZATION INVOLVED

The Respondent concedes, and the Trial Examiner finds, that the Union (herein called Local 138) is a labor organization within the meaning of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. Background and Sequence of Events

The Respondent concedes, and the Trial Examiner finds, that all service shop employees at its Queens store, exclusive of office clericals, sales personnel, watchmen, guards, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

<sup>1</sup> The charge was filed on April 17, 1967

For some time prior to 1967, the employees in the foregoing unit were represented for the purposes of collective bargaining by Retail Men's Wear, Sporting Goods and Accessories Employees Union, Local 721, Automotive Parts and Tire Division, Retail, Wholesale and Department Store Union AFL-CIO (hereinafter called Local 721). On January 3, 1967, Columbus Stevenson, an employee, filed a petition requesting that the Board's Regional Office conduct a decertification election for the employees in the unit.<sup>2</sup> On January 30, 1967, such an election was held. A tally of the ballots cast showed that of seven eligible voters, five votes were cast and all five were against the incumbent union. On February 7, 1967, the Regional Director certified the results of the foregoing election.

In February and March 1967, Local 138 began an organizational campaign among the Respondent's employees at the Queen store. On about April 7, 1967, Local 138 requested recognition as the bargaining agent for the employees in the appropriate unit described above. The Respondent declined to grant such recognition. Thereafter, on April 13 and until April 17, 1967, Local 138 maintained an "on-strike" picket line outside the Respondent's premises.<sup>3</sup> Of some seven individuals who engaged in this picketing, six were employees at the Respondent's store and the seventh was a former employee. The six employees involved in the picketing represented the entire membership of the appropriate bargaining unit here involved.<sup>4</sup>

#### *B. The Organizational Campaign of Local 138 and its Request for Recognition*

At various times in February and March 1967,<sup>5</sup> Columbus Stevenson secured authorization cards from Louis Book, an organizer for Local 138. Thereafter, Stevenson distributed these among his coworkers and during the ensuing weeks secured signed authorizations from all of them.

On or about April 7, Book met with Joseph DeSimone, general manager for the Queen store, and John R. Crow, district manager for the Respondent. There is no conflict in the record as to the substance of the ensuing conversation. According to DeSimone, Book stated at the outset that Local 138 represented the men in the service shop and that he had their signed authorization cards. DeSimone testified that neither he nor Crow asked to see the cards. The general manager further

testified that he and Crow told Book that Local 138 would have to be approved by the Labor Board as the bargaining agent before the Company would grant recognition and that in the Company's view, since there had been an election in the unit recently, it would not be obligated to bargain until 12 months had elapsed.<sup>6</sup> DeSimone conceded that neither he nor Crow expressed any doubts to Book about the majority standing of Local 138. DeSimone testified that about a week later he was in Crow's office when the latter had a telephone conversation with Book, and that the district manager told Book that, since an election had been held within the unit during the preceding 12 months, the Union would have to go to the Labor Board.

On about April 12, Book telephoned DeSimone to tell him that if the Company was not prepared to recognize Local 138 and sign a contract, the Union would cause a work stoppage. DeSimone reiterated the position which he had stated earlier and told the union representative that the matter would have to be resolved by the Labor Board. The next day, the Union established a picket line outside the Respondent's premises.

The picketing was conducted under Book's direction with all of the employees in the unit participating.<sup>7</sup> As found earlier on April 17, the Union terminated the strike and withdrew the pickets.

On April 14, Attorney Robert Savelson, on behalf of Local 138, had a telephone conversation with Attorney John Daily, counsel for the Respondent, wherein the former renewed the Union's demand for recognition and bargaining. Counsel for the Company declined on the ground that since an election had been conducted within the past year, the Company was not obligated to recognize or bargain with Local 138 until an entire year had elapsed. In a letter to the Respondent dated April 14, the Union renewed its demand for recognition and bargaining. Local 138 never received a response to the latter communication.

On April 7, when the Union made its initial request for recognition, there were six employees in the appropriate unit. These were Arsenio Acosta, David Johnson, Antomio Munoz, Jose Sisco Rivera, Louis Rodriguez, and Columbus Stevenson. All of them had signed authorization cards. These cards, all of which bore the date of March 13, or before, were received in evidence. All of the employees here involved testified, on both direct and cross-ex-

<sup>2</sup> Case 29-RD-41

<sup>3</sup> On April 13, 1967, the Respondent filed a charge against Local 138 wherein it alleged that the picketing constituted a violation of Section 8(b)(7)(B) of the Act Case 29-CP-74. A few days later, after the Union abandoned its picketing, the Respondent withdrew the CP charge

<sup>4</sup> The foregoing findings are based upon various stipulations to which the parties agreed at the hearing in the present case.

<sup>5</sup> All events discussed herein occurred in 1967, unless otherwise specified

<sup>6</sup> Book testified, credibly and without contradiction, that DeSimone told

him at this meeting "No sense in you're showing me the cards. I know you got the people. You got to go to Akron, Ohio [the corporate headquarters] because you can't be here for one year "

<sup>7</sup> There were six employees in the unit. All except one of this group carried placards at some point during each business day while the strike was in progress. The only exception was Louis Rodriguez. Because of a leg injury, the latter did not actually walk on the picket line, but throughout the work stoppage he remained in the immediate vicinity of his coworkers who were carrying their strike placards

amination, as to the circumstances in which their signatures were secured.

Stevenson, the one most active in securing employee endorsement of Local 138, testified that he signed his card on March 13 and that on about the same date he secured the other signed cards from his fellow workers.<sup>8</sup> Acosta testified that he signed a card which Stevenson had given him and, in explanation of why he had done so, stated, "I sign it to bring a new union." Johnson, an employee who could neither read nor write, testified that he had his wife sign an authorization for him, and that he had her do this because he wanted "To get a union, better benefits, more money." Munoz, who executed his own card and returned it to Stevenson, testified that he signed an authorization for Local 138 because "We wanted to change the union, because actually we didn't see any benefits with the other union." Rivera, who signed his card in Stevenson's presence and returned it to him, testified that he had signed an authorization to get "this Union [Local 138] and . . . more benefits . . . Blue Cross, things like that." Rodriquez, who affixed his own signature on a card, with Stevenson as a witness, echoed the same objective with his testimony that he had aligned himself with Local 138 "To get more benefits."

On the basis of the foregoing facts, it is apparent, and I find, that on April 7, 1967, when the Union made its demand for recognition and bargaining, Local 138 had secured authorization cards from all of the employees then in the unit and, therefore, had the statutory prerequisite of a majority.

The Respondent made no effort to prove that it ever had any doubts as to the Union's majority support within the unit. General Manager DeSimone conceded that the issue was never raised on behalf of the Respondent in any of the conversations he had with Business Agent Book. He also testified that during the period when the Union took strike action to enforce its demand for recognition he saw all of the employees in the unit on the picket line. In fact, the Respondent denied recognition to Local 138, solely because Local 721 had been decertified in an election held in January, and the Respondent felt that until 12 months had elapsed it was not obligated to bargain with either Local 721 or any other union.<sup>9</sup>

On the basis of the record herein and the findings of fact set forth above, I conclude and find that on April 7, 1967, Local 138 had an uncoerced majority within the appropriate unit, that neither then,

nor later, did the Respondent express any doubt as to the Union's majority standing among the employees in question, and that the Respondent's sole reason for refusing to bargain was that the decertification election had occurred within the preceding 12 months.

### C. Contentions of the Parties; Findings and Conclusions with Respect Thereto

The General Counsel contends that the results of the decertification election in January 1967 did not guarantee the Respondent that it would have a 12-month period of freedom from all unions; that, in fact, another union, such as Local 138, was free to establish its majority status at the time it did, and, having done so, the Respondent was obligated to recognize and bargain with it. This is denied by the Respondent, according to whom it had a good-faith doubt that any union represented a majority of its employees and that, in any event, subsequent to the decertification election it was not compelled for at least a year to recognize any bargaining agent.

The principal cases on which the General Counsel relies are *Rocky Mountain Phosphates, Inc.*, 138 NLRB 292, and *Conren, Inc., d/b/a Great Scot Supermarket*, 156 NLRB 592, enfd., 368 F.2d 173 (C.A. 7), cert. denied, 386 U.S. 974. In *Conren*, a decertification election resulted in the defeat of the incumbent union with a "no union" vote. Only a few months thereafter a majority of the employees signed authorization cards in the old union and the latter requested recognition. The Board and the court of appeals held that the vote in the decertification proceeding did not preclude the rejected union from demanding recognition on the basis of authorization cards secured during the ensuing 12-month period. In *Rocky Mountain Phosphates, Inc.*, 138 NLRB 292, an incumbent union became defunct during the certification year. Thereafter, and before the expiration of the certification year, a new union secured signed cards from a majority within the unit. The Board held that under Section 8(a)(5) the employer was obliged to bargain with the new union. In so doing, the Board stated (138 NLRB at 296):

... this is not a case where an employer must determine at his "peril" where his duty to bargain lies, for the facts here clearly show, and our colleagues concede, that the Respondent was fully aware that the Independent had become defunct and that Local 375 had as-

<sup>8</sup> One card, that of Louis Rodriquez, was dated February 24.

<sup>9</sup> On cross-examination, Mr. DeSimone, who testified with complete candor throughout his appearance on the stand, was asked the following questions and gave the answers which appear below.

Q You heard, did you not, and you testified that Mr. Crow told Mr. Book that he should go to the Labor Board if he wanted to represent the employees because there had been an election in the past 12 months, isn't that so?

A. Right

Q I am asking you simply this: Did you ever hear from Mr. Crow or

anybody else in the Company any other reason advanced for not recognizing and bargaining with Local 138 in February, March, or April 1967?

A. Other than that question?

Q. Other than the 12 month problem?

A. No.

Q. So that was the reason, so far as you know . . . why the company refused to bargain with the Union?

A. That's correct.

sumed the status of majority representative. In the circumstances of this case, to say that Respondent may lawfully resist the bargaining demands of Local 375 despite its lack of a good-faith doubt as to majority status, simply because the employees decided to abandon the Independent during the certification year, is to penalize employees for exercising rights under Section 7 . . . .

The Respondent contends that it had no obligation to recognize or bargain with Local 138 within the year following the RD election unless the General Counsel can prove that the Employer's conduct displayed a rejection of the collective-bargaining principle or a desire to dissipate the Union's majority status. This argument finds support in *Strydel, Incorporated*, 156 NLRB 1185. There, subsequent to a series of elections which concluded with a runoff in which the Machinists and the Teamsters participated, the two named organizations each received 50 percent of the vote, and as a result, neither had a majority. Shortly thereafter, district 50 secured cards from a majority of the employees in the unit and requested recognition. The employer denied the request on various grounds, but primarily because a Board election had been held within less than 12 months prior to the demand. The Board held that the General Counsel had failed to prove an alleged violation of Section 8(a)(5). In so doing, the Board stated "We find no basis in the record for imputing to Respondent a rejection of the collective-bargaining principle, or an effort to undermine the Union by gaining time in which to dissipate the Union's claimed majority." (156 NLRB at 1187.)

*Strydel* dealt with a problem somewhat similar to the one at hand, for concededly the General Counsel here was unable to support the allegation of a refusal to bargain with evidence of any independent violations of Section 8(a)(1). On the other hand, on the facts found herein, the present case is distinguishable from *Strydel*, for in the latter there was a rival union on the scene when the employer denied recognition to district 50.<sup>10</sup> Here, of course, there was no rival to Local 138.

In the instant case, when Local 138 demanded recognition, it was not the union which the employees had rejected in the RD election 2 months earlier, nor did the Respondent offer any evidence that Local 721 or any other rival was soliciting the support of the employees. In its answer and in its brief, the Respondent contends that it had a good-faith doubt that *any* union represented a majority of its employees. General Manager DeSimone, however, did not express any such doubt. It was undeniable that, at the time Local 138 demanded recognition, Mr. DeSimone told Business Agent Book, "No

sense in your showing me the cards, I know you got the people . . ." and that thereafter the general manager witnessed the entire complement of the unit participate in a strike to secure recognition. On the facts found herein, it is my conclusion that there could be, and was, no doubt on the part of Respondent as to the fact that Local 138 represented a majority within the unit.

In substance, other arguments advanced in the Respondent's brief are rooted in the assumption that after an RD election, an employer is entitled to what has been characterized as a 12-month "period of repose from the bargaining demands of unions." *Conren*, 156 NLRB at 509. Since this construction of the Act has already been rejected by the Board, it must likewise be, and is, rejected by me. Consequently, the Respondent, in relying on a legally unacceptable reason for rejecting the bargaining request of Local 138, when the latter had demonstrated an uncoerced majority in an appropriate unit, must be held to have violated Section 8(a)(5) and (1) of the Act. I so find. *Rocky Mountain Phosphates, Inc.*, 138 NLRB 292.

#### CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce and the Union is a labor organization, all within the meaning of the Act.

2. All service shop employees of the Respondent, employed at its Queens store, exclusive of office clericals, sales personnel, watchmen, guards, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

3. At all times since April 7, 1967, the Union has been the exclusive representative, for the purpose of collective bargaining within the meaning of Section 9(a) of the Act, of all the employees in the aforesaid appropriate unit.

4. By failing and refusing to bargain in good faith with the Union as the representative of the employees in the aforesaid appropriate unit, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### IV. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that the Respondent be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

<sup>10</sup> It appears from the Trial Examiner's Decision in *Strydel* that when District 50 made its demand on the employer, the Teamsters, one of the unions which had failed to secure a majority in the run-off election, had resumed its organizational activity among the employees. Indeed, at the unfair labor

practice hearing, the Teamsters sought, without success, to intervene as a party and establish a claim that at all times material it represented a majority of the employees in the unit described in the complaint (156 NLRB at 1188, fn 2)

Upon the foregoing findings and conclusions and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

### RECOMMENDED ORDER

General Tire & Rubber Company, d/b/a Astoria General Tire Co., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with Local 138, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all employees in the following appropriate unit: All service shop employees at the Respondent's Queens store, exclusive of office clericals, sales personnel, watchmen, guards, and supervisors.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under Section 7 of the Act.

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, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its premises in Queens County, in the City and State of New York, copies of the attached notice marked "Appendix."<sup>11</sup> Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's authorized 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 employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.<sup>12</sup>

<sup>11</sup> 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."

<sup>12</sup> 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 Recommendations 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, bargain with Local 138, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of all the employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All service shop employees at our Queens' store, exclusive of office clericals, sales personnel, watchmen, guards and supervisors.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist the above-named, or any other, labor organization, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

GENERAL TIRE AND  
RUBBER COMPANY, D/B/A  
ASTORIA GENERAL TIRE  
Co.  
(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, 4th Floor, Brooklyn, New York 11201, Telephone 596-5386.