

In the Matter of FARMCO PACKAGE CORPORATION and UNITED VENEER
BOX AND BARREL WORKERS UNION, C. I. O.

Cases Nos. C-439 and R-450.—Decided April 14, 1938

Crate and Barrel Manufacturing Industry—Interference, Restraint, or Coercion: refusal to bargain collectively—*Unit Appropriate for Collective Bargaining:* production employees, exclusive of clerical and supervisory employees and salesmen; no controversy as to—*Representatives:* proof of choice: membership applications in union—*Employee Status:* strikers—*Collective Bargaining:* refusal to negotiate with representative of majority of employees.

Mr. Samuel M. Spencer, for the Board.

Mr. E. A. Gray, of Norfolk, Va. and *Mann & Tyler*, by *Mr. James Mann* and *Mr. S. Heth Tyler*, of Norfolk, Va., for the respondent.

Mr. Ray Thomason, of Norfolk, Va., for the Union.

Mr. Arnold R. Cutler, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by the United Veneer Box and Barrel Workers Union, Local No. 324,¹ herein called the Union, the National Labor Relations Board, herein called the Board, by Bennet F. Schaufler, Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint, dated November 8, 1937, against Farmco Package Corporation, Norfolk, Virginia, herein called the respondent, alleging that the respondent had committed unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint and accompanying notice of hearing were duly served upon the parties.

In respect to the unfair labor practices, the complaint alleged in substance that prior to July 15, 1937, and at all times thereafter the Union had been designated as the exclusive representative of the respondent's production employees at the Norfolk plant and that

¹ It appears from the record that the correct name of the Union is United Veneer Box and Barrel Workers Union, Local No. 324, although incorrectly designated in the pleadings.

on that date and subsequent thereto the respondent had refused to bargain collectively with the Union as the exclusive representative of such employees; and that the respondent by such acts and other acts had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On November 16, 1937, the respondent filed an answer in which it admitted the allegations of the complaint concerning the nature and scope of the business, but denied that it was engaged in interstate commerce, denied the commission of the unfair labor practices alleged in the complaint, and stated that although it did not know whether or not a majority of the production employees had designated the Union as their sole representative for the purpose of collective bargaining prior to July 15, 1937, it had not questioned the designation of said Union as such representative and had not refused to bargain with it.

On September 22, 1937, the Union filed a petition with the Regional Director alleging that a question affecting commerce had arisen concerning the representation of production employees of the respondent at its Norfolk plant and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On October 12, 1937, the Board, acting pursuant to Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. Notice of the hearing on the petition was duly served upon the parties. On October 18, 1937, the Board, acting pursuant to Article III, Section 10 (c) (2), of the said Rules and Regulations, ordered that the two cases be consolidated.

Pursuant to notice, a hearing on the complaint and petition was held in Norfolk, Virginia, on November 18 and 19, 1937, before James Gibson Ewell, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel. The Union was represented by a field representative for the Committee for Industrial Organization. All parties participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the close of the hearing, counsel for the Board moved that the pleadings be conformed to the proof. Counsel for the respondent made a similar motion with respect to its defense. Both motions were granted by the Trial Examiner. During the course of the hearing the Trial Examiner made several rulings on other motions and on objections to the admission of evidence. The Board has reviewed these ruling and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On December 4, 1937, counsel for the respondent filed a brief, which the Board has considered. On February 11, 1938, the Trial Examiner filed his Intermediate Report, finding that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act. The respondent did not file any exceptions to the Intermediate Report.

Upon the entire record in both cases, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT ²

The respondent, Farmco Package Corporation, a Virginia corporation, has its office and principal place of business at Norfolk, Virginia. It is engaged in the manufacture of crates, barrels, slat barrels and cooperage stock, for use in the packing of fruits and vegetables. It operates four plants, located respectively at Norfolk, Virginia, hereinafter called the Norfolk Plant, Suffolk, Virginia, Trotville, North Carolina, and Maysville, North Carolina.³ This case is concerned only with the Norfolk Plant. The sales of the respondent at its Norfolk Plant for the year ending August 31, 1936, amounted to \$296,000.

Approximately 75 per cent of the raw materials used by the respondent at its Norfolk Plant come from States other than the State of Virginia. Approximately 25 per cent of the finished products of the respondent's Norfolk Plant are shipped to points outside of the State of Virginia.

As of July 14, 1937, the respondent employed 317 production employees at its Norfolk Plant.⁴

II. THE ORGANIZATION INVOLVED

United Veneer Box and Barrel Workers Union, Local No. 324, affiliated with the Committee for Industrial Organization, is a labor organization admitting to its membership all production employees of the respondent at the Norfolk Plant, exclusive of clerical and supervisory employees and salesmen.

²The information as to the respondent's business has been obtained from a stipulation agreed upon between counsel for the respondent and for the Board which was read into the record.

³The respondent is a subsidiary of and is wholly owned by the Farmers Manufacturing Company, from which the four plants are leased by the respondent. At the time of the hearing both the respondent and Farmers Manufacturing Company were in the process of reorganization under Section 77B of the Bankruptcy Act, 11 U S C. A. Sec. 207.

⁴The above number of employees does not include 13 names which have been stricken from the respondent's pay-roll list of July 14, 1937, because they are clerical or supervisory employees. There is no indication that salesmen were included in this list.

III. THE UNFAIR LABOR PRACTICES

A. *The background of the unfair labor practices*

Early in June 1937, Union organizers started to organize the production employees of the respondent at the Norfolk Plant and the Union was formed. At a regular meeting of the Union, held on July 14, 1937, a proposed collective bargaining agreement between the Union and the respondent was submitted to the members, who approved the agreement, for submission to the respondent. Apparently on the same day three members of the Union bargaining committee, hereinafter called the Committee, who were employees at the Norfolk Plant, communicated with Robert F. Fowler, the superintendent of the Norfolk Plant, who arranged a conference with the Committee for July 15, 1937. On that date Fowler met with the five members of the Committee, of which Clarence Brown, the financial secretary of the Union, was a member. At the meeting Fowler read the contract and the paragraphs which were not clear to him were explained by one of the members of the Committee. Brown testified that Fowler, after reading the contract, stated that he did not have any authority to sign any contract, saying, "There is not a damn thing I can do."

Fowler denied making any statements that he lacked authority to act. He testified that after he had arranged the conference of July 15, but before it was held, he had talked to J. E. Romm, the president of the respondent, and had received authority to act in the matter, subject to the limitation that there could neither be an increase in wages nor a decrease in hours, in view of the precarious financial condition of the respondent. Romm testified to the same effect. Fowler claimed that after reading the contract, he explained the financial position of the respondent to the Committee, and told them that there were "a number of things" in the contract "that were objectionable, that the wages and hours were something that this company could not do anything about." Fowler denied making the statement attributed to him by Brown and contended that he said, "we couldn't do a damn thing about any contract involving an increase in wages and changes in the hours that we were operating at that time."

The Committee left the contract with Fowler, and at the same time tried to arrange a meeting with the officers of the respondent. Fowler said that there was no point in having such a meeting as he had been authorized to act in the matter, but as the Committee insisted, he told them he would let them know in 5 or 6 days. Fowler testified that when he "approached the officers of the company their reply to me was practically the same as it was originally, that they

had appointed me as the representative of the company to deal with these men." About July 20, 1937, three members of the Committee saw Fowler again to inquire whether or not the meeting with the officers had been arranged, but they were told they could not have such a meeting.

On August 16, 1937, Brown again saw Fowler at his office in an endeavor to arrange a meeting between the Committee and the management for Thursday of that week. While Brown was in Fowler's office, the employees decided to and did go out on strike at about 1 o'clock that afternoon. It is clear from the record that the reason the employees struck was because of the dissatisfaction resulting from the failure of the respondent to reach any agreement with the Union. At no time during any of the conferences had the respondent made any counterproposals.

Immediately after the men went out on strike, Brown telephoned Ray Thomason, a field representative for the Committee for Industrial Organization. Between 2 and 4 hours after the strike began Thomason, together with Brown and another member of the Committee, appeared at the scene of the strike, where they met Fowler. Again the contract was discussed, but Thomason testified Fowler said that he was just a plant superintendent and had no authority whatsoever to sign a contract, and that the man to see would be the president of the respondent. Thomason testified he suggested to Fowler that he "draw up a contract both parties can see fit to sign," but that Fowler said he didn't have "any authority to sign any contract." Fowler denied making the statement that he had no authority to act. He testified that "practically the only thing that was discussed at that time was wages and hours." Fowler further testified that he again went into some detail with Thomason as to why the respondent could not pay any more wages, and said, "I did not have the authority to sign any contract involving an increase in wages because I had been told distinctly that we could not and would not pay any higher wages." Although Thomason suggested that both parties get together to draw up some contract, it does not appear that Fowler made any effort to do so. Rather, it does appear that Fowler, in view of the fact that the contract was one dealing in part with wages and hours and to that extent beyond his authority, considered the entire contract beyond his authority. Accordingly, Fowler refused to consider this contract or any contract, and referred Thomason to the president of the respondent.

After the strike began, the respondent closed its Trotville Plant and brought the employees from that plant to the Norfolk Plant to complete certain work. The Norfolk Plant thus continued to operate for a period of 2 or 3 weeks and then closed down.

B. The refusal to bargain collectively

1. The appropriate unit

At the hearing the Union contended that all of the production employees of the respondent at the Norfolk Plant, exclusive of clerical and supervisory employees and salesmen, constitute a unit appropriate for the purpose of collective bargaining. The evidence adduced at the hearing indicated that the production employees are not highly skilled, receive about the same wages and work about the same hours. The respondent did not contend that any other unit is the proper one.

We find that the production employees of the respondent at the Norfolk Plant, exclusive of clerical and supervisory employees and salesmen, constitute a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, and that such unit will insure to said employees the full benefit of their right to self-organization and collective bargaining, and otherwise effectuate the policies of the Act.

2. Representation by the Union of a majority in the appropriate unit

The respondent's pay roll at the Norfolk Plant as of July 14, 1937, showed a total of 317 production employees, exclusive of clerical and supervisory employees. At the hearing, to prove its majority, the Union presented in evidence 299 application cards.⁵ Each of the cards bears a date indicating the date of application for membership. Of these cards the Union submitted separately 164 that were signed on or before July 17, 1937.⁶ These 164 cards were checked by counsel for the Board and for the respondent against the pay-roll list of July 14, 1937, and it was found that only 139 names corresponded to the pay-roll list whereas the names of 25 persons whose signatures appeared on the cards did not appear on the list. Thereafter, it appeared from the record, counsel for the respondent and the representative of the Union checked all the cards against the July 14 pay roll⁷ and found that, as of August 16, 1937, the Union represented a majority of the production employees, a total of 167 names. Counsel for the respondent stated that it was willing to accept these names on the cards as the signatures of such men. In addition, Clarence Brown, financial secretary of the Union, identified

⁵ At the hearing the Union said it had 20 more cards not then available.

⁶ Board Exhibit No. 8. The remaining cards were submitted as Board Exhibit No. 9 and one card was submitted as Board Exhibit No. 11.

⁷ As all parties at the hearing were agreeable to the use of the pay roll of July 14, 1937, and as this was the only pay roll introduced into evidence, it has also been used by the Board.

the signatures on the cards which had been signed in his presence.⁸ The respondent made no objection to, nor did it request the identification of, the signatures on any of the remaining cards. The Board has made an independent check of the cards, based on the dates appearing thereon, and has found that the Union did not secure a majority of the employees until August 17, 1937, as of which date the names on 169 application cards checked with the pay roll of July 14.⁹

Counsel for the respondent objected to the fact that some of the cards did not have the name of the Union stamped on them, but only the words "stamp name of union here," and then in larger type below this the words "Affiliated with C. I. O." The form of card was that in regular use by the Committee for Industrial Organization. Although the name of the Union was not stamped on some of the cards, it is clear from the evidence that those signing the cards knew that they were joining the Union.

It is here pointed out that the status of the employees was in no wise affected by the strike. It is clear that the controversy between the Union and the respondent resulting in the strike was a labor dispute as defined by Section 2 (9) of the Act. It is evident also that the strike, as long as it continued, was a current labor dispute. The work of the strikers ceased as a consequence of, or in connection with, a current labor dispute, and they did not obtain regular and substantially equivalent employment elsewhere as is evidenced by the fact that they ultimately returned to work for the respondent upon the settlement of the strike.

We find that on August 17, 1937, and at all times thereafter, the Union was the duly designated representative of the majority of the production employees at the Norfolk Plant, exclusive of clerical and supervisory employees and salesmen, in an appropriate unit, and, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

⁸ Clarence Brown testified he secured 160 to 165 applications, all of which were signed in his presence.

⁹ Table as to cards submitted

As of—	Total number of cards	Total number of cards to check with pay roll	Total number of cards that did not check with pay roll
June 30, 1937.....	101	85	16
July 14, 1937.....	148	125	23
17, 1937.....	161	132	29
Aug 16, 1937.....	200	150	50
17, 1937.....	237	169	68
Sept 30, 1937.....	299	191	108

3. The refusal to bargain

On August 17, 1937, when the Union became the duly designated representative of a majority of the production employees at the Norfolk Plant, and thereafter, the respondent had a duty to bargain collectively with the Union as the exclusive representative of such employees. Thereafter, the first attempt by the Union to bargain was on August 20, 1937, when Thomason communicated with J. E. Romm by telephone. Thomason asked Romm what could be done about the contract, and suggested that if he couldn't sign the particular contract "then the proper thing to do was to get together and draw up a contract that both parties could sign," saying further that he should at least make a counterproposal to the proposed contract. Thomason testified that Romm refused, saying, "I will not do that." As to this first telephone conversation, Romm did not recall just what Thomason's approach was at the time, but he was quite sure that he stated that the matter of collective bargaining was in the hands of Fowler, and that the respondent was "not in position to meet the terms of the contract proposed."

On or about September 1, 1937, the Regional Director for the Fifth Region had a conference with Romm at a hotel in Norfolk. One of the members of the Committee and Thomason were also present. At this conference the contract was again discussed, but Romm refused to make any counterproposals or consider any modifications. Thomason suggested "we were open yet for a conference to go into negotiations and draw up a contract that both parties would see fit to sign." Romm testified that at this conference in the hotel he again pointed out that Fowler had been authorized by the respondent to bargain with the Union, but that the respondent had not been in a position to meet the wishes of the Committee. Romm testified that at the conference the Regional Director asked if the respondent had made any counterproposals "and I told him that to the best of my knowledge there had been no counterproposals, that, *in my opinion, the contract presented was the question of wages and that the wages asked for were preposterous and that they could not be met.*"¹⁰ In fact the proposed contract consisted of 21 provisions, only four of which dealt with wages directly, or indirectly,¹¹ and only one, with hours.¹²

Thereafter, sometime during September 1937, Thomason again communicated with Romm by telephone in an endeavor to arrange another conference with him. Thomason testified that on this occasion Romm said, "No, on account of my plant being down you made it impossible for us to get together on anything," which state-

¹⁰ Italics supplied.

¹¹ Sections 11, 14, 19, and 20 of Board Exhibit No. 6.

¹² Section 12 of Board Exhibit No. 6.

ment Romm did not deny. Romm recalled very little of this telephone conversation, although he was sure that there was a second telephone conversation. Romm remembered that on this occasion Thomason did ask something about whether the books of the respondent could be opened to show whether the respondent was losing money, to which Romm replied he would be perfectly willing to do so with anyone that had a "right to see them, but that all information as to the company could be had by reports from Dun & Bradstreet." In reply to a question by counsel for the respondent whether Romm was of the opinion that he could not negotiate with the men because they were on strike, Romm said, "No; I was not of that opinion. Frankly, my position was a little dubious as to what we might do. At any rate, the approach would have to come from them."

About September 28, 1937, the Union and the respondent agreed to have the employees go back to work pending the decision on the charges filed with the Board. The respondent then signed an agreement that there would be no discrimination by it against any worker because of union activities and that no worker would be discharged for union activities in the future.¹³ Thereafter, the strikers returned to work.

After the Union had been designated as the representative by a majority of the employees in an appropriate unit on August 17, 1937, the respondent summarily rebuffed the Union's initial attempt, on August 20 during the progress of the strike, to resume bargaining negotiations. In the telephone conversation on that date Romm met the Union's suggestion that the respondent submit a counterproposal to the Union's proposed contract with a flat refusal. He sought to refer the entire matter of collective bargaining back to Fowler, a subordinate official with admittedly limited authority, despite the pendency of the strike and the failure of the Union's prior efforts to deal with Fowler, which had caused the strike. At the meeting held about September 1, Romm pursued the same course. In this conference Romm sought to justify his refusal to bargain with the Union by claiming that the proposed contract presented only "preposterous" demands for wage and hour adjustments. This, as we have indicated, was directly contrary to the fact, since the proposed contract actually contained 16 other provisions. It is clear from Romm's statement that because the proposed contract did contain provisions for increased wages and decreased hours, the respondent refused to consider the contract or collective bargaining negotiations at all.

In its brief, counsel for the respondent in substance contended (1) that a bargaining agency or committee had not been legally elected

¹³ Board Exhibit 62

or appointed by a majority of the workers in the appropriate bargaining unit so as to entitle such agency or committee to represent all of the employees in such unit, and (2) that the respondent had not refused to bargain collectively with an agency or committee representing a majority of its employees in such unit. We do not find any merit in either of these contentions. It is clear from the evidence that after August 17 the Union was in fact the designated representative of the majority of the employees in an appropriate bargaining unit and that throughout the negotiations both the Committee and Thomason acted and were accepted by the respondent as proper agents of the Union. Furthermore, in its verified answer the respondent specifically stated that it had not questioned the designation of the Union as the representative of the employees. From our previous discussion it is apparent that after August 17 the respondent declined to enter into any genuine collective bargaining negotiations with the Union although this refusal had the necessary and actual effect of prolonging a costly strike. It is true that the strike was ultimately settled about September 28. However, it is obvious that the agreement, by which the strikers were to return to work without discrimination, did not represent the result of collective bargaining as contemplated by the Act. Our conclusion concerning the strike settlement agreement is amply supported by the evidence which establishes that the agreement represented merely a truce arrangement under which the strikers were to return to work, pending a decision on the charges before the Board.

We find that on August 20, 1937, and thereafter, the respondent refused to bargain collectively with the Union as the representative of its employees at the Norfolk Plant in an appropriate unit in respect to rates of pay, wages, hours of employment and other conditions of employment and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed under Section 7 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 and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE PETITION

In view of the Board's findings in Section III B above, as to the appropriate bargaining unit and the designation of the Union by a majority of the respondent's employees at the Norfolk Plant in the

appropriate unit as their representative for the purposes of collective bargaining, it is not necessary to consider the petition of the Union for certification of representatives. Consequently the petition for certification will be dismissed.

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following:

CONCLUSIONS OF LAW

1. United Veneer Box and Barrel Workers Union, Local No. 324, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The strike at the Norfolk Plant starting on August 16, 1937, was a labor dispute which was current and continued so during the duration of such strike, and the strikers at such plant were and continued to be employees of the respondent within the meaning of Section 2 (3) and (9) of the Act.

3. The production employees of the respondent at the Norfolk Plant, exclusive of clerical and supervisory employees and salesmen, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

4. United Veneer Box and Barrel Workers Union, Local No. 324, was on August 17, 1937, and at all times thereafter, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

5. The respondent on August 20, 1937, and thereafter, refused to bargain collectively with the representatives of its employees at the Norfolk Plant, and thereby has engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

6. The respondent, by interfering with, restraining, and coercing its employees at the Norfolk Plant in the exercise of their rights guaranteed in Section 7 of the Act, has engaged in unfair labor practices, within the meaning of Section 8 (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.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Farmco Package Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Veneer Box and Barrel Workers Union, Local No. 324, as the exclusive representa-

tive of its production employees at the Norfolk Plant, exclusive of clerical and supervisory employees and salesmen;

(b) In any other manner interfering with, restraining, or coercing its employees at the Norfolk Plant in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Veneer Box and Barrel Workers Union, Local No. 324, as the exclusive representative of all its production employees at the Norfolk Plant, exclusive of clerical and supervisory employees and salesmen, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately notices in conspicuous places throughout the Norfolk Plant, stating that the respondent will cease and desist in the manner aforesaid, and maintain said notices for a period of at least thirty (30) consecutive days from the date of posting;

(c) Notify the Regional Director for the Fifth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

The petition for certification of representatives, filed by the United Veneer Box and Barrel Workers Union, Local No. 324, is hereby dismissed.