

In the Matter of C. G. CONN, LTD. and METAL POLISHERS INTERNATIONAL UNION, LOCAL NO. 77

*Case No. C-116.—Decided May 21, 1938*

*Reinstatement of Proceedings:* charge withdrawn and complaint dismissed without prejudice at union's request after filing of Trial Examiner's Intermediate Report—*Order:* charge and entire proceedings reinstated after motion by the union in accordance with reservation in Board's dismissal order.

*Mr. Harold A. Crane*field, for the Board.

*Mr. Verne G. Cawley*, of Elkhart, Ind., for the respondent.

*Mr. William E. Rodriguez*, of Chicago, Ill., for the Union.

*Mr. A. Bruce Hunt, Jr.*, of counsel to the Board.

DECISION

AND

ORDER GRANTING PETITION FOR REINSTATEMENT OF THE CHARGE AND THE PROCEEDINGS

On November 1, 1935, Metal Polishers International Union, Local No. 77, herein called the Union, filed a charge with the Regional Director for the Thirteenth Region (Chicago, Illinois) against C. G. Conn, Ltd., Elkhart, Indiana, the respondent herein, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On March 11, 1936, the National Labor Relations Board, herein called the Board, by the Regional Director for the Thirteenth Region, duly issued its complaint against the respondent, alleging that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7), of the Act.

On March 19, 1936, the respondent filed a motion to dismiss on the grounds that the Act was unconstitutional, and that its manufacturing activities are intrastate in nature and therefore beyond the jurisdiction of the Board. Reserving all its rights under the motion to dismiss, on the same day the respondent also filed an answer to the complaint, in which it admitted some of the specific acts alleged therein but denied that it had engaged in unfair labor practices.

Pursuant to notice, a hearing was conducted before Leon M. Despres, the Trial Examiner duly designated by the Board, at Elkhart, Indiana, on March 19, 20, 23, 24, 25, 26, 27, 28, and 30, 1936. During the hearing the respondent renewed its motion to dismiss. The motion was denied in so far as it pertained to the constitutionality of the Act, but the Trial Examiner reserved decision with respect to the applicability of the Act to the business of the respondent.

On June 5, 1936, the respondent filed a brief. On June 6, 1936, the Trial Examiner duly filed his Intermediate Report, in which he denied the respondent's motion to dismiss the proceedings on jurisdictional grounds, and found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7), of the Act. The respondent filed exceptions to the Intermediate Report and to the conduct of the hearing on June 29, 1936, a petition for oral argument on July 13, 1936, and an additional brief in support of said exceptions on July 31, 1936.

Before any date for an oral argument on the merits was set the case of *Carter v. Carter Coal Company* was decided by the Supreme Court of the United States.<sup>1</sup> In consequence of this Decision, certain doubts arose as to the legality of the Act's application in the instant case and the Union filed a request to withdraw the charge without prejudice. The Board on August 14, 1936, pursuant to the Union's request, entered an order that "the aforesaid Metal Polishers International Union, Local 77 be and hereby is granted permission to withdraw its charge and that the complaint herein be and hereby is dismissed without prejudice to the Board's right to reinstate the complaint upon the petition of the aforesaid Metal Polishers International Union, Local 77 for good cause shown, and, with or without further hearing, to take such further proceedings as it may deem warranted."

On May 8, 1937, the constitutionality of the Act, as applied in several cases, having previously been upheld,<sup>2</sup> the Union filed with the Board a petition for reinstatement of the proceedings on the ground that there had been no compliance with the Intermediate Report, and on December 29, 1937, filed a supplemental petition for the reinstatement of the original charge as well as the record and proceedings.

On January 22, 1938, the respondent filed its objections to the reinstatement of the proceedings. Pursuant to notice, on January 25, 1938, an oral argument on the petition and supplemental petition was held before the Board in Washington, D. C., at which the respondent was represented by its counsel and the Union by Ray Kelsay, its

<sup>1</sup> 298 U. S. 238, decided May 18, 1936.

<sup>2</sup> *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, and other cases to which the Board was a party, all decided on April 12, 1937.

international vice president, and Lewis G. Hines, an American Federation of Labor representative. During the course of the argument the respondent filed a brief in support of its objections to the reinstatement of the proceedings and the Union filed its brief. We have given careful consideration to the argument, brief, and objections in opposition to said petition and supplemental petition and we find that they are without merit. The petitioner stated that there had not been compliance with the Trial Examiner's Intermediate Report, which fact the respondent admitted. The respondent consequently has not remedied the unfair labor practices found by the Trial Examiner. Therefore, pursuant to the reservation in our qualified dismissal order of August 14, 1936, we shall reinstate the entire proceedings.

Upon the basis of the above facts and after full consideration by the Board, it is

ORDERED that the petition and supplemental petition of Metal Polishers International Union, Local No. 77, requesting reinstatement of the charge and the proceedings in this case, are hereby granted, and said charge and proceedings are hereby reinstated, and it is further

ORDERED that the respondent and the Union shall have the right to file with the Board in Washington, D. C., within ten (10) days from the date of this order, briefs or requests for oral argument on the merits, or both.