

In the Matter of J. W. BEASLEY, INDIVIDUALLY AND TRADING AS
STANDARD MEMORIAL WORKS and GRANITE CUTTERS' INTERNATIONAL
ASSOCIATION OF AMERICA, CHARLOTTE BRANCH

Case No. C-368.—Decided June 23, 1938

Monument Manufacturing Industry—Interference, Restraint, and Coercion—Unit Appropriate for Collective Bargaining: granite cutters, carvers, surface machine operators, carbo sawyers, lathe operators, sand blast operators, tool sharpeners, and rotary and gang sawyers; no controversy as to—*Representatives:* proof of choice: admission by employer that petitioning union represented a majority of the employees in the appropriate unit—*Collective Bargaining:* refusal to negotiate with representative of majority of employees; special form of remedial order: recognition as exclusive representative; negotiation—*Discrimination:* complaint dismissed, as to.

Mr. Reeves Hilton, for the Board.

Mr. J. W. Beasley, of Charlotte, N. C., *pro se*.

Mr. Harry E. Selékman, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Granite Cutters' International Association of America, Charlotte Branch, herein called the Union, the National Labor Relations Board, herein called the Board, by Bennet F. Schaufler, the Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint, dated December 8, 1937, against J. W. Beasley, individually and trading as Standard Memorial Works, Charlotte, North Carolina, herein called the respondent, alleging that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint and notice of hearing were duly served upon the respondent and the Union. The respondent filed no answer.

Pursuant to notice, a hearing was held in Charlotte, North Carolina, on December 16, 1937, before Lawrence J. Kusters, the Trial

Examiner duly designated by the Board. The Board was represented by counsel; the respondent appeared in his own behalf. Both participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues was afforded all the parties.

At the close of the Board's case, counsel for the Board moved to strike from the complaint the allegations that the respondent had engaged in unfair labor practices within the meaning of Section 8 (3) of the Act, and to conform the pleadings to the proof. Both motions were granted by the Trial Examiner. There were no objections to the rulings of the Trial Examiner concerning the admission of evidence made at the hearing. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed.

On January 8, 1938, the Trial Examiner filed his Intermediate Report, finding that the respondent had engaged in 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 filed no exceptions to the Intermediate Report.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is engaged in the production and distribution of monumental stones in Charlotte, North Carolina. All of the granite used in the manufacturing of the monuments is shipped from Winsboro, South Carolina. Some of the machinery at the respondent's plant was made in Philadelphia, Pennsylvania, and practically all of the replacement parts for the machinery come from the same city. During the year 1937 the respondent produced several hundred monuments with a total value of \$39,000. Approximately 75 per cent of the finished products are sold in North Carolina, 15 per cent in Tennessee, 5 per cent in South Carolina, and 5 per cent in Virginia.

II. THE ORGANIZATION INVOLVED

Granite Cutters' International Association of America, Charlotte Branch, is a labor organization affiliated with the American Federation of Labor, admitting to its membership granite cutters, carvers, surface machine operators, tool sharpeners, sand blast operators, lathe operators, polishers, carbo sawyers, and rotary and gang sawyers.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain collectively*

1. The appropriate unit

The complaint alleged that the granite cutters, carvers, surface machine operators, carbo sawyers, lathe operators, sand blast operators, tool sharpeners, polishers, rotary and gang sawyers, constitute a unit appropriate for the purposes of collective bargaining. The respondent raised no objections to the unit proposed by the Union.

We find that the granite cutters, carvers, surface machine operators, carbo sawyers, lathe operators, sand blast operators, tool sharpeners, polishers, and rotary and gang sawyers of the respondent, excluding supervisors and clerical employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the respondent 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 Union organized the respondent's plant in August 1937, and during that month all the employees eligible for membership in the Union signed membership cards. At no time during the series of conferences between the respondent and the Union did the respondent question the majority of the Union. On November 2, 1937, he wrote the following letter to a field representative of the Board:

I acknowledge that the Granite Cutters' International Association of America represents a majority of the granite cutters, carvers, surface machine operators, carbo sawyers, lathe operators, sand blast operators, tool sharpeners, polishers, rotary and gang sawyers, in my employ, and I am, therefore, willing to bargain collectively with that Union as the exclusive representative of all such employees in respect to rates of pay, wages, hours of employment, or other conditions of employment.

Very truly yours,

STANDARD MEMORIAL WORKS.

(s) J. W. BEASLEY.

We find that on August 31, 1937, and at all times thereafter, the Union was the duly designated representative of a majority of the employees 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 the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. Refusal to bargain collectively with the Union

The record is clear that although the respondent stated on several occasions his willingness to bargain collectively with the Union, at each conference with representatives of the Union Beasley refused to recognize the Union or to bargain with it. Vance Vaughn, chairman of the committee of the Union, testified that at the first conference on August 31, 1937, he informed Beasley that the committee represented the employees of the plant and requested that he bargain collectively with them. When asked whether he was familiar with the Act, Beasley said he was not, but refused to examine a copy of it which was offered to him. The next meeting with Beasley and the committee occurred on September 1, 1937. Beasley was told by the Union representatives that he was being given another opportunity to recognize the Union as the bargaining agent before charges were filed with the Board. Beasley said he did not care to discuss the matter at all with them. On September 17 the International president attended a conference with Beasley and attempted to induce him to discuss an agreement with the committee. The respondent finally consented to accept a contract given to him by the International president for inspection and study. However, he put it in his pocket and refused to read it at that time. A further meeting took place on November 12 when Beasley told the committee that he had read the agreement, that he had no counterproposals to make, and that he still refused to discuss its terms or to sign it.

The respondent offered as an excuse for his failure to bargain with the Union the fact that he was not engaged in continuous production and that on September 17 and December 16 he was not operating his plant. He stated at the hearing that he would be willing to recognize the Union as soon as he began to produce. However, it is apparent from the record that the respondent always has on hand stock with which to begin immediate production upon the receipt of orders and that he was manufacturing monuments subsequent to the holding of the first few conferences. Moreover, Vaughn testified that Beasley's reluctance to recognize the Union was motivated by the respondent's desire to have his competitors organized first. We conclude, therefore, that the fact that the respondent produces monuments only upon receipt of orders, which are intermittent in nature, does not absolve him from the duty of recognizing and bargaining with the employees' duly designated bargaining agency.

We find that on August 31, 1937, and thereafter, the respondent refused to bargain collectively with the Union as the representative of his employees in respect to rates of pay, wages, hours of employment, and other conditions of employment and thereby interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed under Section 7 of the Act.

IV. EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with his 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 of commerce.

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. Granite Cutters' International Association of America, Charlotte Branch, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The granite cutters, carvers, surface machine operators, carbo sawyers, lathe operators, sand blast operators, tool sharpeners, polishers, and rotary and gang sawyers of the respondent, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Granite Cutters' International Association of America, Charlotte Branch, was on August 31, 1937, and at all times thereafter has been the exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing and continuing to refuse to bargain collectively with Granite Cutters' International Association of America, Charlotte Branch, as the exclusive representative of the employees in the above-stated unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The aforesaid 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 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, J. W. Beasley, individually and doing business as Standard Memorial Works, Charlotte, North Carolina, and his agents, successors, and assigns, shall:

1. Cease and desist:

(a) From refusing to bargain collectively with Granite Cutters' International Association of America, Charlotte Branch, as the exclusive representative of the granite cutters, carvers, surface machine operators, carbo sawyers, lathe operators, sand blast operators, tool sharpeners, polishers, and rotary and gang sawyers of the respondent, excluding supervisory and clerical employees;

(b) From in any other manner interfering with, restraining, or coercing his employees 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 Granite Cutters' International Association of America, Charlotte Branch, as the exclusive representative of the granite cutters, carvers, surface machine operators, carbo sawyers, lathe operators, sand blast operators, tool sharpeners, polishers, and rotary and gang sawyers of the respondent, excluding supervisory and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post immediately notices to his employees in conspicuous places within the plant, and maintain said notices for a period of at least thirty (30) consecutive days from the date of the posting, stating that respondent will cease and desist as aforesaid;

(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.

And it is further ordered that the allegations of the complaint that the respondent discharged and refused to reinstate Clyde Shelton pursuant to an unfair labor practice within the meaning of Section 8 (3) of the National Labor Relations Act be, and they hereby are, dismissed.