

In the Matter of THE HANSON-WHITNEY MACHINE COMPANY and  
INTERNATIONAL UNION, UNITED AUTOMOBILE WORKERS OF AMERICA,  
LOCAL No. 428

*Cases Nos. C-455 and R-801.—Decided July 8, 1938*

*Machine Manufacturing Industry—Interference, Restraint, and Coercion—Unit Appropriate for Collective Bargaining:* production and maintenance employees, excluding clerical and supervisory employees; employees on hourly wage basis; similar vacation privileges and overtime wage; general wage increase—*Representatives:* proof of choice: comparison of list of employees with union membership cards—*Collective Bargaining:* differentiated from adjustment of individual grievances; negotiation in good faith; failure to make counter proposals; dilatory tactics; refusal to recognize representatives, as exclusive representative; special forms of remedial order: recognition as exclusive representative; negotiation—*Investigation of Representatives:* petition for, dismissed, in view of order to bargain.

*Mr. Bernard J. Donoghue*, for the Board.

*Hewes, Prettyman, Awalt and Smiddy*, by *Mr. Thomas Hewes*, of Hartford, Conn., for the respondent.

*Mr. Frank P. Tucci*, of New York City, for the Union.

*Mr. Victor A. Pascal*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Charges having been filed on behalf of International Union, United Automobile Workers of America, Local No. 428, herein called the Union, the National Labor Relations Board, herein called the Board, by A. Howard Myers, Regional Director for the First Region (Boston, Massachusetts), issued and duly served its complaint dated December 6, 1937, against The Hanson-Whitney Machine Company, Hartford, Connecticut, herein called the respondent, alleging that the respondent had engaged in and was engaging in 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. With reference to the unfair

labor practices, the complaint alleged in substance that the respondent had refused to bargain collectively with the Union which had been designated as their bargaining representative by a majority of the respondent's employees in an appropriate unit. At the hearing, the complaint was amended to include an allegation as to additional acts of coercion and intimidation committed by the respondent's supervisory employees. On December 13, 1937, the respondent filed an answer which, as amended on January 4, 1938, and at the hearing, denied that it had engaged in the unfair labor practices and alleged that it has the right to bargain with individual employees who may desire so to bargain with it.

On July 8, 1937, a petition was filed on behalf of the Union with the Regional Director alleging that a question had arisen concerning the representation of employees of the respondent, 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 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that the cases be consolidated for the purposes of hearing and, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of said Rules and Regulations, ordered an investigation of representatives and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. Notices of hearing on the complaint and the petition were issued and duly served upon the respondent and the Union.

Pursuant to notice, a hearing was held on January 4 and 5, 1938, at Hartford, Connecticut, before Charles W. Whittemore, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On February 11, 1938, the Trial Examiner filed his Intermediate Report in which he found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act and recommended that, upon request, the respondent bargain collectively with the Union as the exclusive representative of the employees in the unit therein found to be appropriate for the purposes of collective bargaining. Thereafter, the respondent filed exceptions to

the Intermediate Report and on April 12, 1938, together with the Union, presented oral argument before the Board. The respondent also filed a brief which has been considered by the Board. The Board has also considered the exceptions to the Intermediate Report and finds them to be without merit.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The Hanson-Whitney Machine Company, a Connecticut corporation, is engaged in the manufacture, sale, and distribution of machines, tools, taps, thread gages, hobs, and other products at its plant in Hartford, Connecticut. During the period between April 1 and June 30, 1937, the respondent secured 67 per cent of the materials purchased by it from concerns located outside the State of Connecticut.

The value of the respondent's sales during 1937 was between \$800,000 and \$1,000,000. During the period between April 1 and June 30, 1937, 81 per cent of the respondent's sales were shipped to destinations outside the State of Connecticut.

#### II. THE ORGANIZATION INVOLVED

International Union, United Automobile Workers of America, Local No. 428, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership the respondent's production and maintenance employees, exclusive of clerical and supervisory employees.

#### III. THE UNFAIR LABOR PRACTICES

##### A. *The appropriate unit*

The Union urged that the production and maintenance employees, excluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining. During its negotiations with the Union, which will be discussed below, the respondent raised no objection to the appropriateness of this unit.

In its answer, the respondent denied that a unit consisting only of production and maintenance employees is appropriate. During the hearing, however, it failed to adduce testimony to indicate the unit it does deem appropriate. The respondent sought to show that each of its employees is a specialist in a particular task, and that therefore the segregation of any employees into an appropriate unit is impossible. The respondent's contentions, however, have no merit.

All the employees in the unit proposed by the Union are paid an hourly wage, receive time and a half for overtime, and are accorded the same vacation privileges. In announcing a general wage increase in March 1937, the respondent gave a 10-per cent increase in wages to all the employees in this unit. Under the circumstances, we conclude that the unit proposed by the Union is appropriate for the purposes of collective bargaining.

We find that all the production and maintenance employees of the respondent, excluding clerical and supervisory 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 to collective bargaining and otherwise effectuate the policies of the Act.

*B. Representation by the Union of a majority in the appropriate unit*

The complaint alleges that on and after July 2, 1937, the Union had been designated by the employees in the appropriate unit as their representative for the purposes of collective bargaining. The respondent prepared lists of its employees in the unit for the pay-roll periods ending July 2 and December 1, 1937, which were introduced in evidence, as were the Union's membership cards and a list of its members. The respondent did not question the authenticity of the signatures on the cards nor did it dispute the Union's claims as to its membership. A comparison of the membership cards with the list of employees prepared by the respondent reveals that of the 134 employees in the appropriate unit on July 2, 1937, 115 were members of the Union and that of the 139 employees in the appropriate unit on December 1, 1937, 117 were members of the Union.

We therefore find that for the pay-roll period ending July 2, 1937, and at all times thereafter the Union was the duly designated representative of a majority of the employees in the appropriate unit and that by virtue of Section 9 (a) of the Act, was the exclusive representative of all employees in the unit for the purposes of collective bargaining.

*C. The refusal to bargain*

1. The chronology of events

The Union commenced its organizational activities during the spring of 1937 and by June of that year was prepared to negotiate a contract with the respondent.

The Union and the respondent first met on June 16, 1937, the Union being represented by a committee and the respondent by Einar A. Hanson, its president, and Leon B. Reed, its general manager. The committee presented a proposed contract to the respondent

but its terms were not fully discussed, as Reed requested additional time to study its contents. The Union's representatives voiced no objection to adjourning the conference but insisted that the respondent issue and post a signed statement recognizing it as the exclusive bargaining representative of the employees in the appropriate unit. The respondent did not question the Union's majority, Reed stating that it did not matter whether or not it represented a majority of the employees. In view of the respondent's subsequent refusal to bargain with the Union as the representative of any of the employees other than its members, Reed's statement clearly shows that the respondent already had determined not to accord exclusive bargaining recognition to the Union. The proposed contract was retained by the respondent for study and the meeting was adjourned.

The respondent did not post a notice of recognition, as the Union had requested. Instead, on the following day, Reed gave the Union committee an unsigned statement which read:

The management of Hanson Whitney Machine Co., upon request, has met with a committee for the purpose of collective bargaining on the subjects of wages, hours and working conditions. The company will continue to carry on such negotiations with this committee who declare that they are the chosen representatives of a group of our employees, namely, the members of International Union A. W. A. Local #428. The company, however, reserves the right to meet and bargain individually with any employee who may elect that method and relationship with the management.

The parties resumed their negotiations on June 21, 1937, the respondent being represented by Winthrop H. Whitney, one of its directors, and by C. E. Wertman, its treasurer, in addition to Hanson and Reed. There is testimony that Whitney stated that "he did not see how a manufacturer could operate successfully if he had to deal with a bargaining committee." In spite of Whitney's denial, we credit this testimony as it is consonant with the respondent's efforts to avoid bargaining with the Union. The respondent again asked that the meeting be adjourned in order to give it an opportunity to study the contract. The Union did not object, but insisted that the respondent post the notice it had requested at the last meeting, claiming that the unsigned statement which the Union committee had received indicated that the respondent had not as yet recognized the Union as the exclusive bargaining representative of the employees.

At the next conference, Reed gave the Union's representatives printed copies of a pamphlet entitled "Industrial Relations Policy of The Hanson-Whitney Machine Company" which bore Hanson's printed signature. The statement of policy incorporated the state-

ment which Reed had given to the Union committee on June 17, 1937. It failed, however, to give the Union exclusive bargaining recognition. The pamphlet also set forth the respondent's policy with reference to hours of employment, seniority rights, and other working conditions and reiterated the respondent's determination to bargain individually with employees. Although the pamphlet stated that the respondent intended to obey the letter and spirit of the Act, it also pointed out that the Act does not compel agreements between employers and employees nor any agreement whatever.

Subsequently, the respondent distributed copies of the statement of policy among the employees at the plant. Meanwhile, the Union continued to insist upon exclusive bargaining recognition while the respondent maintained its original position that it would bargain with the Union only as the representative of its members and that it would bargain individually with any of the employees who desired to do so.

On July 1, 1937, the Union committee again met with the respondent. The respondent again refused to grant the Union exclusive bargaining recognition and insisted upon its right to bargain with employees individually. The Union's representatives pointed out that the respondent's contentions were not in accord with the provisions of the Act and again urged that the respondent recognize it as the exclusive representative of the employees in the appropriate unit. The pending negotiations terminated at this conference and subsequently the Union filed charges and a petition for investigation and certification with the Board.

## 2. Conclusions as to the refusal to bargain

The evidence clearly evinces the respondent's determination to evade its duty to bargain in good faith with the Union. Although the respondent met with the employees' representatives and politely listened to their demands, it failed either to bargain or to attempt to reach an agreement with the Union. The respondent's refusal to sign a statement recognizing the Union as the employees' exclusive bargaining representative clearly indicates its lack of good faith. Moreover, apart from consenting to recognize the Union as the bargaining representative of its members, the respondent failed to accept, reject, or offer counterproposals to any of the Union's demands. As we have previously held,<sup>1</sup> "To meet with the representatives of the employees, however frequently, does not necessarily fulfill an employer's obligations under this Section . . . Interchange of ideas, communication of facts peculiarly within the knowledge of either party,

<sup>1</sup> *Matter of S. L. Allen & Company, Inc., a Corporation and Federal Labor Union Local No. 18526*, 1 N. L. R. B. 714.

personal persuasion and the opportunity to modify demands in accordance with the total situation thus revealed at the conference is of the essence of the bargaining process.”

In its brief submitted to the Board, the respondent argues that “while the employer must bargain collectively with representatives of the employees, it is not a violation of that duty if he bargains individually with such persons who are authorized to present grievances to him.” The respondent misconstrues the proviso of Section 9 (a) of the Act which authorizes an individual or group of employees to present grievances to an employer. We found above that the Union represents a majority of the employees in an appropriate unit and that it is the exclusive representative of all the employees in such unit for the purposes of collective bargaining. Upon request of the Union, the respondent is under a duty to bargain with it as such and not solely on behalf of its members. Although the respondent’s employees, either individually or in groups, may present their grievances to it, the Act imposes upon the respondent the obligation to bargain exclusively with the Union in respect to rates of pay, wages, hours of employment, or other conditions of employment.

The respondent’s claim to have bargained in good faith is likewise negated by its issuance of the “Statement of Policy” during the course of the negotiations and without consulting the Union’s representatives concerning it. The publication of this statement, which covered many of the issues then under discussion with the Union, constituted a clear evasion by the respondent of its duty to continue its negotiations with the Union.

Accordingly, we find that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by 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 the operations of the respondent 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.

#### THE PETITION

In view of the findings in Section III above as to the appropriate unit and the designation of the Union by a majority of the respondent’s employees as their representative, it is not necessary to con-

sider 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 case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. International Union, United Automobile Workers of America, Local No. 428, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All the production and maintenance employees of the respondent, excluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. International Union, United Automobile Workers of America, Local No. 428, is and has been at all times since the pay-roll period ending July 2, 1937, 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.

4. By refusing and continuing to refuse to bargain collectively with International Union, United Automobile Workers of America, Local No. 428, as the exclusive representative of all the employees in such unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By refusing and continuing to refuse to bargain collectively with International Union, United Automobile Workers of America, Local No. 428, as above stated, and thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. 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 Hanson-Whitney Machine Company, Hartford, Connecticut, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From refusing to bargain collectively with International Union, United Automobile Workers of America, Local No. 428, as the exclusive representative of all its production and maintenance employees, except clerical and supervisory employees;

(b) From in any manner interfering with, restraining, or coercing its employees in the exercise of their rights 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 purposes of collective bargaining or other mutual aid and 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 the International Union, United Automobile Workers of America, Local No. 428, as the exclusive representative of all its production and maintenance employees, except supervisory and clerical employees, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Immediately post notices in conspicuous places throughout its plant, and maintain such notices for a period of thirty (30) consecutive days, stating that the respondent will cease and desist as aforesaid and will take the affirmative action set forth in paragraph 2 (a);

(c) Notify the Regional Director for the First 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 petition for investigation and certification of representatives be, and it hereby is, dismissed.