

In the Matter of ROBERTI BROTHERS, INC. and FURNITURE WORKERS
UNION, LOCAL 1561

Cases Nos. C-507 and R-554.—Decided August 16, 1938

Furniture and Mattress Manufacturing Industry—Interference, Restraint, and Coercion: anti-union notices; posting of statements calculated to discourage membership in Union; bonus announcement having coercive effect; charges of, dismissed as to lay-offs; charges of, unsupported as to foremen questioning employees regarding union membership and activities; charges of, unsupported as to foremen making statements derogatory to Union; charges of, unsupported as to influencing employees to repudiate Union—*Investigation of Representatives:* controversy concerning representation of employees: refusal by employer to recognize union—*Unit Appropriate for Collective Bargaining:* employees in mill, frame, and finishing departments, excluding foremen, working foremen, elevator operators, and clerical workers; controversy as to; occupational differences, supervisory employees excluded—*Election Ordered:* time to be set in future when effects of unfair labor practices have been dissipated.

Mr. Charles M. Brooks, for the Board.

Mr. Ben C. Cohen, of Los Angeles, Calif., for the respondent.

Mr. John Murray and *Mr. Ernest Marsh*, of Los Angeles, Calif., for the Union.

Mr. Robert L. Condon, of counsel to the Board.

DECISION

ORDER

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 27, 1937, Furniture Workers Union, Local 1561, herein called the Union, filed with the Regional Director for the Twenty-first Region (Los Angeles, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Roberti Brothers, Inc.,¹ Los Angeles, California, herein called the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

¹The respondent was improperly designated as Roberti Brothers in the original petition.

On October 6, 1937, the Union filed an amended petition. On November 9, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and 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.

On November 26, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the respondent, the Union, Central Labor Council, Los Angeles, California, and upon Los Angeles Industrial Union Council. Pursuant to the notice, a hearing was held on December 2, 3, and 4, 1937, at Los Angeles, California, before Dwight W. Stephenson, the Trial Examiner duly designated by the Board. On December 4, 1937, the hearing was adjourned to be reconvened upon 24 hours' notice.

On December 4, 1937, Frank Lopez, organizer for the Union, filed with the Regional Director charges alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of the Act. Thereafter, on December 16, 1937, the Board, by Towne Nylander, its Regional Director, issued its complaint against 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 Section 2 (6) and (7) of the Act. On December 18, 1937, the Board, acting pursuant to Article II, Section 37 (b), and Article III, Section 10 (c), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that the hearing on the complaint be consolidated with the hearing on the petition which, on December 4, 1937, had been adjourned to be reconvened on 24 hours' notice. Copies of the complaint, notice of hearing, and notice to reconvene adjourned hearing were duly served upon the parties upon whom the original notice of hearing was served.

The complaint alleged in substance (1) that the respondent had warned its employees not to join the Union and had threatened their discharge or transfer to an inferior position if they became or remained members thereof; (2) that the respondent had prominently displayed around its plant notices derogatory to the Union; and (3) that the respondent had coerced the employees into signing statements disavowing the Union as their representative for collective bargaining. It was alleged that these acts interfered with the employees in the exercise of their rights guaranteed by Section 7 of the Act.

On December 27, 1937, the respondent filed its answer, which in substance denied the jurisdiction of the Board and denied that it had engaged in the unfair labor practices alleged in the complaint.

Admitting that its employees had signed statements disavowing the Union as their representative for collective bargaining, the respondent denied that the employees had been coerced into signing.

Pursuant to the notice of hearing and the notice to reconvene adjourned hearing, the hearing in both cases was convened on December 27 and 28, 1937, before the Trial Examiner who had conducted the previous hearing. At both hearings the Board and the respondent were represented by counsel, and the Union by its representatives. 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 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 January 26, 1938, counsel for the respondent submitted to the Trial Examiner an informal memorandum to guide him in determining the controversy.

On March 17, 1938, the Trial Examiner filed his Intermediate Report, which was duly served on all the parties. The Trial Examiner found that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act. The respondent filed exceptions to the Intermediate Report, and a brief in support of its exceptions. No opportunity for oral argument was requested. The Board has considered the exceptions and the brief and, except where consistent with the following findings, conclusions, and order finds them without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Roberti Brothers, Inc., is a corporation organized under the laws of the State of California, having been incorporated on March 27, 1923. It is engaged in the business of manufacturing and selling mattresses, bedsprings, and upholstered furniture, having but one factory located in the city of Los Angeles, California. It employs approximately 200 people.

The principal raw materials used in the manufacture of its products are lumber, cotton, and angle iron. All of these raw materials are purchased from concerns maintaining stocks of such raw materials at their places of business in the State of California. These concerns purchase and transport into the State of California from other States the greater portion of these raw materials. Purchases

of raw materials by the respondent for the period from January 1, 1937, to November 1, 1937, amounted to approximately \$263,296.88.

The total volume of the respondent's sales for the same period amounted to \$552,404.47. Approximately 20 per cent of such sales were shipped to points outside the State of California. The respondent sells approximately 75 per cent of its merchandise under a trade-mark registered in the United States Patent Office.

II. THE ORGANIZATION INVOLVED

Furniture Workers Union, Local 1561, was chartered April 3, 1935, by United Brotherhood of Carpenters and Joiners of America and is affiliated with the American Federation of Labor. The Union is a labor organization admitting to membership all employees of the mill, frame, and finishing departments of the Company, exclusive of elevator operators, clerical, and supervisory employees.

III. THE UNFAIR LABOR PRACTICES

The Union started to organize the respondent's employees sometime in April 1937. On or about September 17, 1937, representatives of the Union conferred with the management of the respondent and requested the respondent to bargain collectively. The Union informed the respondent on this date that it had application cards from 28 of the 43 employees whom it considered eligible for membership. The respondent refused to bargain with the Union because it doubted the claim of a majority in the appropriate unit. During the month of September 1937, the Union's activity was at its height, and the record discloses that the employees of the respondent were aware of the Union's demand and of the respondent's refusal.

Meanwhile the respondent sometime in August or September 1937 prominently displayed on the bulletin boards and other places around the plant a notice to its employees reading as follows:

To the Employees:

There has been circulated information to the effect that you must join the Union in order to keep your job. This is a false statement. It is not necessary to have a Union Card to work here.

It is the policy of this firm not to encourage or discourage membership in Labor Unions. This is entirely for you to decide.

However, do not let anybody tell you that your job here depends upon membership in any Union.

This is to inform you that if you should leave your employment and you are replaced by another man that we are under no obligations to take you back.

THE MANAGEMENT.

This announcement must be read in the light of the circumstances then existing in the respondent's plant. As we have described above, union activity had reached its height, and unquestionably the notice was posted to counteract such activity.

There is nothing in the record to indicate that the Union either directly or indirectly had circulated information to the effect that union membership was necessary for employment in the respondent's plant. Consequently the gratuitous advice to employees not to "let anybody tell you that your job here depends upon membership in any union" can only be explained as a notice to employees that under no circumstances would the respondent enter into a closed-shop agreement with the Union, the only device whereby the Union might effect the compulsion of employees to join the Union. The respondent was clearly issuing an ultimatum with respect to a term or condition of employment properly the subject of collective bargaining before any request for a closed shop had been made.

Were the Act to sanction such notice by the employer, he could with equal impunity further forestall and defeat union organization by announcing to his employees that under no circumstances would he recognize seniority among his employees for the purpose of lay-offs, that under no circumstances would he consider a change in the hours of employment, that under no circumstances would he consider *any* change in any other term or condition of employment. In effect, at the outset of union organization he could discourage his employees from becoming members by warning them that any possible advantage to be derived from such membership and from collective bargaining was beyond their reach. We cannot permit the purposes of the Act to be so flouted.

In the light of all the evidence we find that the notice had the sole purpose of anticipating and denying to employees a possible advantage to be derived from collective bargaining negotiations. As such it amounted to discouragement of membership in the Union.

For years the respondent has had a sign over the entrance of the shop saying "Open Shop—American Plan." In September 1937, shortly following the previously discussed notice to the employees, the respondent posted upon its bulletin boards and other places, the following statement, developing the theme of the sign over the entrance:

This factory operates
under the
AMERICAN PLAN—OPEN SHOP

In the interest of sound industrial relations between employer and employe, this factory will observe and operate upon the broad principles of Industrial Freedom, which gives the right

to every man to work—and assures to the Employer the privilege of employing his labor without coercion from any source.

The respondent's notice above, posted immediately after the notice we have heretofore discussed, was equally intimidating and must be interpreted in the light of the surrounding circumstances. There is no claim and no evidence that the Union had coerced or had attempted to coerce the respondent. The only reasonable interpretation that can be placed upon respondent's phraseology of the above notice is that it would not respond to any efforts of the Union to "coerce" it in respect to employment of its labor. This amounted to a second attempt to convince the employees that in respect to the closed shop, a possible subject of collective bargaining, its mind was closed. By so much the notice was intended to discourage self-organization for the purposes of collective bargaining.

On or about September 20, 1937, a few days after the union representatives conferred with the respondent in regard to collective bargaining, the following bonus announcement was posted on the respondent's bulletin boards:

TO ALL EMPLOYEES

The Management takes pleasure in announcing that this year a flat bonus will be paid to loyal employees of the Company.

The bonus will be paid to eligible employees who are on the pay roll December 23, 1937 and will consist as follows:² . . .

Any employee who voluntarily leaves the service will not be entitled to any bonus regardless of whether he may be reemployed here or not.

ROBERT BROS. INC.,
By HARRY RHYMER,
General Manager.

The record discloses that this was the first time a general bonus payable to all employees was ever offered, although in 1936 certain "key" men received a bonus at Christmas time. In refuting the Union's contention that the Christmas bonus was a method of exerting pressure on the employees to repudiate the Union, the respondent's witnesses testified that the idea of a bonus for all employees had originated early in the year but that it was not announced until September since respondent was not aware until then of the amounts which would be available for distribution.

We are of the opinion, however, that the appearance of this bonus announcement at the most critical period in the Union's existence, exercised a coercive restraint upon the employee's rights of self-organ-

² The bonus amounts, which were graduated according to length of service, are omitted.

zation. It is extremely significant that less than a week after the Union's first request was refused the Christmas bonus was announced. The respondent in effect advised the employees to look to the largess of the respondent and not to the economic strength of the Union. The conclusion that the bonus was intended to discourage the Union is bolstered by the terms of the announcement. Only "loyal" employees would receive the bonus, and those who "voluntarily" left employment would be excluded. The word "loyal," under the circumstances, must have meant non-union. That such implication was meant is confirmed by the oblique threat against strikers, for such is the only plausible explanation of the reference to those who have "voluntarily" left their employment. Yet the record discloses that no strike was imminent or even contemplated.

The respondent contends that this was not an unfair labor practice since in paying the bonus there was no discrimination against union men. At the time the bonus was paid in December, however, due at least in part to the unfair labor practices of the respondent, union membership had seriously dwindled, so that no discrimination in paying the bonus was necessary in order to discourage membership in the Union.

We find that by the foregoing enumerated acts the respondent did interfere with, restrain, and coerce its employees in the exercise of their rights guaranteed by Section 7 of the Act. We shall therefore order the respondent to cease and desist from these practices.

The Trial Examiner found that certain other practices of the respondent were unfair practices within the meaning of the Act. He found that Clyde S. Leaker, shop steward for the Union, and 12 other employees were laid off in November 1937. There was, however, no allegation that these discharges were discriminatory. The record discloses that these lay-offs were made on a seniority basis because of a slump in the respondent's business. Indeed it appears from the brief of counsel for the respondent that Leaker received the Christmas bonus and has since been rehired. We therefore find that the respondent was not guilty of an unfair practice in regard to these lay-offs.

The Trial Examiner also found that the foremen of the Company had questioned the employees about the Union and their membership therein and had made derogatory statements about the Union, and that certain union men who were dissatisfied with the Union were promised raises in pay. The record discloses, however, that information about union membership was volunteered by certain of the union members themselves. While there is some evidence that derogatory statements about the Union were made by one of the foremen, the testimony is conflicting, and the statements, if made,

were addressed to only one employee who himself was disgruntled with the Union. The promised raises apparently were to go to certain classifications of workers and were unconnected with union activity. We therefore believe that these findings were not supported by the evidence.

The complaint also alleged that the respondent had used coercive tactics in influencing the men to repudiate the Union. The evidence does not sustain this allegation.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that 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.

V. THE QUESTION CONCERNING REPRESENTATION

On September 17, 1937, representatives of the Union conferred with the respondent and demanded the right to bargain collectively, claiming that the Union had application cards from a majority of the employees in the appropriate unit. The respondent denied the claim of majority and refused to bargain collectively with the Union.

We find that a question has arisen concerning representation of employees of the Company.

VI. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the respondent described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VII. THE APPROPRIATE UNIT

The Union's petition alleges that all the employees in the mill, frame, and finishing departments constitute the unit appropriate for the purposes of collective bargaining. The respondent agrees with the contention of the Union, and the only question raised at the hearing was whether to include or exclude a clerical worker, a working foreman, and an elevator operator, whose names appear on the pay

roll of November 24, 1937, which has been introduced into the record. The Union desires the exclusion of these three employees.

The exclusion of the clerk from the unit seems clearly warranted in view of the difference between his duties and the duties of the other employees in these three departments who are production workers. The working foreman in the mill department does not have the power to hire and discharge, but he may recommend discharges, instructs the other employees in the type of work they shall perform, and at least part of the time does work similar in nature to the foreman of the mill department. We find, therefore, that he should be excluded. The elevator operator works part of the time in the stockroom where he furnishes supplies to the production employees. He is ineligible for membership in the Union. For this reason and because of the difference in the type of work, we find that he should be excluded from the unit.

We find that all of the employees in the mill, frame and finishing departments, excluding foremen, working foremen, elevator operators, and clerical workers, 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.

VIII. THE DETERMINATION OF REPRESENTATIVES

The Union contended that it should be certified as the exclusive representative in the appropriate unit for the purposes of collective bargaining. It introduced in evidence application cards indicating that it had a majority at the date the petition was filed and asserted that it had a majority at the time of the hearing. At the hearing, however, it developed that a substantial number of the employees had repudiated the Union. Under these circumstances we believe that the question concerning representation can best be resolved by the holding of an election by secret ballot.

The Union requests that if an election is held, eligibility to vote in the election should be determined on the basis of the pay roll next preceding the filing of the petition on September 27, 1937. The respondent opposed this contention, refusing to produce this pay roll, and urged that the pay roll of November 24, 1937, should be used. We believe, however, that conditions may have so changed since the time of the hearing that neither of these dates should be used. Accordingly, we shall direct that all employees in the appropriate unit whose names appear on the pay roll next preceding the date of this order, including those temporarily laid off whose names are on the seniority lists, shall be eligible to vote in the election. We

shall not order an election to be held, however, until we are satisfied that the effects of the Company's unfair labor practices have been dissipated.

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

CONCLUSIONS OF LAW

1. Furniture Workers Union, Local 1561, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. 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.

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

4. A question affecting commerce has arisen concerning the representation of employees of the respondent within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

5. All employees of the respondent in the mill, frame and finishing departments, excluding foremen, working foremen, elevator operators, and clerical workers, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

ORDER

Upon the basis of the above 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 Roberti Brothers, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of their 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 purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Immediately post notices in conspicuous places throughout the plant and maintain such notices for a period of at least thirty (30) consecutive days stating that the respondent will cease and desist as aforesaid;

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

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

DIRECTED that, as a part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Roberti Brothers, Inc., an election by secret ballot shall be conducted upon further order of the Board under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among the employees of the mill, frame, and finishing departments of Roberti Brothers, Inc., whose names appear upon the pay roll of the date next preceding the date of this order, including those temporarily laid off whose names are on the seniority lists, but excluding foremen, working foremen, elevator operators, and clerical workers, and those who since have quit or been discharged for cause, to determine whether or not they desire to be represented by Furniture Workers Union, Local 1561, for the purpose of collective bargaining.