

In the Matter of HARBOR BOAT BUILDING COMPANY, A CORPORATION
and SHIP CARPENTERS LOCAL UNION No. 1335

Case No. C-45.—Decided March 17, 1936

Boat Building and Repairing Industry—Unit Appropriate for Collective Bargaining: craft; history of collective bargaining relations; occupational differences—*Representatives:* proof of choice: membership in union—*Collective Bargaining:* employer's duty as affected by action of competitors; refusal to negotiate with representatives; negotiation in good faith: counter proposals; meeting with representatives but with no intention of bargaining in good faith—*Strike:* averted by filing of charge with Board.

Mr. Leonard Janofsky for the Board.

Hilda Droshnicop, of counsel to the Board.

DECISION

STATEMENT OF CASE

On October 18, 1935, Ship Carpenters Local Union No. 1335, hereinafter referred to as the union, filed with the Regional Director for the Twenty-first Region a charge that the Harbor Boat Building Co. of Los Angeles, California, had engaged in unfair labor practices, forbidden by the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On November 26, 1935, the Board issued a complaint against the Harbor Boat Building Co., hereinafter referred to as respondent, the complaint being signed by the Regional Director for the Twenty-first Region and alleging that respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (5) and Section 2, subdivisions (6) and (7) of the Act. In respect to the unfair labor practices the complaint alleged in substance:

1. That the ship-carpenters, caulkers and joiners in the Los Angeles plant of respondent constitute a unit appropriate for purposes of collective bargaining, within the meaning of Section 9 (b) of the Act;

2. That on or about September 12, 1935, and thereafter, a majority of the employees in this unit had designated the union as their representative for purposes of collective bargaining with respondent, such designation having been made by vote of said employees duly recorded in the minute book of the union and by appointing a committee of union members to bargain with respondent; and that

by virtue of Section 9 (a) of the Act the union has since that time been the exclusive representative of all employees in the unit for purposes of collective bargaining;

3. That on and before September 30, 1935, the union requested respondent, through its officers, agents and employees, to bargain collectively with the union as the exclusive representative of all the employees in the unit, but respondent refused and continued to refuse to enter into any discussion with the union with respect to rates of pay, wages, hours of employment and other conditions of employment.

The complaint and accompanying notice of hearing were served on respondent in accordance with Article V of National Labor Relations Board Rules and Regulations—Series 1. Respondent filed no answer, but on the day of the hearing respondent delivered to the Regional Attorney for the National Labor Relations Board a letter addressed by respondent to Towne Nylander, Regional Director for the Twenty-first Region, wherein respondent denied generally all the allegations of the complaint and asserted that the business of respondent was outside the scope of the National Labor Relations Act. The Trial Examiner ruled that this letter did not constitute an answer within the meaning of Section 10, Article II, of the Rules and Regulations.

The hearing was originally noticed for December 5, 1935, at 10 o'clock A. M., at the office of the National Labor Relations Board in the Federal Building, Los Angeles, California. It was later postponed to December 18, 1935, at the same place, and respondent was notified of said adjournment. By letter dated December 16, 1935, respondent was notified that the hearing would be held in the Board Room of the City Hall at San Pedro, California instead of in Los Angeles.

The hearing was conducted on December 18, 1935, at the City Hall at San Pedro, California, by Rollin L. McNitt, the duly designated Trial Examiner. The Trial Examiner inquired at the opening of the hearing and from time to time during the hearing as to whether there was anyone representing respondent present at the hearing, either officially or as an observer. There was no response to any of these inquiries. The Regional Attorney, on behalf of the Board, offered evidence to sustain the allegations of the complaint.

Upon the record thus made, the stenographic report of the hearing and all evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Trial Examiner, on December 30, 1935, filed an intermediate report, finding in substance that respondent is engaged in building and repairing wooden boats used in transportation and commerce upon the high seas, con-

stituting foreign commerce; that respondent had committed unfair labor practices in violation of Section 8, subdivisions (1) and (5) of the Act in refusing to bargain collectively with the duly designated representatives of its employees; and that such unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act. The Trial Examiner recommended that respondent cease and desist from refusing to bargain collectively with the representatives of its employees in the woodworking department of its Harbor plant.

We find that the evidence supports the Trial Examiner's rulings, findings and conclusions. Nothing in respondent's letter of exceptions to the intermediate report, which is discussed below, requires any material alteration of such findings and conclusions.

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

FINDINGS OF FACT

I. THE HARBOR BOAT BUILDING CO.

The Harbor Boat Building Co. is a California corporation engaged in repairing and building fishing and other wooden boats. Respondent's plant is in Los Angeles Harbor, County of Los Angeles, and is one of the largest of several companies in Los Angeles Harbor similarly engaged. The annual business of respondent is estimated at about \$300,000.

Respondent employs on a yearly average about thirty carpenters, caulkers and joiners when a substantial repair job is under way; from time to time as many as one hundred men are so engaged; at all times not less than five carpenters, caulkers and joiners are so employed. During the period in question there were approximately twenty carpenters, caulkers and joiners in the woodworking departments of the company. The monthly payroll of respondent ranged from \$700.00 to \$1600.00 per month in 1935.

Respondent specializes in fishing boats and handles a substantial portion of the repairing and building of fishing and other wooden boats operating out of Los Angeles Harbor. Large fishing boats ordinarily are repaired two and three times a year; even in the absence of other damage they come in twice a year for paint. 90% of respondent's business in the years 1923-1935 consisted of repairing and only 10% building.¹ 50% of respondent's business is on the larger boats.

The boats repaired and built by respondent range in size from 40 feet to 125 feet with a cruising area as far south as the equator. All

¹In 1935 respondent constructed four fishing boats, which brought its average of construction up to 20% for that year. This however was unusual.

the fishing boats operating out of Los Angeles Harbor, including the boats repaired and built by respondent, cruise beyond the three mile limit in the ordinary course of their operations and frequently make their actual catches of fish outside the three-mile limit. 50% of these boats occasionally go into waters south of the Mexican line, some as far as the Galapagos Islands. The smaller boats repaired and built by respondent at its plant also have an extensive range; more than half the fish caught on said smaller boats are also caught outside the three-mile limit. In the course of its business, respondent sometimes also repairs fishing boats from Seattle and Tacoma, Washington and San Diego, California.

The aforesaid repairing and building operations of respondent are performed upon instrumentalities which engage in traffic and commerce among the several states, and between the several states and the high seas and foreign countries.

II. APPROPRIATE UNIT AND THE UNION AS REPRESENTATIVE OF THE MAJORITY IN SUCH UNIT

Ship Carpenters Union No. 1335 is a labor organization which was formed in July, 1934 for the purpose of creating an agency for collective bargaining between the boat building companies in the Harbor and the employees in their woodworking departments, which include carpenters, caulkers and joiners. The union is a local of the United Brotherhood of Carpenters and Joiners of America, which is affiliated with the American Federation of Labor. In September, 1935, the total number of members was 117.

Respondent employs painters and machinists in addition to those employed in the woodworking department. On September 12, 1935 there were 20 employees in respondent's woodworking department. All of the men in the woodworking department of respondent were members of the union on that date.

Painters normally comprise about 5% and machinists about 35% of the men in the plant. These craftsmen are not eligible for membership in Ship Carpenters Union No. 1335 because their crafts differ from those practiced by the employees in the woodworking department. The machinists employed by respondent are organized and are represented by their own organization within the American Federation of Labor.

The nature of the woodworkers' employment is such that they may work intermittently for all the boat companies in the Harbor during any given season. The separate craft organization of the ship carpenters, caulkers and joiners is based upon a particular skill and is traditional, dating back to a period long preceding the formation of the American Federation of Labor. There is considerable divergence

in the basic rate of pay between the carpenters, caulkers and joiners on the one hand, and the machinists on the other, generally throughout the United States, the base rate for machinists in private industry being 75 or 80 cents an hour, while the prevailing rate for woodworkers is substantially higher. This was also true in the Harbor area until approximately June, 1935, when the boat-building companies succeeded in cutting down the rates of the woodworkers.

We find that the employees in the woodworking department of respondent's plant constitute an appropriate unit for the purposes of collective bargaining.

The allegation of the complaint that on or about September 12, 1935, and at all times thereafter, a majority of the employees in the woodworking department of respondent had designated the union as their representative for purposes of collective bargaining with respondent was not denied by respondent in any of its dealings with the union. Respondent filed no answer to the complaint within the meaning of the Rules and Regulations, and in the informal letter delivered to the Regional Attorney this allegation was not specifically controverted; only a general denial of the allegations of the complaint was put in, the jurisdiction of the Board alone being explicitly challenged. At the hearing it was shown by the uncontroverted testimony of Hart, Secretary of the District Council of Carpenters of Los Angeles County, that about September 12, 1935 all the men in the woodworking department of respondent were members of the union and that the committee which attempted to negotiate with respondent was designated on the same day in the union hall at a regular meeting when a majority of respondent's employees were present in the hall. On no occasion did Rados, the General Manager of respondent, or any other agent of respondent, base his refusal to bargain with the union committee on the ground that it did not represent the men.

The Trial Examiner found that the union had been since on or about September 12, 1935 the duly designated representative of the majority of the men in this unit of respondent's plant. Nine days after the issuance of the Trial Examiner's report respondent in a letter of exceptions stated for the first time that the union did not and never had represented a majority of the men in the woodworking department of its plant. A bare denial of a state of fact raised at this belated point in the proceedings, unmentioned in any answer to the allegations in the complaint, unsupported by evidence introduced by respondent or adduced by cross-examination of the union's witnesses, when respondent had full opportunity to raise the issue on any or all of these occasions, is insufficient to undermine the conviction carried by the uncontradicted testimony of the union's witnesses.

The Board finds that the union, on or about September 12, 1935, and at all times thereafter, was the duly designated representative of

the majority of the men in the woodworking department of respondent.

III. THE UNFAIR LABOR PRACTICES

In the early part of August, 1935 a committee was appointed by the union to interview the various boat building companies in the Harbor with a view to negotiating a contract with them. A letter was sent to the companies setting forth the wage scales voted by the union, and asking them to fix a date for a meeting. Respondent failed to answer the letter. On September 12, 1935 the union designated another bargaining committee. Respondent was again notified of a proposed meeting but it replied on September 16, 1935 that since it "did not find any of the other yards able to attend the meeting" because "one was on his vacation; several others advised that unfair practices, etc. was satisfactory to them and did not see any reason for a meeting; etc. . . . we do not care to take the lead on a meeting of this sort involving the industry". On September 24, 1935, respondent once more was requested to meet with the representatives of the woodworkers in order to discuss hours and wages and working conditions. This letter was never answered. A similar letter sent to respondent by the union on September 30, 1935, requesting a meeting for the same purpose and stating that "Local Union #1335 represents an overwhelming majority of the employees in your plant" also remained unanswered by respondent. The union committee also waited upon the officers of respondent in August, 1935 and again on September 12, 1935 but was unable to see them on either occasion.

On October 9, 1935 a registered letter was sent to Rados notifying him that a committee from the union would call upon him on October 11, 1935, for the purpose of bargaining collectively. The meeting actually occurred on October 17, 1935, with Rados alone representing the respondent. The union committee proposed that respondent agree to enter into negotiations relating to a contract which would approximate the union scale. It was made clear that it was acceptable to the union, if respondent was unwilling to agree to the union rate immediately, that a program be worked out whereby a lower rate would be set for the present and payment of the union scale postponed until some later period. The questions raised by the union involved rates of pay, hours, working conditions and recognition of the union. Rados conversed with the committee but explicitly stated that he would not consider becoming a party to a bargaining agreement unless all the other boat companies in the Harbor joined in it. He made no counter proposition when the committee stated the union scale; he merely declared that he was paying all he could afford to

pay, and when pressed as to what that was, replied, "Well, I am paying them all they are worth." The period for which any agreement would operate was not discussed because negotiations did not reach the state of discussion of particular terms.

It is clear that an employer cannot refuse to bargain collectively on the ground that his competitors have not entered into negotiations or made agreements with their employees. In any event, however, it is obvious that in this case Rados' statement to the effect that he would not consider entering into a contract with the union until all the other companies in the Harbor were signed up was injected into the discussion solely with a view to precluding the possibility of effective negotiations, since there is evidence that he knew that the committee had already called upon all the other large boat builders in the vicinity and had received the same answer. The record shows without contradiction that Rados and the other companies had conferred on the question with each other prior to that date and that Rados was fully apprised of their attitude on the subject. Thus there is some evidence to the effect that about September 16, 1935, when the respondent declined to appear at a joint meeting of all the boat shops in the Harbor to discuss terms with the union, respondent and the other boat builders held a meeting at the Rados Duck Ranch and agreed not to meet with the union.

Several incidents appearing in the record disclose a generally hostile attitude on the part of respondent to the union. Thus Browning, a caulker who worked for respondent at the time of the negotiations, and who was an active union man, testified that he had worked for respondent for nine or ten years and had also been intermittently employed by the other large boat building firms in the Harbor. Late in September, 1935, Browning was heard by Rados to say that a night job should be paid time and a half, which was the union rate. Rados thereafter did not recall Browning as he customarily did when there was work, and in answer to Browning's inquiry as to the reason replied that it was because he had said "time and a half" on that occasion. He added "you fellows tried to tie me up." Browning testified that Rados knew that he had been one of the first organizers of the union. Late in September Rados also failed to recall Twining, recording secretary of the union, and McGinney, president of the union. In addition, when Twining and Browning early in November applied at the Standard Dredging Co., another ship building company in the Harbor, for jobs which had previously been promised them, the foreman, who was a friend of Browning and Twining, said, "Why, you fellows are Bolsheviks . . . that is what Johnnie Rados, Al Larsen, Homer Evans and

Craig came in and told me." (The latter men are owners of other large boat building companies in the Harbor). Browning also testified that of the carpenters, caulkers and joiners working in the wood-working department of respondent in September, only four or five have been retained and that "the four men there right now are different from what they used to be towards organized labor."

We find that respondent refused to bargain collectively with the representative of its employees, and that by such refusal respondent interfered with, restrained, and coerced its-employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

We found above that the repairing and building operations of respondent are performed upon instrumentalities which engage in traffic and commerce among the several states and between the several states and the high seas and foreign countries. The employees in the woodworking department of respondent's plant are thus engaged in operations which constitute a necessary and integral part of such commerce; such repairing and building is essential to the regular and effective functioning of such instrumentalities.

At the time of the filing of the charge in this case, the employees of respondent contemplated calling a strike in order to assert their rights. Hart, Secretary of the District Council, advised against such action and told them that he could take up their grievances with the Regional Office of the National Labor Relations Board. He pursued such a course and thus the strike was averted.

Several of the witnesses testified that the employees here involved worked at different times for all the boat building and repairing companies in the Harbor. In view of the large proportion of union men in this trade in the Harbor the effect of a strike on the operations of these boat building companies, including respondent, is obvious. Moreover it was testified by Woods that a strike called by this local would involve every connected carpenters' local, thus affecting construction of buildings, wharves, studios and ocean liners including the men in all the lumber and material yards in the vicinity, who number about 1,000 men in the Harbor district alone. The longshoremen might also strike in sympathy, thus directly causing a stoppage of interstate and foreign commerce. Evidence was adduced to the effect that respondent's failure to bargain collectively through the union might involve a walk-out of all the carpenters' unions, longshoremen, seamen on barges and tug boat unions, which might result in 50,000 men leaving their work, thus creating an interruption of all commerce to and from Los Angeles Harbor as well as dislocating

industrial operations generally in Southern California. Such a strike would practically paralyze shipping out of Los Angeles Harbor and perhaps out of other ports on the Pacific Coast.

Interference with the activities of employees in forming or joining labor organizations results in strikes and other forms of industrial unrest which in the ship-building industry have the effect of impeding the servicing of instrumentalities of foreign and interstate commerce. In 1934 and in January to July, inclusive, 1935, such interference by employers in the ship-building industry resulted in strikes and lockouts involving 8,740 workers and 460,588 man-days of idleness.

The refusal of respondent to bargain collectively with the representatives of the employees in its woodworking department burdens and obstructs commerce and the free flow of commerce and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

Upon the basis of the foregoing the Board finds and concludes as a matter of law:

1. Ship Carpenters, Caulkers and Joiners Local 1335 is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.
2. The carpenters, caulkers and joiners in respondent's plant constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.
3. By virtue of Section 9 (a) of the Act, Ship Carpenters, Caulkers and Joiners Local 1335, having been duly designated on or about September 12, 1935 by a majority of the employees in the unit as their representative for the purposes of collective bargaining, has been at all times thereafter the exclusive representative of all the employees in such unit.
4. By its refusal to bargain collectively with the duly designated representative of its employees, respondent has engaged in and is engaged in unfair labor practices within the meaning of Section 8, subdivisions (1) and (5) of the Act.
5. Such unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

ORDER

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that

respondent, Harbor Boat Building Co., and its officers and agents, shall:

1. Cease and desist from refusing to bargain collectively with the Ship Carpenters, Caulkers and Joiners Local No. 1335 as the exclusive representative of the carpenters, caulkers and joiners employed in such capacity by respondent, in respect to rates of pay, wages, hours of employment and other conditions of employment.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act: Upon request, bargain collectively with the Ship Carpenters, Caulkers and Joiners Local No. 1335 as the exclusive representative of the carpenters, caulkers and joiners employed in such capacity by respondent, in respect to rates of pay, wages, hours of employment, and other conditions of employment.