

In the Matter of THE CANTON ENAMELING & STAMPING COMPANY,
A CORPORATION and CANTON LODGE No. 812, INTERNATIONAL ASSO-
CIATION OF MACHINISTS

Case No. C-47.—Decided March 23, 1936

Stamping and Enameling Industry—Unit Appropriate for Collective Bargaining: craft; eligibility for membership in only organization making bona fide effort at collective bargaining; history of collective bargaining relations; occupational differences; organization of business—*Representatives:* proof of choice: membership in union; petition designating—*Collective Bargaining:* refusal to negotiate with representatives.

Mr. Harry L. Lodish for the Board.

Black, McCaskey, Ruff & Souers, by *Mr. H. E. Black* and *Mr. Walter S. Ruff*, of Canton, Ohio, for respondent.

Mr. Melvin C. Smith, of counsel to the Board.

DECISION

STATEMENT OF CASE

Upon charges duly filed by Canton Lodge No. 812, International Association of Machinists, hereinafter called Lodge No. 812, Ralph A. Lind, Regional Director for the Eighth Region, agent of the National Labor Relations Board designated by Article IV, Section 1 of National Labor Relations Board Rules and Regulations—Series 1, issued its complaint, dated December 11, 1935, against the Canton Enameling & Stamping Company, Canton, Ohio, hereinafter called respondent. The complaint and notice of hearing thereon were duly served upon respondent and Lodge No. 812 on December 12, 1935, in accordance with Article V, Section 1 of said Rules and Regulation—Series 1, the hearing being set for December 19, 1935, in Canton, Ohio. On December 18, 1935, respondent filed with the Regional Director a motion for continuance of the hearing. The motion was granted and the date of the hearing was set for January 6, 1936.

The complaint alleges that respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (5), and Section 2, subdivisions (6) and (7)

of the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act.¹ Respondent filed an answer to the complaint admitting the allegations concerning its incorporation and place of business, and admitting the interstate sources of quantities of its raw materials and the interstate sale and transportation of certain of its products, but denying that such constitutes a continuous flow of commerce among the several states. Respondent's answer further denies the allegation in the complaint that the machinists employed at respondent's plant constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, and the allegations with respect to the unfair labor practices.

Pursuant to notice thereof, A. Howard Myers, Trial Examiner duly designated by order of the Board, conducted a hearing on January 6, 1936, at Canton, Ohio. Respondent, appearing by counsel, participated in the hearing. Full opportunity to be heard, to cross-examine witnesses and to produce evidence was afforded to all parties.

At the beginning of the hearing counsel for respondent moved that the proceeding be dismissed on the ground that the National Labor Relations Act is unconstitutional and at the conclusion thereof renewed the motion on the same ground and on the further ground that the evidence did not support the allegations made in the complaint. The motion was noted but no ruling was made thereon by the Trial Examiner. The Board now denies the motion to dismiss.

Upon the record, including the transcript of the hearing and all the evidence, oral and documentary, offered and received at the hearing, the Trial Examiner, on January 17, 1936, filed an intermediate report, finding and concluding that the machinists employed by respondent constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act and that respondent had committed unfair labor practices affecting commerce in violation of the Act as alleged in the complaint. Respondent filed exceptions to the intermediate report and also a brief in support of the exceptions, contending that the Trial Examiner's findings are not sustained by the evidence, and that the Act is unconstitutional.

Upon the entire record, as thus made, including the evidence adduced at the hearing, the intermediate report and exceptions thereto, the Board makes the following:

¹One of the allegations in the complaint was that upon the request of Commissioner Faulkner, United States Department of Labor, respondent met with a committee representing Lodge No 812 on October 1, 1935, and refused to enter into any agreement with Lodge No 812, and otherwise failed or refused to bargain collectively with Lodge No. 812. This allegation was amended at the hearing, changing the date from October 1, 1935 to October 9, 1935.

FINDINGS OF FACT

I. RESPONDENT AND ITS BUSINESS

1. Respondent is and has been since 1905 a corporation organized under and existing by virtue of the laws of the State of Ohio, having its principal office and place of business in the City of Canton, County of Stark, State of Ohio. It is now and has been continuously for a long period of time engaged at its plant in the production, sale and distribution of kitchen enamelware.

2. Much of the raw materials used by respondent in the production of its kitchen enamelware is obtained from within the State of Ohio. During the period January 1, 1935 to December 1, 1935, steel, tin plate, twine and wire, wrapping paper, wax paper, carpet paper, corrugated rolls, cartons, straw, coal, gas, acid, wood knobs and grips, and department supplies were obtained from within the State of Ohio. However, a substantial part of the raw materials, including excelsior, wood boxes, metal cleaner, iron sulphate, and chemicals were purchased without the State of Ohio during the same period. The total purchases from all sources during this period amounted to more than \$500,000.

3. The finished products manufactured by respondent, consisting entirely of enameled kitchen utensils, are shipped to every state in the United States. Approximately 92 per cent of the finished products are sold without the State of Ohio. The total sales during the period from January 1, 1935 to December 1, 1935 amounted to more than \$1,000,000.

4. Respondent employs two men in its sales department on a salary basis. One of these men is located in Ohio, presumably at the Canton plant, and the other is located in Chicago, Illinois. Representatives, employed on a commission basis, are also located in New York, N. Y., Chicago, Illinois, Portland, Oregon, San Francisco, California, Dallas, Texas, and in South Carolina.

5. The aforesaid operations of respondent constitute a continuous flow of trade, traffic and commerce among the several States.

II. ORGANIZATION AND ACTIVITY OF UNIONS REPRESENTED IN
RESPONDENT'S PLANT*A. Canton Lodge No. 812, International Association of Machinists*

6. Canton Lodge No. 812, International Association of Machinists, is a labor organization affiliated with the American Federation of Labor. Employees engaged in machine and assembly work, and tool and die work are eligible to membership therein. Lodge No. 812 was organized more than fourteen years ago and is included in

District 68, International Association of Machinists. Its membership is not limited to employees of respondent.

B. Stamping and Enameling Workers Union No. 18506

7. Stamping and Enameling Workers Union No. 18506, hereinafter referred to as Union No. 18506, is a labor organization affiliated with the American Federation of Labor. It was organized in August, 1933, for the purpose of representing the production employees in respondent's plant. Respondent employs approximately 550 employees. The record does not indicate what proportion thereof are production workers; however, Union No. 18506 claims a membership of approximately ninety-eight percent of respondent's employees engaged in production work. Union No. 18506 does not admit machinists to membership and has never claimed that it has jurisdiction over the machinists employed by respondent or that it is entitled to represent them for the purposes of collective bargaining.

C. The strike of October, 1933

8. Labor difficulties at respondent's plant in 1933 culminated in a strike of its production employees, called by Union No. 18506 in October, 1933. The strike continued for three to four weeks, and respondent's plant ceased to operate during this period. The machinists, employed in the foundry, had no part in calling the strike or negotiating for a strike settlement, and took no active part in the conduct of the strike. However, they did not report for work during the period of the strike. This action on the part of the machinists was described by members of Lodge No. 812 as "purely sympathetic."

At the conclusion of the strike an agreement, dated October 27, 1933, was entered into between respondent and Union No. 18506.² Lodge No. 812 was not a party to the agreement, and no mention was made of it in the agreement. The record clearly indicates that Union No. 18506 did not purport to represent the machinists during the course of negotiations in reaching the agreement. Henry E. Martin, organizer for the American Federation of Labor, who helped organize Union No. 18506, testified that "the machinists' organization out there is a separate organization from the Federal Local (Union No. 18506), and the Chairman of the shop committee of the Federal Local does not interfere in machinists' affairs or the machinists do not interfere in the Federal Local affairs."

²The agreement, Board's Exhibit number 5, provided that (1) respondent "agrees to meet bona fide committee of the Second Part (Local Union No. 18506) for the purpose of discussing and mutually agreeing in regard to working conditions in Plant . . . and rates of pay affecting employees", (2) any disagreement between the parties would be referred to the Conciliation Service, U S Department of Labor, and that, (3) respondent re-employ its old employees, without discrimination, as rapidly as possible.

III. THE BARGAINING UNIT

9. Respondent has questioned the appropriateness of the machinists as a unit for the purposes of collective bargaining. It is clearly established by the record that the foundry, wherein the machinists work, is a separate department, located in a different building and distinct from the other departments comprising respondent's plant. The machinists are engaged in work of a highly skilled nature and receive wages substantially greater than the average wages received by employees of the production departments. The machinists also comprise the only skilled department in respondent's plant paid on the basis of hourly wages.

It is obvious that the various problems which confront the employees of respondent from day to day in respect to rates of pay, wages, hours of employment, and other conditions of employment may be totally different in the case of the machinists than in the case of the production employees. Thus in determining whether a particular unit is appropriate for the purposes of collective bargaining the relative size of such unit is not controlling; and the fact that only thirteen employees of respondent are employed as machinists in the foundry does not require that the machinists be merged in a larger bargaining unit.

The machinists are not eligible to membership in Union No. 18506; and Union No. 18506 does not purport to represent them in matters of collective bargaining, as is clearly evidenced by the agreement reached between respondent and Union No. 18506 at the conclusion of the strike in October, 1933, and the circumstances incident thereto. Consequently should the machinists not be found to be a unit appropriate for the purposes of collective bargaining Lodge No. 812 would be denied the privilege of representing the machinists for such purpose, and the machinists would be denied the right of representation for the purposes of collective bargaining with respondent.

We therefore find that the machinists constitute a unit appropriate for the purposes of collective bargaining.

10. There are thirteen employees of respondent, machinists employed in the foundry, eligible for membership in Lodge No. 812, and twelve are members thereof. Board's Exhibit number 10 is an undated petition admitted to have been signed in December, 1935, by twelve machinists employed by respondent.³ Edward M. John, Chairman of the duly elected Shop Committee representing Lodge No. 812, testified that all twelve members of Lodge No. 812 became

³ Board's Exhibit number 10 states as follows: "We, the undersigned members of Lodge #812, I. A. of M., comprising approximately 93% of the machinists employed at the Canton Stamping and Enameling Company, wish to be represented by the International Association of Machinists."

members thereof previous to August 12, 1935. Board's Exhibit number 8, copy of a letter dated September 3, 1935, written by Walter C. Summers, Business Agent for District 68, International Association of Machinists, and addressed to Harvey Brown, an official of the International Association of Machinists, Machinists Building, Washington, D. C., states that, "The machine shop in this plant employs fourteen men of which thirteen are members in good standing in Local #812."

As hereafter appears, the respondent's refusal to bargain took place on August 23 and October 9, 1935. We find that on such dates Local No. 812 was the duly designated representative of a majority of the employees in the appropriate unit.

IV. THE UNFAIR LABOR PRACTICES

11. On August 12, 1935, Edward M. John, Chairman of the Shop Committee representing Lodge No. 812, presented a proposed agreement,⁴ previously drawn up by members of Lodge No. 812, to Superintendent Staley and requested that it be given consideration by the management. Staley conferred with E. F. Hoerger, vice-president and treasurer of respondent; however, no action was taken at that time for the reason that H. T. Bebb, president of respondent, was out of town.

12. On or about August 14, 1935, several members of the Shop Committee representing Lodge No. 812 went to Superintendent Staley's office, informed him that Lodge No. 812 represented 92 per cent of the machinists, and asked him to request the management to meet with the Shop Committee. Staley replied that he would take the matter up with the management. The management subsequently gave consideration to the proposed agreement, decided that it would not enter into such an agreement, and Staley informed Edward M. John on August 23, 1935, that nothing could be done about it.

13. The Shop Committee was unsuccessful in its efforts to arrange a conference with the management of respondent, and Lodge No. 812 sought the assistance of the Conciliation Service, United States Department of Labor. On October 9, 1935, Commissioner Faulkner, United States Department of Labor, arranged a meeting between Bebb and Hoerger, representing respondent, and the Shop Committee representing Lodge No. 812. Harry Peterson, Grand Lodge representative of the International Association of Machinists, and

⁴ This proposed agreement, Board's Exhibit number 7, stated that, "The intention of this agreement is to maintain harmonious relationship and closer cooperation between the Canton Stamping and Enameling Company and the International Association of Machinists," and contained provisions in respect to rates of pay, wages, hours of employment, and other conditions of employment, not substantially different from the rates of pay, wages, hours of employment, and other conditions of employment then in effect.

Walter C. Summers, representative of District 68, International Association of Machinists, were also present.

At this meeting the agreement proposed by Lodge No. 812 was discussed, and Bebb, President of the respondent company, refused to enter into any agreement with Lodge No. 812. Bebb testified that:

“the conditions were such in our office that there was nothing that they were asking for in that agreement other than what they were already enjoying. . . . Then after we got through Mr. Faulkner then wanted to know if I would not go into another room and write my own agreement as to what I would agree to do with the employees. I stated that these men had all long terms of service with the company and if they didn't know after being, after working with the company eight and nine years what my policies were in the company, I didn't know what I should do any different that they would understand.”

Bebb further refused to make counter proposals to Lodge No. 812, and stated that the respondent already had one agreement with its employees (Union No. 18506) and that he could not see the necessity of having two agreements.

14. Bebb testified that in his opinion he did not refuse to bargain collectively with the machinists, but merely refused to grant the terms which they asked for. However, the facts do not sustain this contention. The October 9 meeting was arranged only through the efforts of Commissioner Faulkner, and it is apparent that respondent flatly refused to enter into any agreement whatsoever with Lodge No. 812 at that meeting. The mere fact that respondent did meet with representatives of Lodge No. 812 cannot in itself be construed as collective bargaining.

15. Respondent's conduct as set forth in paragraphs 11, 12 and 13 above constitutes a refusal to bargain with the representative of its employees on August 23 and October 9, 1935.

16. Respondent, by refusing to bargain collectively with the representative of its employees, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

17. On the basis of experience in respondent's plant and in other plants, respondent's conduct as set forth in findings 11 to 14 above, tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE RESPONDENT'S EXCEPTIONS

Respondent's exceptions to the Trial Examiner's intermediate report are based mainly on the contentions that his findings of fact, conclusions and recommendations are not sustained by and are contrary to the evidence. The findings of fact set forth above are in substantial accord with those of the Trial Examiner, whose intermediate report we find to be supported by the evidence.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, and upon the entire record in the proceeding, the Board finds and concludes as a matter of law that:

1. Canton Lodge No. 812, International Association of Machinists, is a labor organization, within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

2. The machinists employed at respondent's plant constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. By virtue of Section 9 (a) of the National Labor Relations Act, Canton Lodge No. 812, International Association of Machinists, having been designated by a majority of the employees in an appropriate unit, is the exclusive representative of all the employees in such unit for the purposes of collective bargaining.

4. The respondent, by refusing to bargain collectively with the representative of its employees, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the National Labor Relations Act.

5. The respondent, by refusing to bargain collectively with the representative of its employees, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of said Act.

6. The unfair labor practices in which the respondent has engaged and is engaging constitute unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

ORDER

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

the respondent, Canton Stamping and Enameling Company, and its officers and agents, shall:

(1) Cease and desist from any refusal to bargain collectively with Canton Lodge No. 812, International Association of Machinists, the exclusive representative designated therefor by the machinists employed at its plant, 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 Canton Lodge No. 812, International Association of Machinists, the exclusive representative designated therefor by the machinists employed at its plant in respect to rates of pay, wages, hours of employment, and other conditions of employment.