

In the Matter of STAR PUBLISHING COMPANY and SEATTLE NEWS-
PAPER GUILD, LOCAL NO. 82

Case No. C-238.—Decided December 11, 1937

Newspaper Industry—Interference, Restraint or Coercion: discriminatory removal of union members from regular jobs without guarantee of other regular employment, upon demands of rival union.—*Strike—Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* awarded.

Mr. E. J. Eagen, for the Board.

Mr. S. S. Hahn, of Los Angeles, Cal., and *Bagley & Croson*, of Seattle, Wash., for the respondent.

Mr. Harry L. Gross, of Portland Ore., and *Mr. Stanley Golub* and *Mr. James Molthan*, of Seattle, Wash., for the Guild.

Mr. Lewis M. Gill, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On July 2, 1937, Seattle Newspaper Guild, Local No. 82, herein called the Guild, filed a charge with the Regional Director for the Nineteenth Region (Seattle, Washington) alleging that Star Publishing Company, Seattle, Washington, herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 13, 1937, the National Labor Relations Board, herein called the Board, by the Regional Director, duly issued and served upon the parties a complaint and notice of hearing. The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8(1) and (3) and Section 2 (6) and (7) of the Act.

With regard to the unfair labor practices, the complaint, as amended at the hearing, alleges in substance that the respondent, on or about July 2, 1937, transferred J. W. Farmer, Everett Ray, Al Nienau, Ed Wright, Bert Sparks, Orville Lane, Jack Connor, Lee Connor, Wesley Bubb, Vernon Nelson, Verle Nelson, Marcel Maynard, Tom Beveridge, Hal Navarre, Jack Burris, Clarence Benecke,

Lambert Spear, Paul Pemberton, Don Longbottom and Urban Harris, from their regular jobs in the circulation department of the respondent to temporary positions in other departments because they joined and assisted and refused to give up their membership in the Guild, that the respondent refused and is refusing to reinstate such individuals to their regular positions or to assure them of regular employment; that by such action the respondent discriminated and is discriminating against such individuals in regard to hire and tenure of employment and thereby discouraged and is discouraging membership of its employees in the Guild; and that the respondent by such action interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On July 21, 1937, the respondent filed an objection and answer, alleging that the respondent is not engaged in interstate commerce, that the matters complained of in the complaint are not within the proper jurisdiction of the Board because such matters are entirely within the jurisdiction of the American Federation of Labor, herein called the A. F. of L., and denying the unfair labor practices charged, although admitting that the respondent transferred the individuals in question from their regular jobs in the circulation department of the respondent to other jobs.

Pursuant to an amended notice of hearing duly served upon the parties, a hearing was held in Seattle, Washington, on July 27, 28, 29, and 30, 1937, before Walter Wilbur, the Trial Examiner duly designated by the Board. All parties 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.

A petition for leave to intervene was filed by Newspaper Drivers and Helpers, Local No. 763 of International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers, herein called the Teamsters, an A. F. of L. union, and certain named individuals. The same parties also presented objections to the jurisdiction of the Board and an answer to the complaint. The petition for leave to intervene was discussed exhaustively at the hearing. The petitioners claimed an interest in the case by virtue of the fact that the individual petitioners had replaced the Guild members who had been removed from their jobs, and alleged that any order by the Board that respondent reinstate the Guild members might prejudice the individual petitioners. The Trial Examiner denied the petition for leave to intervene, ruling that the sole question for the Board's determination was whether respondent engaged in any unfair labor practice by discriminatorily removing the Guild members from their jobs, and that the

petitioners had no standing in the case with the issue so defined. We hereby affirm the Trial Examiner's ruling on the petition for leave to intervene.

The Trial Examiner also ruled that evidence as to whether the Guild was, at the time of the alleged unfair labor practices, affiliated with the A. F. of L. was immaterial, and that evidence as to whether the Guild had proper jurisdiction over the jobs in question was likewise immaterial in considering the question of whether respondent engaged in unfair labor practices. We hereby affirm these rulings of the Trial Examiner.

Various other motions and objections to the admission of evidence were made during the course of the hearing. We have reviewed the rulings of the Trial Examiner on these motions and objections and find no prejudicial error. The rulings are hereby affirmed.

On September 20, 1937, the Board, acting pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the proceedings in the case transferred to and continued before the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, a Washington corporation organized in 1900, has its principal office and place of business at Seattle, Washington. It owns, prints and publishes the Seattle Star, herein called the Star, a daily newspaper, and distributes it in the State of Washington, in various other states of the United States, in the Territory of Alaska and in British Columbia, Canada. The average daily circulation of the Star is in excess of 80,000. In the publication of the Star, respondent is engaged in collecting, receiving, distributing and transmitting news and intelligence from, to, into, and through states other than the State of Washington, territories of the United States, and foreign countries.

The majority of the capital stock of the respondent is owned by Scripps Newspapers, Inc., a Delaware corporation which also owns and controls a majority of the capital stock of other corporations which own and publish newspapers in the states of Washington, Oregon, California, Utah, Texas, and Idaho. The chairman of the Board of Directors, the treasurer, and the secretary of Scripps Newspapers, Inc., also hold those offices in all of the afore-mentioned corporations, including the respondent. Scripps Newspapers, Inc. supervises in many ways the operations of such newspapers, under the name of the Scripps League of Newspapers. It purchases all substantial items of supplies, machinery, real estate, news services, syndi-

cated feature services, and other items for each of the aforesaid corporations, including the respondent. The individual corporations are charged for such items. Some of such items are purchased and shipped from outside the State of Washington. For example, the newsprint used by respondent is purchased and shipped from British Columbia, Canada. The respondent purchases its own ink, which is shipped from New York City.

The respondent uses the United Press service, which is purchased by Scripps Newspapers, Inc. from United Press Association, a New York corporation engaged in collecting, formulating, and transmitting news and intelligence from various points within and without the United States. The United Press Association maintains and operates two teletype machines in respondent's plant in Seattle, and has the privilege of using items of news and intelligence collected and edited by respondent's employees, for transmittal to the various subscribers of the United Press service.

The Star, the Tacoma (Washington) Times, and the Portland (Oregon) News Telegram, newspapers included in the Scripps League of Newspapers, transmit news and intelligence to and from one another by means of a wire service.

II. THE UNION

The Seattle Newspaper Guild, Local No. 82, is a labor organization affiliated with the American Newspaper Guild.

III. THE UNFAIR LABOR PRACTICES

The circulation department in respondent's plant includes employees engaged in various types of work. The employees involved in this proceeding are district and branch managers and verifiers. The district managers, of whom fourteen are involved here, have supervisory duties over the carrier boys in various parts of the city. They instruct the boys in the technique of procuring new subscribers, see that the papers are properly delivered and collections efficiently made, and keep records of the work of the boys. Branch managers, of whom two are involved here, have similar duties, except that their jurisdiction covers certain outlying points not covered by the district managers. The verifiers, of whom four are here involved, are engaged primarily in checking up on complaints from subscribers. There are a number of other employees in the circulation department, but they are not involved in this case.

The actual transportation of the papers from the plant to the various stations throughout the city was done by the district and branch managers in their own cars until the middle of April 1937, at which time the Teamsters prevailed upon the management to

have the hauling done by the City Transfer Company, of Seattle. This change was effected, with the City Transfer Company employing members of the Teamsters to drive the trucks. Thereafter the district and branch managers rode out to their stations independently of the trucks hauling the papers.

Shortly after this first inroad was effected by the Teamsters, the district and branch managers and verifiers organized themselves into the Guild. By about May 11, 1937, the management agreed to institute collective bargaining with the Guild as the exclusive representative of its employees in the circulation department, business office, and classified advertising department. It was satisfied by evidence presented by the Guild that the Guild represented a majority of the employees in those departments. Conferences relating to wages, hours, and other conditions of employment were carried on between the management and the Guild from that time until July, when the controversy we are considering came to a head.

Several A. F. of L. unions had been in the plant for some time. The typographers, janitors, mailing room employees, press room employees, and stereotypers were organized in their respective organizations, and some had been operating under contracts with the respondent for several years.

The conflict between the Teamsters and the Guild over the verifiers and district and branch managers was foreshadowed as early as May 17, 1937, when Dave Beck, international representative of the Teamsters in the northwest district, wrote Frank Webster, publisher of the Star, that the Teamsters had jurisdiction, under A. F. of L. laws, over all circulation department employees. On May 22 William Green, president of the A. F. of L., at the request of Beck wired the respondent that the Guild's jurisdiction was limited to news writers and editorial departments, under the charter granted the American Newspaper Guild by the A. F. of L. On June 9, 1937, the general manager of the respondent wrote the Guild, stating that the respondent did not desire to enter into any agreement with the Guild which would conflict with the jurisdiction of any other A. F. of L. unions. At about this time the management was familiar with reports that the American Newspaper Guild had voted, at its convention in St. Louis early in June, to affiliate with the Committee for Industrial Organization. However, the exact status of the Guild and the A. F. of L. was apparently never taken up between the Guild and the respondent at any of the conferences. Collective bargaining between the Guild and the respondent continued down to July 1, 1937, the Guild being accepted by the respondent as the representative for the employees in the circulation department, business office, and classified advertising department. With this background in mind, we turn to the events of July 1, 2, and 3, 1937.

At 5:30 in the afternoon of July 1, 1937, Shaw, a representative of the Teamsters, called upon respondent's president, Marshall, at the offices of the respondent, and informed him that starting the next morning the Teamsters would not haul respondent's papers unless all the circulation department employees were members of the Teamsters or made application for such membership. Marshall requested sufficient time to get the jurisdictional dispute settled. Shaw replied that his instructions permitted no delay. Upon Shaw's refusal to grant an extension of time, Marshall upon request granted him permission to speak to the district and branch managers and verifiers at their regular meeting in the Star plant the following morning. Marshall then attempted without success to contact Beck and other A. F. of L. officials in Seattle, for the purpose of having the Teamsters' demands withdrawn.

The next morning at about 9:30 o'clock, Shaw addressed a meeting attended by most, if not all, of the 20 men in question and informed them that they must, in order to hold their jobs, join the Teamsters. It was made clear that he was appearing before them at his own request, not at the request of the respondent. Shaw left the room after presenting the Teamsters' demands, and the 20 men, all of whom were Guild members, decided to remain in the Guild rather than to join the Teamsters. This decision was communicated to certain of the respondent's officers, who were gathered in conference. This was about 10:30 o'clock in the morning. The presses had already stopped and the papers which had been printed were not being moved from the plant. The representatives of the Guild suggested that the matter be placed before the National Labor Relations Board for solution in some way, and the management stated that they doubted if the Teamsters would acquiesce. Shaw was called in to the conference and the management's prediction was verified when he refused, basing his refusal on the ground that this was merely a jurisdictional dispute between two A. F. of L. unions. The meeting broke up at this point.

After further deliberation, the management decided to ask the Guild members in question whether they would guarantee delivery of the papers from the plant to the points throughout the city. The men declined to make such a guarantee for two reasons. One was that the hauling work was within the jurisdiction of the Teamsters. The other reason was that the Teamsters, who were then congregated in the alley outside the plant, were regarded by the Guild members as a threat to the well-being of anyone attempting to take over the work of hauling the papers. One of the Guild members testified that such groups were known as "goon squads," with a record of attempting to settle previous jurisdictional disputes by subjecting Teamsters' opponents to violent beatings. The management then

secured the assurance of Shaw that the Teamsters would guarantee distribution, and he was told to go ahead. The presses started, the papers were moved out in the trucks, and within about twenty minutes the Teamsters had produced men to replace the Guild members who were district and branch managers and verifiers.

When informed by the management that the Teamsters had been given the jobs, the Guild members naturally inquired of the management as to whether they were discharged. They were told that they would be kept on the regular pay roll for at least two weeks, the management being hopeful that some adjustment of the dispute could be reached in that time. No guarantee of employment beyond two weeks could be secured by the men, although the management insisted they were not being given the customary two weeks' notice prior to discharge. It was extremely uncertain what work, if any, they were to be assigned. Accordingly, at about one o'clock in the afternoon of July 2, the 20 district managers, branch managers, and verifiers, who had elected to retain the Guild as their bargaining agency, found themselves out of their regular jobs and without any assurance of regular employment at other jobs.

That afternoon the entire Guild membership in the respondent's plant, comprising employees in the editorial, business office, classified advertising, and circulation departments, held a meeting and voted authority to a strike committee to call a strike unless some mutually acceptable adjustment could be made with the respondent. This committee met with the management twice during the afternoon and evening, but no additional assurance of regular employment for the 20 men in question could be obtained. Efforts by the management to have the Teamsters withdrawn were likewise unavailing. At 10:30 o'clock on the morning of July 3, the entire Guild membership struck. The paper appeared that day, but did not reappear until July 9, when the plant was reopened with police assistance furnished by Mayor Dore of Seattle. At the time of the hearing, the plant had not been shut down again, although the Guild members remained out on strike. Further negotiations between the respondent, the Teamsters, and the Guild strike committee failed to result in any settlement, the principal barrier being the consistent refusal of Beck to agree to any withdrawal of the Teamsters from the disputed jobs. A further stumbling block was the fact that the respondent introduced a condition on the return of the 20 men, to the effect that the Guild must agree to submit future jurisdictional disputes to the A. F. of L. for decision.

We are not called upon in this case to decide whether the Guild was, either technically or realistically, affiliated with the A. F. of L. at the time of the removal of the 20 Guild members from their regular jobs. The question as to the proper jurisdiction over the disputed

jobs is not presented to us for decision. Our sole inquiry is as to the alleged unfair labor practices of the respondent in removing the 20 men from their regular jobs and in refusing them any guarantee of regular employment. The acts complained of occurred on July 2, 1937, and it is on the basis of those acts that we must make our decision.

We think it is clear that the acts of July 2 related above, constituted discrimination in regard to hire and tenure of employment and that they necessarily discouraged membership in the Guild, a labor organization. The respondent accordingly committed an unfair labor practice within the meaning of Section 8 (3) of the Act. It is also clear that those acts, in a very real sense, interfered with, restrained, and coerced respondent's employees in the exercise of their rights to self-organization and to collective bargaining through representatives of their own choosing, and accordingly constituted a violation of Section 8 (1) of the Act. The 20 men in question were presented with the alternative of transferring their membership from their chosen organization, the Guild, to the Teamsters, or of being removed from their regular jobs with no guarantee for the future apart from a place on the pay roll guaranteed for but two weeks. They chose to remain in the Guild, and the resultant removals from their jobs constituted an unmistakable blow at the Guild and a clear violation of the Act.

We realize that the respondent was placed in an unenviable position by the Teamsters' ultimatum, but the violation of the Act is unmistakable.

We find that the respondent has discriminated in regard to hire and tenure of employment against the 20 men in question, and that it has thereby discouraged membership in the Guild and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with 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 and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

The 20 men in question, having ceased work in connection with a current labor dispute and because of an unfair labor practice, retain their status as employees within the meaning of Section 2 (3)

and (9) of the Act. Evidence was introduced at the hearing that these men were all desirous of reinstatement, and that none of them have obtained other employment. We will order respondent to reinstate all of these men to their former jobs, with back pay.

CONCLUSIONS OF LAW

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. Seattle Newspaper Guild, Local No. 82, is a labor organization within the meaning of Section 2 (5) of the Act.

2. The strike of employees of the respondent on July 3, 1937, was a labor dispute within the meaning of Section 2 (9) of the Act.

3. J. W. Farmer, Everett Ray, Al Nienau, Ed Wright, Bert Sparks, Orville Lane, Jack Connor, Lee Connor, Wesley Bubb, Vernon Nelson, Verle Nelson, Marcel Maynard, Tom Beveridge, Hal Navarre, Jack Burris, Clarence Benecke, Lambert Spear, Paul Pemberton, Don Longhbottom, and Urban Harris were employees of the respondent on July 2, 1937, and are still employees of the respondent, within the meaning of Section 2 (3) of the Act.

4. The respondent, by discriminating in regard to the hire and tenure of employment of J. W. Farmer, Everett Ray, Al Nienau, Ed Wright, Bert Sparks, Orville Lane, Jack Connor, Lee Connor, Wesley Bubb, Vernon Nelson, Verle Nelson, Marcel Maynard, Tom Beveridge, Hal Navarre, Jack Burris, Clarence Benecke, Lambert Spear, Paul Pemberton, Don Longhbottom, and Urban Harris, and thereby discouraging membership in Seattle Newspaper Guild, Local No. 82, has engaged and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

5. By the acts set forth in these conclusions of law, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and has engaged 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 above findings of fact and conclusions of law and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Star Publishing Company, Seattle, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from :

a. Discouraging membership in the Seattle Newspaper Guild, Local No. 82, or any other labor organization of its employees, by discriminating against its employees in regard to hire and tenure of employment or any term or condition of employment;

b. In any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the 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. Offer to J. W. Farmer, Everett Ray, Al Nienau, Ed Wright, Bert Sparks, Orville Lane, Jack Connor, Lee Connor, Wesley Bubb, Vernon Nelson, Verle Nelson, Marcel Maynard, Tom Beveridge, Hal Navarre, Jack Burris, Clarence Benecke, Lambert Spear, Paul Pemberton, Don Longhbottom, and Urban Harris immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

b. Make whole J. W. Farmer, Everett Ray, Al Nienau, Ed Wright, Bert Sparks, Orville Lane, Jack Connor, Lee Connor, Wesley Bubb, Vernon Nelson, Verle Nelson, Marcel Maynard, Tom Beveridge, Hal Navarre, Jack Burris, Clarence Benecke, Lambert Spear, Paul Pemberton, Don Longhbottom, and Urban Harris for any loss of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them of a sum of money equal to that which he would normally have earned as wages from July 3, the date on which their work ceased as a result of the unfair labor practices, to the date of the respondent's offer of reinstatement, less the amount which each, respectively, has earned during said period;

c. Post immediately notices in conspicuous places in its plant at Seattle, Washington, stating (1) that the respondent will cease and desist as aforesaid, (2) that such notices will remain posted for a period of thirty (30) consecutive days from the date of posting;

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