

In the Matter of SCANDORE PAPER BOX CO., INC. and CONTINENTAL CONTAINER CORPORATION and PAPER BOX MAKERS UNION, LOCAL 18239

Case No. C-227.—Decided January 14, 1938

*Paper Box Manufacturing Industry—Interference, Restraint, or Coercion:* expressed opposition to labor organization; threats of retaliatory action; threats and warnings given to employees on day of Board election to vote against Union—*Discrimination:* discharges—*Collective Bargaining:* meeting with representatives, but with no intention of bargaining in good faith; formation of committee of employees for collective bargaining purposes and the signing of individual contracts with employer, not the free act of employees but the result of employer's refusal to negotiate with representatives—*Company Union:* charges of, dismissed—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. Will Maslow*, for the Board.

*Mr. Louis Barnett*, of New York City, for the respondents.

*Mr. S. G. Lippman*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On June 17, 1937, Paper Box Makers Union, Local 18239, herein called the Union, filed a charge with the Regional Director for the Second Region (New York City) alleging that Scandore Paper Box Co., Inc., Brooklyn, New York, and its wholly owned subsidiary Continental Container Corporation, Brooklyn, New York, herein called the respondents, had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On June 21, 1937, the National Labor Relations Board, herein called the Board, by the Regional Director for the Second Region, issued its complaint against the respondents, alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the Act, in that the respondents, jointly and severally, on May 3 and 4, 1937, did lock out and refuse to allow their employees to work, in

order to discourage membership in or activity on behalf of the Union; that since April 12, 1937, the respondents have interfered with, restrained and coerced their employees in the exercise of their rights guaranteed by Section 7 of the Act; that on or about May 27, 1937, the respondents initiated, formed, and sponsored a labor organization known as Committee of the Employees of the Continental Container Corporation and have since dominated and interfered with the administration of this labor organization; that the respondents discharged Rose Passarelli on April 30, 1937, and Matteo Romeo on May 24, 1937, because they had joined and assisted the Union and engaged with other employees in concerted activities for their mutual aid and protection; that although the Union had been designated by more than a majority of the employees of the respondents, the respondents refused to bargain collectively with it.

The respondents in their verified answer dated June 25, 1937, denied every material allegation in the complaint, but admitted that the Union was the collective bargaining agency for the employees of Scandore Paper Box Co., Inc., although it was not the representative of the employees of Continental Container Corporation.

Pursuant to a notice, issued by the Regional Director on June 21, 1937, and duly served on the respondents and the Union, a hearing was held on July 8, and 9, 1937, in New York City, before Robert M. Gates, the Trial Examiner duly designated by the Board. The Board and the respondents were represented by counsel, and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties.

At the close of the Board's case, the respondents moved that the complaint be dismissed. The motion was denied. At the close of the respondents' case, the motion was renewed. Decision on that motion was reserved and was denied by the Trial Examiner in his Intermediate Report. During the course of the hearing an oral motion to intervene was made by the attorney for the Committee of Continental Container Corporation Employees. The motion was denied.

The Trial Examiner, in his Intermediate Report, found and concluded that the respondents had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5), and Section 2 (6) and (7) of the Act, but not within the meaning of Section 8 (2) of the Act. The Trial Examiner recommended that the respondents cease and desist from their unfair labor practices in discouraging membership in any labor organization, and from refusing to bargain collectively, and in addition offer reinstatement

and back pay to Rose Passarelli and Matteo Romeo, and on request bargain collectively with the Union or its successor.

The respondents thereafter filed exceptions to the Trial Examiner's findings upon the ground that they were contrary to the weight of the evidence. On respondents' motion oral argument was had before the Board. The respondents were also given permission to file a brief in support of their exceptions.

The Board has reviewed the rulings of the Trial Examiner and finds no prejudicial errors were committed. The rulings are hereby affirmed. The Board has also considered the exceptions to the findings of the Intermediate Report and finds they are without merit.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENTS

Scandore Paper Box Co., Inc., is and has been since February 28, 1934, a corporation organized and existing by virtue of the laws of the State of New York. Continental Container Corporation is and has been since January 11, 1934, a corporation organized and existing by virtue of the laws of the State of New York. Both corporations have their principal offices and places of business at the same address, in Brooklyn, New York. Scandore Paper Box Co., Inc., is engaged in the manufacture and sale of paper boxes. Continental Container Corporation is engaged in the manufacture and sale of corrugated boxes and kindred products. The officers, directors, and stockholders of both corporations are identical.

In accordance with a stipulation entered into between the respondents and counsel for the Board, we find "that the respondents in the course and conduct of their business caused and have continually caused a major portion of the raw materials used in the manufacture of paper and corrugated boxes and kindred products to be purchased and transported in interstate commerce from and through the states of the United States, other than the State of New York, to their plant in the City of New York, and caused and have continuously caused the paper and corrugated boxes and kindred products produced by them to be sold and transported in interstate commerce from their plant in the City of New York into, and through states of the United States other than the State of New York."

#### II. THE UNION

Local 18239 of Paper Box Makers Union was directly affiliated with the American Federation of Labor and admitted into membership all the production employees, of the respondents' factories, excluding supervisory employees.

On June 1, 1937, the local was transferred and became Local 299 of the International Brotherhood of Pulp, Sulphite and Paper Mill Workers, affiliated with the American Federation of Labor, retaining, however, the same membership and officers, and the rights and obligations of Local 18239.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The shut-down of April 30, 1937, and incidents prior thereto*

On April 22, 1937, a union meeting was held, attended by many of the respondents' employees. The following day Rose Fazio and Anna Modica were transferred from a job at which a bonus could be earned to a job at which no bonus was payable. They were in effect demoted. Anna Modica had spoken at the meeting, and it appears that Rose Fazio had been suspected of actively participating in the union meeting. Minnie Salenao, a sister of Rose Fazio, testified that Nicholas Scandore, an officer of both corporations, said to her, "See what happened to your sister? Wasn't she satisfied? She had to join the Union and had to do a lot of speaking." About two weeks later, Michael Scandore, an officer of the corporations restored the girls to their former positions.

On April 23, 1937, Michael Scandore stated to several employees that it was all right for the men to join a union, but they should "make sure it is the right kind of a union." It was further testified that Michael Scandore stated that the management "were seriously considering closing down the plant for business was very poor and that we fellows should be very careful what we do."

On April 29, 1937, the Union held a mass meeting for employees in the paper box industry. At the close of the meeting the respondents' employees met separately. On April 30, a notice was posted at the plant announcing that it would remain closed the following Monday and Tuesday, May 3 and 4, 1937. The reasons given by the respondents for this shut-down were bad management and the glutted condition of the factory caused by a shortage of "wraps" necessary to complete a large order in process of fabrication. This was the first time in years that the factory had completely stopped production.

Michael Scandore testified that, assisted at times by two others, he worked for four days removing the incompleated boxes to make the plant ready for operation on Wednesday, May 5, 1937. It appears that no great effort was made to relieve the glutted condition during Saturday and Sunday, although with the aid of a reasonable number of employees the factory might have been ready for work on Monday morning.

Insufficient evidence, however, was introduced to rebut the respondents' explanation that the shut-down was for the purpose of relieving the glutted condition of the factory, and was not for the purpose of discouraging union activities.

*B. The discharge of Rose Passarelli and Matteo Romeo*

On the same Friday, April 30, 1937, Rose Passarelli, an employee of the respondent Scandore Paper Box Co., Inc., a niece of Nicholas Scandore, was discharged. Rose Passarelli testified that on that day Nicholas Scandore had asked her the names of the girls who had accompanied her to the union meeting of April 22, 1937. According to Rose Passarelli, Nicholas Scandore said, "Come on, tell me. It won't make any difference to you. I won't do anything. I just want to know who the girls were." She replied, "You wouldn't want me to be a rat." Rose Passarelli was discharged that evening.

Nicholas Scandore denied making such statements, but stated, "She came to me one day and told me they had threatened her, so I asked her who threatened her, and she said, 'I am not a rat' so I walked away from her, and told her to stay away a couple of days." He testified on direct examination that he laid her off for her own protection, because of threats to her safety. On cross-examination, however, he testified that he laid her off because of her discourtesy to him.

At her husband's request Mrs. Scandore went to see Rose Passarelli. She testified, "I went there on Saturday to my niece's house, and I told her my husband said she can go in on Monday. She says, 'No, I quit.'" According to Rose Passarelli, Mrs. Scandore said she would ask Nicholas Scandore to take her back to work, and in answer to the question whether she would go back to work, she replied, "No, he fired me." Subsequently, when requested to reinstate her, Nicholas Scandore refused on the ground that she had quit.

The Board is inclined to believe Rose Passarelli's version of the incident in view of Nicholas Scandore's inconsistency in offering an explanation for her lay-off, her admitted reply to Nicholas Scandore, the respondents' hostility toward unionization, and the fact that, as the factory was about to be closed, there was no need of singling her out to stay home for her protection. We are led to the conclusion that Nicholas Scandore's action was not a two day lay-off for the purpose of disciplining Rose Passarelli for discourtesy, but was actually motivated by her refusal to answer his improper question.

Matteo Romeo had worked for the respondent, Scandore Paper Box Co., Inc., for about seven years and was the only employee capable of operating the automatic stripping machine. Prior to 1934, Matteo Romeo had worked on these machines on a piece-rate basis earning about \$40 a week. In May of 1934 an arrangement was entered into

between Matteo Romeo and Michael Scandore, whereby Romeo would receive a flat rate of \$30 a week thereafter, and steady work all year around. Romeo testified that thereafter he worked four or five months out of the year on the automatic stripping machines, the balance of the year being spent operating other machines, and doing various kinds of work in different departments of the plant.

On April 29, Matteo Romeo was elected by the members of the Union as floor steward and was very active in soliciting members for the Union. He was a leader among the union employees. The respondents contend that Romeo was laid off because of a shortage of the kind of work which required the use of the automatic stripping machines. Romeo was laid off on May 24, 1937, while he was running an order for 100,000 boxes, and was engaged in setting up another machine for a second order. There is testimony that since Romeo's lay-off the respondents have worked by hand on orders usually done by Romeo on the automatic stripping machines.

Romeo received no criticism of his work, and no effort was made to explain to him the respondents' reason for his lay-off. The respondents' attitude toward him is illustrated by the testimony of Marie Buskirk, an employee, who testified that while she was at work on May 17, 1937, Nicholas Scandore "came over and banged his fists on the table and said, 'This firm is not compelled to deal with the Union . . . . Somebody told me that Matteo said I can't lay him off or fire him. Is the government paying his wages? I can lay him off or fire him whenever I please.'"

The circumstances of the lay-off, Romeo's production and employment record, and the respondents' antagonism to Romeo's union activities rebut the respondents' explanation as to the reason for laying him off, and establish that Matteo Romeo was laid off in order to discourage union organization and concerted activities for the purpose of collective bargaining or other mutual aid and protection.

We find that the respondent, Scandore Paper Box Co., Inc., in discharging Rose Passarelli and laying off Matteo Romeo have discriminated against them in regard to hire and tenure of employment and have thereby discouraged membership in a labor organization.

### *C. The coercion of employees and the failure to bargain collectively*

On May 5, 1937, Abraham Weinberg, business agent of the Union, called upon Mariani, an officer of the respondents; Emil and Nicholas Scandore were present. At that time Weinberg submitted as a proposal a contract which had been found acceptable by 95 per cent of the paper box manufacturers in the City of New York. It provided for a 40-hour work week, and a minimum wage of \$16 a week for girls, and \$21 a week for men. No question was raised as to the

Union's right to bargain for the respondents' employees. Mariani is alleged to have remarked, ". . . I am perfectly in accord with the objectives of the Union . . . and I think we can get along on the basis of this agreement. It is perfectly satisfactory to me . . . excepting I cannot see how at this time our firm can grant any concessions to its employees in the way of increased wages or reducing the hours of labor . . . I can see the need of organizing the industry. It will be a good thing for both the employees and the employers. I should be perfectly willing to proceed to negotiating an agreement on the basis of the agreement submitted."

On May 8, 1937, the Union addressed letters to the respondents asking for collective bargaining conferences. On May 11, 1937, each respondent sent an identical reply stating: "We know that you do not represent our employees, and consequently we cannot agree to meet with you to discuss our problems. Upon satisfactory proof furnished by you that you do represent our employees we shall be glad to confer with you and then discuss their problems."

On May 14, 1937, each respondent entered into an agreement with the Union for a consent election to be held under the supervision of the Board's Regional Office for the purpose of determining the bargaining agency of each of the respondents' employees. The agreements contained the following language:

The employer agrees to bargain collectively with the Union as the exclusive bargaining agency of all its employees, in the event that the Union wins such election. . . .

The employer agrees not to interfere by coercion or persuasion directly or by his agents or foremen, with his employees' free choice of collective bargaining representatives.

Camillio Addeo, an employee, testified that on May 17, 1937, the morning of the election, Nicholas Scandore said to her, "You know there is going to be an election here today.' He said, who am I going to vote for? And he said to me if he was fair to me or not." She also testified to a second conversation with Scandore that day: "He said to me why should I worry about the Union, that the Government is going to give forty hours a week and \$16 a week! So I said, Why should we wait for the Government if we can do anything about it now with the Union? So he said, 'Have you been listening to Matteo?'"<sup>1</sup> Marie Buskirk testified that on the morning of the election Nicholas Scandore came up to a group of nine employees "and banged his fist on the table and said, 'This firm is not compelled to deal with the Union, so when you vote use your own head, do as you please . . .'"

<sup>1</sup> Matteo Romeo, whose discharge is discussed above.

Nicholas Scandore testified on cross-examination that he did talk with a number of his employees prior to the election and "I just said I wasn't going to sign a contract with the Union, so vote any way you want."

It is obvious that Nicholas Scandore attempted to influence the employees in their choice of representatives, by urging them to vote against the Union. Such action was an unfair labor practice within the meaning of Section 8 (1) of the Act as well as being a violation of the consent election agreement.

The election was held on May 17, 1937, for the employees of each of the respondents. In both instances the Union was chosen as the bargaining representative by a large majority. On May 19, a meeting was held for the purpose of collective bargaining. The respondents came to the meeting accompanied by their counsel and a stenographer for the purpose of making a record of the proceedings. After some discussion the conference was adjourned for several days to permit the respondents to study the proposed contract.

When the meeting again opened the respondents read a prepared reply into the record. The respondents' answer to the 6th and 7th clause of the contract, which merely provided, in effect, that no union employee should be discharged except for a justifiable cause, illustrates the quality and spirit of the bargaining carried on. The answer is as follows:

We cannot agree to a closed shop, and we will not abrogate or give up our rights to hire and discharge as deemed to the best interest of our business.

During the course of the meeting, counsel for the respondents made the following statement:

This company definitely states that it will not enter into a contract with the union. The principal objection to the contract has to do with the interference with the proper management of the Company by the people who have all of the money invested in the Company. The officers of this Company propose to run this business fairly in the future and without any interference of any kind, and this is the principal objection to the proposed contract.

Collective bargaining requires more than meeting with representatives of employees; the employer is under an obligation to make an honest and sincere attempt to reach an agreement. The respondents, as indicated by the language above quoted, have made no such effort. They flatly took the position that they would not enter into an agreement with the Union, declaring that negotiations by the Union as to conditions of employment constituted interference in the management of their business.

About May 20, Alfred Meringolo, an employee who had represented the employees at the conference of May 19, called the 32 employees of the Continental Container Corporation together, most of whom were members of the Union, and suggested they form a committee and bargain for themselves. Meringolo argued that the Company was hostile to the Union and that the Union would not get anywhere in its negotiations. An attorney retained by the group wrote to the respondents asking for a conference. The respondents decided to deal with this group.

A proposed contract was prepared on May 26. The terms of this contract were worked out by the counsel representing the committee and the respondents. It provided, among other things, for a 20 per cent increase in wages, and an open shop. The following day, May 27, the committee's counsel appeared at the plant. Operations were stopped, the contract was read, and all the employees signed the contract. The contract does not purport to be a contract between the Continental Container Corporation and an organization; rather it is a contract between the respondent and individuals signing the contract. The contrast between the difficulties experienced by the Union in its attempt to negotiate an agreement and the ease with which the individual contracts were negotiated by the committee, is indicative of the fact that the Company was anxious to deal individually, and to avoid its obligation to bargain collectively with the Union as the representative of its employees.

This negotiation of individual contracts by the respondent, Continental Container Corporation, does not fulfill its obligation under Section 8 (5) of the Act to bargain collectively with the duly authorized representatives of its employees. While there is nothing in the evidence to indicate that the employer was directly responsible for the formation of the bargaining committee, it is plain that the employees designated the committee as their representative solely because the employer refused to deal with the Union, their proper representative. Under such circumstances, to hold that the committee is the freely chosen representative of the employees or that the employer is under no further obligation to bargain with the Union, would be to nullify the provisions of Section 8 (5) of the Act.

We find that the committee selected by the employees of the Continental Container Corporation on May 20 is not the freely chosen representative of the employees of said respondent and that the Union remained the duly designated representative of such employees. We further find that each of the respondents has refused to bargain collectively with representatives of its employees and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondents 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 REMEDY

For the reasons stated above we shall order each of the respondents to bargain collectively with the Union as the representative of its employees for the purpose of collective bargaining. We shall further order the respondent, Scandore Paper Box Co., Inc., to offer reinstatement to Rose Passarelli and Matteo Romeo and to make them whole for the loss of wages they have suffered during the period from their discharge and lay-off, respectively, to the date of such offer of reinstatement, less any sum of money they have earned in the interval.

## CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law:

1. Paper Box Makers Union, Local 18239, and its successor, Local 299, of the International Brotherhood of Pulp, Sulphite, and Paper Mill Workers, affiliated with the American Federation of Labor, are labor organizations, within the meaning of Section 2 (5) of the Act.
2. The respondent, Scandore Paper Box Co., Inc., by discriminating in regard to the hire and tenure of employment of Rose Passarelli and Matteo Romeo and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.
3. By their refusal to bargain collectively with the Union as the representative of their employees with respect to rates of pay, wages, hours of employment, and other conditions of employment, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.
4. The respondents by interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

## ORDER

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

1. The respondent, Scandore Paper Box Co., Inc., and its officers, agents, successors, and assigns shall:

(a) Cease and desist from discouraging membership in Paper Box Makers Union, Local 18239, and its successor, International Brotherhood of Pulp, Sulphite, and Paper Mill Workers, Local 299, affiliated with the American Federation of Labor, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or by discriminating in any other manner in regard to the hire or tenure of employment of any of its employees.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Offer to Rose Passarelli and Matteo Romeo immediate reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(2) Make whole the employees named in paragraph (1) above for any loss of pay they have suffered by reason of the discrimination in regard to their hire and tenure of employment, by payment, respectively, of a sum of money equal to that which each would have earned as wages during the period from the date of such discrimination to the date of such offer of reinstatement, less the amount each has earned during that period.

2. The respondents, Scandore Paper Box Co., and Continental Container Corporation, and their officers, agents, successors, and assigns, shall:

(a) Cease and desist from in any manner interfering with, restraining, or coercing their employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

(b) Cease and desist from refusing to bargain collectively with Paper Box Makers Union, Local 18239, or its successor, International Brotherhood of Pulp, Sulphite, and Paper Mill Workers, Local 299, affiliated with the American Federation of Labor as the exclusive representative of their respective employees in regard to rates of pay, wages, hours of employment and other conditions of employment.

(c) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Upon request, bargain collectively with Paper Box Makers Union, Local 18239, or its successor, International Brotherhood of Pulp, Sulphite, and Paper Mill Workers, Local 299, affiliated with the American Federation of Labor, as the exclusive representative of their respective employees in regard to rates of pay, wages, hours of employment, and other conditions of employment;

(2) Post immediately notices to their employees in conspicuous places in each department of their places of business stating that the respondents will cease and desist in the manner aforesaid, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting;

(3) Notify the Regional Director for the Second Region within ten (10) days from the date of this order what steps the respondents have taken to comply herewith.

It is further ordered that the complaint be, and is, hereby dismissed with respect to the allegation that the respondents have engaged in and are engaging in an unfair labor practice within the meaning of Section 8 (2) of the National Labor Relations Act.