

In the Matter of THE MAY COMPANY *and* DEPARTMENT STORE EMPLOYEES UNION, LOCAL 1521, AFFILIATED WITH RETAIL CLERKS INTERNATIONAL PROTECTIVE ASSOCIATION (AFL)

Case No. 8-C-1839.—Decided December 10, 1947

ORDER

Upon a third amended charge duly filed on April 2, 1946, by Department Store Employees Union, Local 1521, affiliated with Retail Clerks International Protective Association (AFL), herein called the Union, the National Labor Relations Board, herein called the Board, by the Acting Regional Director for the Eighth Region (Cleveland, Ohio), issued its complaint dated April 2, 1946, against The May Company, Cleveland, Ohio, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7), of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, together with notice of hearing thereon, were duly served upon the respondent and the Union.

Pursuant to notice, a hearing was held at Cleveland, Ohio, from April 29 to May 4, and from May 13 to 18, 1946, before A. Bruce Hunt, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, and the Union was represented at times by counsel and at all times by other representatives. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the close of the hearing, the respondent moved to dismiss the complaint and further moved that the Trial Examiner be removed from further participation in this case. Decision on both motions was reserved.¹ On January 30, 1947, the Trial Examiner filed his In-

¹ On June 19, 1946, the respondent, supplementing its oral motion made at the close of the hearing, filed a written motion for the removal of the Trial Examiner from further participation in the hearing, to set aside the record, and to dismiss the complaint. On October 2, 1946, the Board denied the motion, with leave to the respondent to renew the application within the time designated by the Board's Rules and Regulations for the filing of exceptions to the Trial Examiner's Intermediate Report.

intermediate Report, in which he found that the respondent had engaged in certain unfair labor practices. The Trial Examiner further found, contrary to the allegation of the complaint, that the respondent had not engaged in unfair labor practices within the meaning of Section 8 (3) of the Act, with respect to Marian Benedum and Frances Shouse, and recommended, among other things, that the complaint be dismissed insofar as it alleges that the respondent violated Section 8 (3) of the Act by discriminating against them. On March 14, 1947, the respondent moved to set aside the Intermediate Report of the Trial Examiner, to set aside the record, and to dismiss the complaint, and also requested a preliminary hearing before any further proceedings, including the filing of exceptions to the Intermediate Report, should take place herein. On March 26, 1947, the Board denied the motion insofar as it requested a preliminary hearing, and reserved decision thereon in all other respects. The respondent, on April 10, 1947, filed exceptions to the Intermediate Report together with a supporting brief. No exceptions or brief were filed by the Union or by counsel for the Board.

As neither the Union nor counsel for the Board has filed exceptions to the Intermediate Report, we will accept the recommendations of the Trial Examiner made therein insofar as he recommends dismissal of the allegation of the complaint with respect to discrimination by the respondent against Frances Shouse and Marian Benedum.²

In support of its motion to set aside the Intermediate Report and the record, and to dismiss the complaint, the respondent contends that by reason of certain matters which transpired in the course of the hearing it was not accorded a fair hearing and was deprived of due process of law as guaranteed by the Fifth Amendment to the Constitution. We are not, however, concerned solely with the question whether there was *in fact* bias or prejudice on the part of the Trial Examiner which deprived the respondent of a fair hearing and due process of law. As the Supreme Court stated in *N. L. R. B. v. Donnelly Garment Company*, 67 S. Ct. 756, "It takes time to avoid even the *appearance* of grievances. But it is well spent . . ." (Italics supplied.) For this reason we believe it desirable under the circumstances here presented that we authorize a new hearing upon so much of the complaint as the Trial Examiner did not recommend be dismissed. Insofar as the respondent's motion seeks dismissal of the entire complaint, however, it is without merit and is denied.

IT IS THEREFORE ORDERED that the complaint be, and it hereby is, dismissed, insofar as it alleges that the respondent violated Section 8 (3)

² *Matter of M. T. Stevens & Sons Company*, 68 N. L. R. B. 229, footnote 1.

of the Act by discriminating against Frances Shouse and Marian Benedum; and

IT IS FURTHER ORDERED that the Intermediate Report and the record herein (except as they refer to the aforesaid alleged violation of Section 8 (3) of the Act with respect to Frances Shouse and Marian Benedum) be, and they hereby are, set aside, and that the case be, and it hereby is, remanded to the General Counsel for a new hearing upon the complaint herein, except so much thereof as is hereby dismissed, or for such other disposition as the General Counsel may determine to be advisable under present conditions.