

In the Matter of HILLSBORO COTTON MILLS and TEXTILE WORKERS'
UNION OF AMERICA, CIO

Case No. 16-C-1255.—Decided December 8, 1948

DECISION

AND

ORDER

On July 20, 1948, Trial Examiner Max M. Goldman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He also recommended that the complaint be dismissed insofar as it alleged that the Respondent engaged in certain other unfair labor practices. Thereafter, the Respondent filed exceptions to the Intermediate Report, and a supporting brief.

The Board¹ has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions² and brief filed by the Respondent, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Hillsboro Cotton Mills, Hillsboro, Texas, and its officers, agents, successors, and assigns shall:

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this proceeding to a three-man panel consisting of the undersigned Board Members [Chairman Herzog and Members Houston and Gray].

² The Respondent's exceptions raise only the applicability of the 6 months' rule under Section 10 (b) of the Act, as amended, in regard to the issuance of the complaint. The Board has held, however, that Section 10 (b) has no retroactive application. *Matter of Itasca Cotton Manufacturing Company*, 79 N. L. R. B. 1442. As the charge in this case was filed and served prior to August 22, 1947, we agree with the Trial Examiner that the Respondent's contention is without merit

80 N. L. R. B., No. 172.

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers' Union of America, CIO, as the exclusive representative of all production and maintenance employees at the Respondent's mill, including the spinning frame fixer and the assistant second hand of the spinning room on the third shift, but excluding clerical employees and supervisors as defined in the Act;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Textile Workers' Union of America, CIO, or any other labor organization, 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 Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Textile Workers' Union of America, CIO, as the exclusive representative of all the employees in the bargaining unit described herein, with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post in conspicuous places at its mill at Hillsboro, Texas, copies of the notice attached to the Intermediate Report marked "Appendix A."³ Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Sixteenth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

³ This notice, however, shall be and hereby is amended by striking from the first paragraph thereof, the words, "The recommendations of a Trial Examiner" and substituting in lieu thereof the words, "A Decision and Order." In the event that this order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "A DECISION AND ORDER" the words, "DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

INTERMEDIATE REPORT

AND

RECOMMENDED ORDER

Mr. James R. Webster, for the General Counsel.

Samuels, Brown, Herman and Scott, by *Mr. John M. Scott*, of Fort Worth, Tex., for the Respondent.

Mr. Paul Schuler, of New Orleans, La., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by the Textile Workers' Union of America, CIO, herein called the Union, the General Counsel by the Regional Director for the Sixteenth Region (Fort Worth, Texas), on behalf of the National Labor Relations Board, herein called the Board, issued his complaint dated May 17, 1948, against Hillsboro Cotton Mills, Hillsboro, Texas, 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 8 (5) and Section 2 (6) and (7), and Section 8 (a) (1) and 8 (a) (5) of the National Labor Relations Act, 49 Stat. 449, and of the National Labor Relations Act as amended by the Labor Management Relations Act, 1947, 61 Stat. 161, herein called the Act. Copies of the complaint, together with copies of the charge and notice of hearing thereon, were duly served upon the Respondent and the Union.

With respect to unfair labor practices, the complaint alleged in substance that the Respondent (a) engaged in certain acts of interference, restraint, and coercion, and (b) on or about May 23, 1944, and thereafter, refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate bargaining unit, although a majority of the employees in such unit on May 20, 1944, had designated and selected the Union as their representative for the purposes of collective bargaining, and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

In its answer, duly filed herein, the Respondent admitted certain of the allegations of the complaint, but denied that it had engaged in any unfair labor practices within the meaning of the Act.¹

Pursuant to notice, a hearing was held on June 1, 1948, at Hillsboro, Texas, before the undersigned, the Trial Examiner duly designated by the Chief Trial

¹ The Respondent in its answer moved to dismiss the complaint upon the ground that the complaint was based upon a charge which was not filed with the Board and served upon the Respondent within 6 months after the alleged unfair labor practices had occurred and that since the complaint was issued after August 22, 1947, the effective date of the amendment to the Act, its issuance was in violation of Section 10 (b) of that amendment which provides, in part, as follows:

Provided, that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . .

Service of the charge having been made upon the Respondent on June 27, 1947—before the effective date of the amendment—and the charge having been filed with the Board prior thereto, the undersigned is of the opinion that, since the charge was filed and served prior to or within the 6-month period after the effective date of the amendment, the General Counsel properly issued the complaint. The limitation provided for in the amendment is procedural in nature and should not be given retroactive effect. (*Union Products Co.*, 75 N. L. R. B. 591; *Briggs Manufacturing Co.*, 75 N. L. R. B. 569; and *Smartly, et al. v. Pennsylvania Sugar Co.*, 108 F. (2d) 603.)

Examiner. The General Counsel was represented by counsel, and the Union was represented by its Regional Director. Although counsel for the Respondent filed an answer, he did not enter an appearance at 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. Although afforded an opportunity, none of the parties presented oral argument at the close of the hearing or filed briefs and/or proposed findings of fact and conclusions of law with the undersigned. Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, Hillsboro Cotton Mills, a Texas corporation, has its principal office and place of business at Hillsboro, Texas, where it is engaged in the manufacture, sale, and distribution of cotton cloth and related cotton products. The Respondent annually purchases raw cotton valued at approximately \$800,000, of which practically all is purchased within the State of Texas. The annual value of the Respondent's finished products amounts to approximately \$1,500,000, of which 85 percent is shipped to points outside the State of Texas. The undersigned finds that the Respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

The Textile Workers' Union of America, CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

The refusal to bargain, and interference, restraint, and coercion

A. *The appropriate unit and representation by the Union of a majority therein*

In accordance with the Board's Decision and Direction of Election in Case No. 16-R-873,² issued on May 4, 1944, the undersigned finds that all production and maintenance employees at the Respondent's mill, including the spinning frame fixer and the assistant second hand of the spinning room on the third shift, but excluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

On May 20, 1944, pursuant to the Direction of Election, an election by secret ballot was conducted under the supervision of the Regional Director for the Sixteenth Region; and a majority of the employees selected the Union as their representative. No objections to the election having been filed by any of the parties within the time provided therefor, the Board on July 13, 1944, certified the Union as the representative for the purposes of collective bargaining of the employees in the unit heretofore mentioned. The undersigned accordingly finds that on May 20, 1944, and at all times thereafter, the Union was the duly designated bargaining representative of a majority of the employees in the above-described unit and that pursuant to the provisions of Section 9 (a) of the Act, the Union was on the aforesaid date, and at all times thereafter has been and

² *Hillsboro Cotton Mills*, 56 N. L. R. B. 271.

is now the exclusive representative of all the employees in the afore-mentioned unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

B. The refusal to bargain, and interference, restraint, and coercion

The election conducted under Board auspices on May 20, 1944, showed that of approximately 220 eligible employees in the appropriate unit, 139 voted for and 61 voted against the Union. A few days thereafter the Union's representatives met with the Respondent's officials at the Respondent's offices in Hillsboro. The Union submitted its proposed contract and A. L. Smith, president of the Respondent, informed the Union's representatives that he desired to discuss the contract with counsel. The next meeting between the Respondent and the Union was held about a week later at the offices of Respondent's counsel at Fort Worth. After some contract discussion, counsel for the Respondent pointed out that each of the provisions of the contract would have to have some additional consideration and that he would inform the Union of his answer at some later date.³

On July 5, the parties met to discuss a counterproposal which Respondent's counsel had submitted. The Union's representatives raised issues as to several of the provisions contained in the counterproposal, but after some discussion the Union felt that it was not persuading the Respondent to its views. Under these circumstances and in view of the fact that this was one of the Union's first contracts in the State and the Union was anxious to sign any contract it could obtain in order to establish a relationship which it believed would be satisfactory once the Union and the Respondent got to know each other, the Union's representative asked the Respondent whether it would sign the proposal it had submitted if the Union accepted the proposal exactly as it was. The Respondent, however, replied that it would not sign its own proposal. Upon the Union's request to set a date for another conference, the Respondent stated that it would suggest a date for another meeting later on.

Thereafter the Union obtained the services of a conciliator of the United States Conciliation Service to aid in the negotiations. No agreement on any of the provisions of the contract having been reached, the subject matter of the entire contract was submitted to the War Labor Board for determination. During

³ Early in June, the employees at the mill went on strike to protest the discharge of union member Ervin McGee. The cessation of work, which did not last for more than a few hours, ended when a union representative and a member of the United States Conciliation Service announced to the strikers that an arrangement had been reached with the Respondent, provided the employees returned to work, whereby the Respondent and the Union were to negotiate the establishment of a grievance procedure under which the McGee and other cases would be handled. The employees thereupon resumed their work, but an agreement for the establishment of a grievance procedure was not consummated. About a week later the Union presented the matter to the Regional War Labor Board, which on August 8 issued its order directing the parties to negotiate a grievance procedure. This matter was again submitted to the War Labor Board when the entire contract was before that Board.

McGee sought to return to work, but the Respondent refused to reemploy him. There is testimony by McGee that sometime after the Respondent's refusal to reemploy him Overseer Mark Lance, son of the mill manager, on two occasions told McGee, in substance, that the Respondent wanted him back as an employee if he would give up the Union. McGee, however, told Lance that he refused to abandon the Union. In view of the fact that McGee's testimony also shows that Lance was intoxicated during each of these incidents (although apparently less intoxicated during one of the incidents), no findings of unfair labor practices will be based upon these events.

this year and the next, 1945, various proceedings and appeals were had before the War Labor Board, but it does not appear that a contract governing the relationship of the parties was executed.

During this period, Lon Everett, overseer of the spinning room, on one occasion went around to the employees and told them that they had 15 days to withdraw from the Union. Apparently on another occasion, Everett went to employee Carl Mitchell and told Mitchell that he had cards for Mitchell to withdraw from the Union. On still another occasion, an employee informed Mitchell that he had decided to join the Union, and Mitchell told him that he, Mitchell, did not have any union cards and that he should see someone else. A day or so later, Everett accused Mitchell of having tried to get employees to join the Union. Mitchell did not reply when Everett asked him whether he was guilty. Everett continued declaring that Mitchell had been violating the law and was subject to discharge, but that he was going to overlook it this time but discharge Mitchell if he heard again that Mitchell had engaged in such activities.

On the morning when B. B. Powers, president of the local union, and the other employees returned to work after a strike in which the Respondent's refusal to bargain was certified as the issue pursuant to the War Labor Disputes Act, employee E. L. Gray stated that Powers was not fit to, and that he was not going to, work at the mill. Meanwhile Gray took off his coat and engaged Powers in a fight. After the fight continued for awhile Overseer Whitlock came to the scene and Powers asked him to stop the fight, but Whitlock made no effort to do so. After the fight ended, Whitlock announced to the employees that they had better go home until the matter was settled, and Powers left the plant.

By letters of December 8, 1945, and February 19 and July 31, 1946, the Union requested bargaining conferences, but received no reply from the Respondent.

Upon the basis of the foregoing, the undersigned finds that the Respondent, particularly by the following conduct, has failed to bargain collectively in good faith: failing to treat its own proposal as a firm offer and refusing to accept its own proposal as a contract; and failing to reply to letters requesting, and failing to grant requests, to meet with the Union for the purposes of bargaining. The undersigned accordingly finds that the Respondent on or about May 23, 1944, and at all times thereafter has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby and by soliciting its employees to withdraw from the Union, inquiring into an employee's union activities, threatening an employee with discharge if he engaged in union activities, and failing upon request in derogation of its duties to afford protection to a union employee and thereby permitting and acquiescing in an assault upon him by a fellow employee, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.⁴

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

It is found that 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,

⁴ The complaint also alleges other independent violations of Section 8 (1) and Section 8 (a) (1) of the Act. No evidence having been introduced to substantiate these allegations, they are hereby dismissed.

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

Since it has been found that the Respondent has engaged in unfair labor practices, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It having been found that the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the Respondent upon request bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following :

CONCLUSIONS OF LAW

1. Textile Workers' Union of America, CIO, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees at the Respondent's mill, including the spinning frame fixer and the assistant second hand of the spinning room on the third shift, excluding clerical and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Textile Workers' Union of America, CIO, was on May 20, 1944, and at all times thereafter has been, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on or about May 23, 1944, and at all times thereafter to bargain collectively with Textile Workers' Union of America, CIO, as the exclusive representative of all its employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) and Section 8 (a) (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8 (1) and Section 8 (a) (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.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommends that the Respondent, Hillsboro Cotton Mills, Hillsboro, Texas, and its officers, agents, successors, and assigns, shall :

1. Cease and desist from :

(a) Refusing to bargain collectively with the Textile Workers' Union of America, CIO, as the exclusive representative of all production and maintenance employees at the Respondent's mill, including the spinning frame fixer and the assistant second hand of the spinning room on the third shift, but excluding clerical and supervisory employees; and

(b) Engaging in like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, or to join or assist Textile Workers' Union of America, CIO,

or any other labor organization, 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 Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act :

(a) Upon request, bargain collectively with the Textile Workers' Union of America, CIO, as the exclusive bargaining representative of all the employees in the bargaining unit described herein, with respect to wages, rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement ;

(b) Post in conspicuous places at its mill at Hillsboro, Texas, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material ; and

(c) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the receipt of this Intermediate Report and Recommended Order what steps the Respondent has taken to comply herewith.

It is further recommended that, unless on or before ten (10) days from the receipt of this Intermediate Report and Recommended Order the Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, effective August 22, 1947, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof ; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules

and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

MAX M. GOLDMAN,

Trial Examiner.

Dated July 20, 1948.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist TEXTILE WORKERS' UNION OF AMERICA, CIO, or any other labor organization, 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. All our employees are free to become or remain members of the above-named union, or any other labor organization.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all the employees in the bargaining unit described herein with respect to wages, rates of pay, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at the Hillsboro mill including the spinning frame fixer and the assistant second hand of the spinning room on the third shift, but excluding clerical and supervisory employees.

HILLSBORO COTTON MILLS,

Employer.

Dated----- By-----
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.