

In the Matter of **POSTEX COTTON MILLS, INC. and TEXTILE WORKERS
UNION OF AMERICA, CIO**

Case No. 16-C-1578.—Decided December 9, 1948

**DECISION
AND
ORDER**

On June 14, 1948, Trial Examiner J. J. Fitzpatrick 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 more fully set forth in the copy of the Intermediate attached hereto.¹ The Respondent filed exceptions to the Intermediate Report.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-man panel consisting of the undersigned Board Members.*

The Board 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 exceptions 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, Postex Cotton Mills, Inc., Post, Texas, and its officers, agents, successors, and assigns, shall:

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 of the Respondent, including piece work and hourly paid employees, employees in the handkerchief unit, bleachery

¹ Because of a typographical error, the Intermediate Report is dated June 14, 1947.

*Chairman Herzog and Members Houston and Gray.

employees, and the truck driver, but excluding office and clerical employees, watchmen, overseers, the master mechanic, second hands, and supervisors as defined in the Act;² and

(b) Interfering in any other manner with the efforts of Textile Workers Union of America, CIO, to negotiate for or to represent the employees in the aforesaid bargaining unit as their exclusive bargaining agent.

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 bargaining representative of the employees in the bargaining unit described above, 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 plant at Post, Texas, copies of the notice attached hereto, 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 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 10 days from the date of this order, what steps the Respondent has taken to comply herewith.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order 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 engage in any acts in any manner interfering with the efforts of **TEXTILE WORKERS UNION OF AMERICA, CIO**, to negotiate for or represent the employees in the bargaining unit described below.

² This is substantially the same unit as that for which the Union was certified. The unit description has been changed slightly to conform with the provisions of the amended Act.

³ In the event 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, "A Decree of the United States Court of Appeals Enforcing."

WE WILL BARGAIN collectively upon request with the above-named Union as the exclusive representative of all 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. The bargaining unit is:

All our production and maintenance employees, including piece work and hourly paid employees, employees in the handkerchief unit, bleachery employees, and the truck driver, but excluding office and clerical employees, watchmen, overseers, the master mechanic, second hands, and supervisors as defined in the Act.

POSTEX COTTON MILLS, INC.,
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.

INTERMEDIATE REPORT

- Mr. E. Don Wilson*, for the General Counsel.
- Mr. Joe S. Moss*, of Post, Tex., for the Respondent.
- Mr. Paul Schuler*, of New Orleans, La., for the Union.

STATEMENT OF THE CASE

Upon a charge filed August 13, 1947, by Textile Workers Union of America, CIO, herein called the Union, the General Counsel of the National Labor Relations Board by the Regional Director for the Sixteenth Region (Fort Worth, Texas),¹ issued a complaint dated April 23, 1948, against the Postex Cotton Mills, Inc., herein called the Respondent, alleging that the Respondent had engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, and Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Labor Management Relations Act, 1947,² herein called the Act. Copies of the complaint, the charge, and notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleges in substance: that the Respondent on or about May 13, 1947, and thereafter, refused to bargain collectively with the Union as the exclusive representative of the Respondent's employees in an appropriate unit, although the Union since about December 5, 1946, represented a majority of the employees in said unit and by virtue of Section 9 (a) of the Act has been and now is the exclusive representative of all the

¹ The General Counsel and his representatives at the hearing will be referred to herein as the General Counsel. The National Labor Relations Board will be called the Board.

² The National Labor Relations Act, 49 Stat. 449, as amended June 23, 1947, by 61 Stat. 136. Section 8 (a) (1) and (5) in the Act, as amended, are identical with Section 8 (1) and (5) of the original Act.

employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment; that by said refusal to bargain the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The verified answer of the Respondent filed May 5, 1948, denies the commission of any unfair labor practices, the appropriateness of the unit alleged, and that a majority of the employees therein designated the Union to represent them for the purposes of collective bargaining.

Pursuant to notice a hearing was held at Post, Texas, on May 12, 1948, before J. J. Fitzpatrick, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel and the Union by an official. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the conclusion of all the testimony counsel for the Respondent moved to dismiss the complaint on the grounds that (a) the Board has no jurisdiction because Philip Murray, president of the Congress of Industrial Organizations of which the Textile Workers Union of America, CIO, is an affiliate, has not complied with the provisions of Section 9 (h) of the Act, and (b) the Respondent's employees are now represented by United Textile Workers of America, AFL, which has a contract with the Respondent but was not included as a party in the representation proceedings. Both motions were denied. Oral argument was waived, but the parties were given until May 26, 1948, to file briefs. A memorandum relative to certain pertinent cases has been received from the General Counsel and the Respondent has filed a brief.

Upon the entire record in the case,³ the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Postex Cotton Mills, Inc., is a Texas corporation, with office and principal place of business located in the city of Post, Texas, where it is engaged in the manufacture, sale, and distribution of textiles, including sheets, pillow cases, handkerchiefs, and related products. Over 5 percent of the Respondent's products, which annually amount to in excess of \$500,000, are shipped directly to points outside the State of Texas. The balance of its annual products are shipped to a commission broker at Dallas, Texas, who in turn causes the products to be delivered to points outside the State of Texas.

II. THE LABOR ORGANIZATION INVOLVED

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

III. THE UNFAIR LABOR PRACTICES

Upon a petition duly filed, the Board on December 5, 1946, conducted a pre-hearing election among the employees of the Respondent in a unit consisting of all production and maintenance employees including watchmen and bleachery employees, to determine whether or not they desired to be represented by the

³ No witnesses testified at the hearing. The entire record consists of stipulated facts and a few exhibits.

Union for the purposes of collective bargaining. The Union won this election, and the Board on April 29, 1947, in Case No. 16-R-2030 issued its Decision and Certification of Representatives wherein it found that "all production and maintenance employees [of the Respondent], including piecework and hourly paid employees, employees in the handkerchief unit, bleachery employees, watchmen and the truck driver, but excluding office and clerical employees, overseers, the master mechanic, second hands, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of the employees, or effectively recommend such action," constituted a unit appropriate for the purposes of collective bargaining; and that as a result of the prehearing election and pursuant to the provisions of Section 9 (a) of the Act, the Union was the exclusive representative of all the employees in the above-described unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment. At the hearing in the complaint case it was stipulated that the facts with respect to the unit "are substantially the same" as they were at the time of the hearing in the representation proceeding.

Section 9 (b) of the Amended Act (effective August 23, 1947), prohibits the inclusion of plant guards in a unit with other employees. In construing this section, the Board has classified watchmen with plant guards because they enforce rules to protect the property or the safety of persons employed on the premises.⁴ It is therefore found in effect as alleged in the complaint and in compliance with the provisions and the construction of Section 9 (b) of the Act, as amended, that all production and maintenance employees including bleachery employees and the truck driver, but excluding office and clerical employees, watchmen, overseers, the master mechanic, second hands, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining and that on April 29, 1947, the Union was and at all times thereafter has been, and now is, the duly designated bargaining representative of the majority of the employees in the aforesaid appropriate unit⁵ and that by virtue of Section 9 (a) of the Act the Union at all times material herein has been and now is the exclusive representative of all the Respondent's employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.⁶

On May 13, 1947, shortly after the above certification by the Board, the Union requested a meeting with the Respondent for the purpose of bargaining about a

⁴ *Matter of Consumers Cooperative Refinery Assn.*, 77 N. L. R. B. 528, 22 L. R. R. M. 1055; *Matter of American Zinc Co., etc.*, 77 N. L. R. B. 56, 21 L. R. R. M. 1327; *Matter of C. V. Hill & Co., etc.*, 76 N. L. R. B. 158, 21 L. R. R. M. 1173; and *Matter of Roanoke Mills Co., etc.*, 76 N. L. R. B. 195, 21 L. R. R. M. 1160

⁵ The vote tally in the representation proceeding shows that the Union received 117 out of 184 valid votes cast. No pay roll is in the representation record, but apparently there are only three watchmen, so their elimination from the unit could not possibly affect the Union's majority showing.

⁶ Although the Respondent's answer denied the appropriateness of the unit alleged, in the instant hearing the parties stipulated that the facts "with respect to the unit" were substantially the same as at the time of the representation proceeding. Furthermore, the Respondent's entire defense herein is bottomed on the theory that the representation proceedings generally and the resulting Decision and Certification of the Board are illegal and not binding on it. No point is made that the watchmen should be included in the appropriate unit. The Respondent's contentions and the reasons for rejecting them are discussed hereafter.

contract covering the employees involved. The same day C. H. Bailey, the Respondent's manager, wrote the union representative as follows:

DEAR SIR: Today you called upon our attorney and requested a meeting for the purpose of negotiating a contract pertaining to rates of pay, wages, hours of employment and other conditions of employment at this plant. At the outset, and before entering into any discussions or negotiations, and in order that there may be no misunderstanding with respect to the company's position, you are hereby notified that the company is advised by its counsel and believes that the opinion and decision of the National Labor Relations Board rendered on April 29th, 1947, is erroneous, both with respect to the law and the facts, and that, in arriving at said decision, the National Labor Relations Board failed to follow the provisions of the National Labor Relations Act, or to grant to the company an appropriate hearing. You are further notified that the company has not a review by the Courts of the said decision of the National Labor Relations Board because it is advised by the counsel that the law provides no method for obtaining such a review at the present stage of the proceedings, but that it will be entitled to such a review when, as and if the Board shall enter an order under Section 10 (c) of the National Labor Relations Act.

Accordingly, and in order to preserve the company's legal rights in this respect, you are advised

(a) that the company desires to seek by appropriate proceedings, a review by the Courts of the said opinion and decision of the National Labor Relations Board;

(b) that the company does not recognize the bargaining unit for which you propose to act as an appropriate bargaining unit within the meaning of the National Labor Relations Act; and

(c) that the company does not recognize you or the Textile Workers Union of America, CIO, as the representative for the purposes of collective bargaining under the provisions of the National Labor Relations Act of any of its employees within said proposed bargaining unit.

If you will proceed forthwith under Section 10 (c) of the National Labor Relations Act, the company will co-operate in every possible way to expedite the proceedings so as to obtain an early and final decision of the Courts on this controversy.

The Respondent reiterated its position on February 23, 1948, in a letter from Bailey to the Regional Director of the Sixteenth Region as follows:

DEAR SIR: Further replying to your telegram of February 12, 1948, and supplementing our telegram of February 13, 1948, we beg to advise that our letter of May 13, 1947, addressed to Mr. J. A. Dundon, Director of Textile Workers Union of America, still correctly states our position, subject only to the changes which have been made in our legal rights by the provisions of the Labor Management Relations Act, 1947.

We are unwilling to enter into negotiations with the Textile Workers Union of America, CIO, according to your previous certification.

At the hearing the Respondent conceded that there had been no material change in the question concerning representation or the unit, but attacked the legality of the Board's previous certification. It also specifically challenged the jurisdiction of the Board to try the complaint case on the ground (1) that United Textile Workers of America, AFL, was under contract with the Respondent as the bargaining representative of the Respondent's employees at the time of the rep-

resentation hearing, and had not been included as a party in that hearing, and (2) that Philip Murray, president of the Congress of Industrial Organizations (of which the Union was an affiliate) has not complied with the provisions of Section 9 (h) of the Act in that he had failed to file a non-communistic affidavit.

The courts have uniformly held that the Board's findings in an administrative representation hearing are conclusive unless arbitrary or capricious.⁷ No attempt was made to show that the Board had acted arbitrarily or capriciously. In its Decision and Certification of Representatives the Board discussed and rejected all the Respondent's contentions including its claim that the United Textile Workers of America, AFL, should have been included as a party in the representation hearing.⁸ The Board has also recently held that, where the officers of a union have complied with Section 9 (h), a complaint based upon a charge filed by that union is not subject to dismissal on the ground that the parent federation had not complied with the filing requirement.⁹ In the cited case the parent federation was the American Federation of Labor. In the instant case it is the Congress of Industrial Organizations. Aside from the names, the situation in the two cases is parallel so far as non compliance with 9 (h) is concerned.

The contentions of the Respondent are therefore rejected *in toto* and it is found that on May 13, 1947, and at all times thereafter, the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF 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 tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

If 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, I make the following :

CONCLUSIONS OF LAW

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

⁷ *N. L. R. B. v. Pittsburgh Plate Glass Co.*, 313 U. S. 146; *Matter of Pacific Greyhound Lines*, 22 N. L. R. B. 110. Cf. *N. L. R. B. v. West Kentucky Coal Co.*, 152 F. (2d) 198 (C. C. A 6); and *Matter of Midland Steel Products Co.*, 71 N. L. R. B. 1379.

⁸ In its brief before me, it is the Respondent's contention that the Board "carefully ignored" the argument in the representation proceeding (again pressed by the Respondent in its brief in the instant case) that the prehearing election was prejudicial to the Respondent, and illegal. An examination of the Board's Decision and Certification in Case No. 16-R-2030 discloses that, in effect, the specific points now raised by the Respondent were discussed and rejected by the Board. I therefore find specifically that these contentions of the Respondent are without merit.

⁹ *Matter of Northern Virginia Broadcasters, Inc.*, 75 N. L. R. B. 11.

2. All production and maintenance employees of the Respondent, including bleachery employees and the truck driver, but excluding office and clerical employees, watchmen, overseers, the master mechanic, second hands, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, 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 April 29, 1947, 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 May 13, 1947, 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, Respondent has engaged in unfair labor practices within the meaning of Section 8 (1) and (5) of the original Act, and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (5) of the amended Act.¹⁰

5. 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 of the case I recommend that the Respondent, Postex Cotton Mills, Inc., Post, Texas, and its officers, agents, successors, and assigns shall:

1. Cease and desist from refusing to bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of all its production and maintenance employees, including bleachery employees and the truck driver, but excluding office and clerical employees, watchmen, overseers, the master mechanic, second hands, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

2. Take the following affirmative action which I find 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 its employees in the above-described appropriate unit;

(b) Post immediately in conspicuous places in its plant at Post, Texas, copies of the notice attached to the Intermediate Report herein marked "Appendix A." Copies of this 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 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 of the Sixteenth Region in writing within ten (10) days from receipt of this Intermediate Report what steps Respondent has taken to comply therewith.

¹⁰ See page 1189 and footnote 2, *supra*.

It is further recommended that, unless the Respondent shall within ten (10) days from receipt of this Intermediate Report notify 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 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. 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 and exceptions thereto shall be deemed waived for all purposes.

J. J. FITZPATRICK,
Trial Examiner.

Dated June 14, 1947.

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 Labor Management Relations Act, 1947, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with TEXTILE WORKERS UNION OF AMERICA, CIO, as the exclusive representative of all of the employees in the bargaining unit described herein. The bargain unit is:

All production and maintenance employees of Postex Cotton Mills, Inc., including bleachery employees and the truck driver, but excluding office and clerical employees, watchmen, overseers, the master mechanic, second hands, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action.

POSTEX COTTON MILLS, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

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