In the Matter of FRANKLIN HOSIERY MILLS, INC. *and* AMERICAN FEDERATION OF HOSIERY WORKERS

Case No. 4–C–1837.—Decided April 29, 1949

DECISION

AND

ORDER

On December 27, 1948, Trial Examiner Charles W. Schneider issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (5) and Section 8 (a) (1) of the National Labor Relations Act, as amended,[1] 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. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel [Members Reynolds, Murdock, and Gray].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the additions and exceptions herein noted.

Like the Trial Examiner, we are convinced by the record as a whole, particularly the shifting of positions by the Respondent as to matters under negotiation, its repudiation of oral agreements reached during negotiations, and its insistence upon the reservation of unilateral action as to future wage reductions, as detailed in the Intermediate Report, that the Respondent did not bargain in good faith with the Union, but

[1] The Trial Examiner recommended that the complaint be dismissed insofar as it alleges that the Respondent engaged in independent acts violative of Section 8 (a) (1). In the absence of exceptions to this recommendation, we shall adopt it without passing upon the supporting finding that Pleet's statement to the employees on May 22 was not violative of the Act.

instead studiously sought to avoid consummating any agreement on mutually agreeable terms.[2] We accordingly find that at least since on or about January 20, 1947, when negotiations actually commenced, and at all times thereafter, the Respondent has refused to bargain collectively with the Union as the exclusive representative of employees in the unit here found appropriate.[3]

We find no merit in the Respondent's contentions that "this case should be held to be moot" because of lapse of time. Having found that the Respondent unlawfully refused to bargain we find, in accordance with established precedent, that the policies of the Act will be best effectuated by requiring the Respondent upon request, to bargain collectively with the Union, as recommended by 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, Franklin Hosiery Mills, Inc., Williamsport, Pennsylvania, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with American Federation of Hosiery Workers as the exclusive representative of all its service and production employees, excluding janitors and office, clerical, and supervisory employees;

(b) In any manner interfering with the efforts of American Federation of Hosiery Workers to negotiate for or represent the employees within the aforesaid bargaining unit as the 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 American Federation of Hosiery Workers as the exclusive representative of all employees in the above-described appropriate unit with respect to labor disputes, grievances, rates of pay, wages, hours of employment, or other con-

[2] Since we are in agreement with the Trial Examiner as to the Respondent's lack of good faith, we find it unnecessary to pass upon his additional finding based on the *Heinz* case (*H. J. Heinz Co.* v. *N. L. R. B.*, 311 U. S. 514), that the Respondent's repudiation of its oral agreement with the Union constituted "a refusal to bargain as a matter of law, irrespective of the bona fides of the Respondent's motive."

[3] Like the Trial Examiner, we find it unnecessary to pass upon the General Counsel's contention that Pleet's alleged reservation of the right to withdraw from any oral commitments was *per se* a violation of Section 8 (a) (5) of the Act. We do find, however, that Pleet's asserted reliance upon this reservation to justify his successive repudiations of complete oral agreements does not excuse the Respondent's failure to bargain in good faith, as required by the statute.

ditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant at Williamsport, Pennsylvania, copies of the notice attached hereto and marked "Appendix A."[4] Copies of said notice to be furnished by the Regional Director for the Fourth 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 for the Fourth Region in writing, within ten (10) days from the date of the Decision and Order, what steps the Respondent has taken to comply therewith.

AND IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed, insofar as it alleges that the Respondent threatened, warned, and advised its employees not to assist, support, or become or remain members of the Union under threat of moving the plant and loss of employment in violation of Section 8 (a) (1) of the Act.

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:

> WE WILL NOT refuse to bargain collectively with AMERICAN FEDERATION OF HOSIERY WORKERS as the exclusive representative of all employees in the appropriate unit described below.
>
> WE WILL NOT in any other manner interfere with the efforts of AMERICAN FEDERATION OF HOSIERY WORKERS, to negotiate for or to represent the employees of the said bargaining unit, or their exclusive bargaining agent.
>
> WE WILL BARGAIN collectively upon request with AMERICAN FEDERATION OF HOSIERY WORKERS, as the exclusive representative of all employees in the unit described herein with respect to rates of pay, hours of employment, or other conditions of employment, and, if an undestanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

[4] 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 "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

All service and production employees, excluding janitors, office, clerical, and supervisory employees.

All our employees are free to become or remain members of the above-named union or any other labor organization.

FRANKLIN HOSIERY MILLS, INC.
Employer.

By _____
(Representative) (Title)

Dated_____

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

AND

RECOMMENDED ORDER

Mr. John H. Garver, for the General Counsel.
Mr. John C. Youngman, of Williamsport, Pa., for the Respondent.
Mr. Julian E. Goldberg, of Philadelphia, Pa., for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by American Federation of Hosiery Workers, herein called the Union, the General Counsel of the Board issued his complaint dated June 10, 1948, against Franklin Hosiery Mills, Inc., Williamsport, Pennsylvania, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the National Labor Relations Act (49 Stat. 449) and Section 8 (a) (1) and (5) of the Act as amended June 23, 1947 (61 Stat. 136). Copies of the complaint and charge, accompanied by notice of hearing thereon, were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that the Respondent: (1) Threatened, warned, and advised its employees not to assist, support, or become or remain members of the Union, under threat of moving the plant and loss of employment; and (2) refused to bargain collectively with the Union as the representative of its employees.

In due course the Respondent filed its answer denying the commission of unfair labor practices.

Upon due notice a hearing was held at Williamsport, Pennsylvania, on July 22 and 23, 1948, before the undersigned Trial Examiner. The General Counsel, the Respondent, and the Union were represented by counsel and participated in the hearing. All parties were afforded opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. Opportunity was afforded to argue the issues orally upon the record and to submit briefs and proposed findings. Briefs have been received from the Respondent and from the Union.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Franklin Hosiery Mills, Inc., the Respondent herein, a subsidiary of United Rexall Drug Company, is a Delaware corporation, maintaining its principal office and place of business at Williamsport, Pennsylvania, where it is engaged in the manufacture, sale, and distribution of ladies' hosiery.

In the conduct of its business the Respondent causes raw materials, principally nylon and silk yarn, valued in excess of $200,000 annually, to be transported in interstate commerce from States other than the Commonwealth of Pennsylvania, to its plant in Williamsport. The Respondent causes in excess of 90 percent of its manufactured products, valued in excess of $1,000,000 annually, to be transported in commerce from the Williamsport plant to States other than the Commonwealth of Pennsylvania. It is conceded that the Respondent is engaged in commerce.

II. THE ORGANIZATION INVOLVED

American Federation of Hosiery Workers is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The unit and majority*

On November 12, 1946, in an election held under the direction and supervision of the Board's Regional Director, the Respondent's employees designated the Union as their exclusive bargaining representative. The voting unit consisted of all service and production employees, excluding janitors, office and clerical, and supervisory employees. It is conceded, and it is found, that this unit constituted an appropriate bargaining unit within the meaning of the Act.

The Respondent's answer, while admitting the result of the election, asserted that the Union no longer represents a majority of the employees. There is, however, no evidence to substantiate that assertion. It is therefore found that the Union at all times material herein was, and is now, the exclusive representative of the employees in the appropriate unit within the meaning of the Act.

B. *The negotiations*

Following receipt of the Regional Director's certification, dated November 19, 1946, as to the results of the election, representatives of the Respondent and of the Union met at various times from December 11, 1946, to June 18, 1947, in an effort to arrive at a collective bargaining agreement. No signed contract resulted. The General Counsel and the Union contend that the Respondent did not negotiate in good faith. This the Respondent denies.

The Respondent was represented at the various meetings by Paul Pleet, vice president of the Company and manager of the plant, and by John C. Youngman, a local attorney, and at times by Abrams, the Respondent's superintendent. Until April 1946, Pleet had been one of the owners of the plant under a partnership arrangement. In the latter month, however, he sold the business to the present operating syndicate, and while divesting himself of proprietary interest, remained on as vice president and plant manager. In 1933, while under contract with the Union, Pleet had moved the plant to Williamsport from Philadelphia, because of the union wage scales.

The union representatives at the negotiations were, from time to time, National Representatives Fred Held, Warren Leader, and Adolph Benet; and at a later point—after Pleet had insisted upon their presence during the negotiations—the Union's Shop Committee, consisting of Roy Finney, president of the Local, and several other employees.

The first meetings were held on December 11 and 12. At these sessions the Union presented a complete proposal which was discussed, clause by clause. No final agreement being arrived at, the discussions were continued, by mutual agreement, to January 20. Pleet testified that at this meeting he or Youngman proposed, and the Union agreed, that any agreement reached was to be purely tentative, and that either side should have the right to withdraw its assent to any provision at any time up to the point that a contract was actually signed. While conceding that such a proposal was made by Pleet, the union representatives uniformly testified that they rejected it, and that they accepted Pleet's failure to press the matter as an acquiescence in the rejection. It seems evident from the weight of the testimony that the union representatives did not agree to Pleet's proposal. Pleet may, however, have had a misunderstanding. In any event, the conflict is not of critical importance.

On January 20, 1947, Pleet, Youngman, Held, and Leader had a luncheon meeting at the Lycoming Hotel in Williamsport at which they mainly discussed the Union's proposed security clause—to which the Respondent had objected. On the following day, the same representatives, plus the Shop Committee, met at the Respondent's offices. At this time the Respondent insisted upon disposing of the wage question. The Union, which had previously insisted that wages be left as the last topic for discussion, finally acquiesced. Pleet then proposed a wage increase with the proviso that he be allowed to allocate its spread over the various operations. The Union, however, demanded that it be given a voice in the matter of allocation. Pleet acquiesced, and a meeting was arranged for the following day, January 22, to decide upon the method of allocation.

In addition to the wage question, the parties also discussed other as yet unresolved issues at the January 21 meeting. These included check-off, union security, second week's vacation, third shift operation, a health program, machine operation, overtime, and disposition of female employees. No agreement on these issues had been reached by the end of the meeting.

On the following day, January 22, Pleet, Held, and Leader met and arrived at an agreement on allocation of the wage increase.

During the course of this meeting the union representatives, according to Held, decided to give way on the issues which remained unresolved and accept the Respondent's proposals as to them. While Held testified that he thought that Pleet and Youngman understood this, he did not unequivocally convey that decision to them. It seems clear to me that there was misunderstanding here, that Pleet and Youngman were unaware of the Union's intention, and that the parties had not yet expressed final and complete agreement.

That night, January 22, a meeting of the union membership was held. The Respondent's proposals were submitted to the members for approval, voted upon, and accepted.

On the following morning, January 23, 1947, Held got in touch with Youngman, informed him that the membership had ratified the proposals and suggested that an agreement be drafted for execution. Youngman responded that he did not think that they had yet reached complete agreement and suggested that they see Pleet.

As a consequence, another negotiating session was held on January 29. Pleet now insisted that negotiations begin from scratch, asserting that all agreements up to this point had been on a tentative basis. To this the Union objected. Nevertheless, the Respondent being adamant, the union representatives read each clause of the original proposals. The Respondent then withdrew its prior expressed agreement to some of the clauses and injected several new issues which it had not previously raised. Discussion failing to result in agreement, the union representatives stated that they would file a notice to strike in accordance with the War Labor Disputes Act, 57 Stat. 163, known as the Smith-Connally Act.

Apparently as a result of the filing of the strike notice, a meeting of the parties was arranged for March 12, 1947, at the Lycoming Hotel. This meeting was conducted by Commissioner Moser, of the United States Conciliation Service. At the suggestion of the Commissioner, the negotiations were begun anew. Each clause of the Union's proposed contract was read and discussed. During the course of the discussions the Repondent withdrew the new issues it had raised at the January 29 meeting; the Union modified its demands on certain issues, and withdrew them on others. As a result, the parties arrived at complete agreement on all points. Pleet stated that he regarded the agreement as final and binding and the meeting terminated with all parties under the belief that full agreement had been reached.

Shortly after March 12, probably on the next day, Pleet called a meeting of the employees in the plant, told them that he was going to sign the agreement reached with the Union, but that this did not necessarily mean that employees who were not members of the Union would have to join it.

On March 15 the Union held a membership meeting at which the employees ratified the agreement.

On March 21 Youngman met with Held and Leader to put the agreement into written form. A draft was dictated, subsequently corrected, and from this a final draft was prepared by Youngman and delivered to the Union. The final draft was then sent to Philadelphia where it was signed by the Union's top officials and was returned to Youngman about April 22 for the Respondent's signature. At this point difficulties arose. Youngman told Leader, when the latter brought back the documents containing the Union's signature, that there were certain clauses that would have to be changed. Leader asked what they were. Youngman enumerated the following: (1) a clause on "fair dealings"; (2) the Respondent wanted the agreement signed by the Local and not by the National Union; (3) the Respondent wished to modify the jurisdiction of the impartial chairman; and (4) the Respondent wanted a 15-day strike or lock-out notice. These were all substantive changes at variance with the agreement previously arrived at. Leader became angry and told Youngman that Pleet had assured Moser that the agreement made on March 12 was final and binding. According to Leader, Youngman was apologetic, and said that the objections to the agreement had come from the Respondent's attorneys in California.[1] Leader reminded Youngman that both he and Pleet had assured the Union that they had complete authority to sign any agreement arrived at. Leader further said that he had no power to approve the revisions without permission of the national office, now that the contract had been signed by the Union. Youngman suggested further negotiation. Leader responded that he was not in a position to begin renegotiating the contract. Youngman thereupon telephoned Pleet, and told him that Leader was "kicking like hell" and accusing the Respondent of "reneging."

[1] Apparently attorneys for the parent company.

Apparently in response to a question from Pleet, Youngman asked Leader whether he would meet with Pleet. Leader angrily told Youngman that he could "tell Pleet to go to hell," said that he would file either a strike notice or *unfair labor practice charges*, and left the office.[2]

Despite Leader's statement to Youngman that he was not disposed to negotiate further, the negotiations were nevertheless resumed. A meeting was held on May 20, 1947, attended by Pleet, Youngman, Benet, Held, and the Shop Committee, at which Respondent formally presented proposals respecting the new issues raised by Youngman on April 22. The union representatives read and considered these proposals and, after a time, announced that they would accept them. Youngman then stated that the Respondent wanted an additional clause outlawing jurisdictional and sympathy strikes and prohibiting employee refusals to work on goods from struck factories. The Union answered that the contract did not authorize such strikes or refusals to work, but that it would be agreeable to the insertion of the specific phraseology desired by the Respondent.

There thus being no further apparent issues, Held turned to Pleet and said, "Since we have agreed to all your proposed changes, will you sign the agreement as it has been amended?" Pleet responded "no," saying that he would not sign any contract unless an additional clause were inserted giving the Respondent the right to reduce wages unilaterally and without negotiation at any time during the term of the contract, to the point they were at the time of the latest wage increase. Held answered that the Union could not permit the Respondent to reduce wages unilaterally without discussion. He further pointed out that the proposed contract contained a clause permitting reopening for wage renegotiation once during its term; this latter limitation having been inserted at the insistence of the Respondent. Pleet reiterated his stand, stating that he did not intend to reduce wages, but wished to be in a position to do so if the market dropped further. The meeting broke up with the Union's statement that the matter would be presented to the membership.

Around May 22, Pleet called a number of representative employees from different departments, including the Shop Committee, to his office. He told them, in substance, that he did not wish to influence them, but that the contract which the Union proposed that he sign did not contain any greater benefits for them than they already were enjoying. He further said that the "trend of business—was down" and that market conditions might necessitate wage adjustments. He then told the employees that he had had to move his plant from Philadelphia to Williamsport in 1933 because of the union wage scale, and that he "would not like to have to move from Williamsport."

On May 24 at a union meeting, the membership unanimously rejected the Respondent's proposal that it be given the right to reduce wages unilaterally. On June 5 Benet and the Shop Committee met with Pleet and Youngman and informed them of the Union's rejection. Pleet, in response, reiterated that he would not sign without the clause. Benet then made the following five proposals with respect to the wage question, stating that any of them would be acceptable to the Union: (1) That the Respondent could propose reductions not to exceed $0.15 per dozen and that after 30 days either party was free to take whatever action it saw

[2] This draft contained one clause from the Union's original proposal which the Union had abandoned This clause had been inadvertently included in the final draft. While to that extent the draft signed by the Union required revision to conform to the agreement, it was not that matter, easily remediable and requiring no negotiation, which provoked Leader, but rather the insertion of new issues and the upsetting of the agreement.

fit; (2) that if national wage scales under the Union's agreements were decreased or increased the Respondent's scales should be automatically conformed; (3) that reductions up to $0.15 per dozen could be proposed and submitted to arbitration; (4) that the question of what wage scale should be specified in the contract should be submitted to a wage tribunal selected by the parties; and (5) that requests for decreases or increases should be submitted to a wage tribunal for determination unless the parties could agree within 30 days.

Pleet rejected each of these proposals *seriatim* as it was made. The meeting then broke up.

The Union invoked conciliation again. On June 18 another meeting was held by Commissioner Moser. In addition to Moser and the usual representatives of both sides, R. W. Yohn, a representative of the Department of Labor and Industry of the Commonwealth of Pennsylvania was also present. The area of disagreement was explored. Moser expressed surprise at the issues, saying that he had thought that final agreement had been reached on March 12. Pleet responded that Moser could not tell him what to do.

Youngman proposed that the wage schedule be left out of the agreement altogether as a means of avoiding the difficulty. Pleet, however, refused to consider such a solution. Youngman then proposed that the matter be allowed to rest as it was for 30 to 60 days before it was discussed further. This the Union said would not be acceptable because there was no grievance procedure in effect; but, it added, it would be agreeable to such a solution if the Respondent would agree in writing to maintain the *status quo* and put the grievance machinery in operation during the interim. Pleet responded that he would agree orally to those conditions, but that he would not put that agreement in writing.

During the discussion the Respondent asserted that it had had an understanding that either party was free to withdraw at any time prior to the signing of the contract. Moser stated that that understanding had not been expressed before him.

No agreement was arrived at. The meeting concluded with the suggestion that the Union would file charges of refusal to bargain, which it did thereafter.

C. *Conclusions*

As has been indicated heretofore, the Respondent contended, and the Union denied, that there was an understanding at the beginning of the negotiations to the effect that all agreements reached orally were tentative and that either party was free to withdraw at any time prior to the actual signing of a contract. Moreover, the General Counsel and the Union, arguing from the *Heinz* case,[3] contend that to insist upon such a condition is illegal and *per se* to refuse to bargain. To be sure, it cannot be a refusal to bargain to demand that *up to the point complete accord is reached* all agreements made be tentative only. To hold a party legally bound to individual commitments before he has arrived at a total agreement would insure that he would not dare to make any commitment whatever. The establishment of such a proposition might effectively hamstring all collective bargaining, by making the trades, compromises, and tentative expressions of assent which expedite the attainment of accord more hazardous, and mayhap impossible. On the other hand, if a party to a collective agreement is free to withdraw *after* agreement has been reached, employee relations might never be

[3] *H. J. Heinz Co.* v. *N. L. R. B.*, 311 U. S. 514, holding, in essence, that the refusal to reduce to writing and sign a collective bargaining agreement orally arrived at, is a refusal to bargain.

stabilized. If after an understanding on all terms has been attained its legal effect can be deferred until the evidence of the accord can be indentured, there seems no reason why withdrawal rights could not also be legally reserved to a time after execution; possibly to any time during its term. In such a state of affairs a collective bargaining contract would settle nothing at all; it would be forever subject to cancellation at the whim of the optionee. That the act of signing a collective bargain is of importance in the bargaining process is evident not only from the decision of the Supreme Court in the *Heinz* case, but also from the Board's decision in the case of *Eicor, Inc.*, 46 N. L. R. B. 1035. There the Board held that a collective agreement which had not been reduced to writing and signed was not a bar to a petition for an election filed by a rival union; although a signed contract under the same circumstances would have been.

I find it unnecessary here, however, to pass on the precise question as to whether the reservation which the Respondent asserts it made, is *per se* illegal.

I am persuaded that even if such a reservation was made it was waived by the Respondent on March 12 before Commissioner Moser when the parties reached full agreement on all issues. As has been seen, Pleet stated at the conclusion of that conference that he regarded the agreement reached as being final and binding. In addition, he told the employees at the meeting held in the plant shortly thereafter, that he was going to sign the agreement. The failure of Pleet to state the alleged reservation at the March 12 session or to the employees can only be construed as a waiver of it, if it existed. I so interpret it. Under such circumstances, the parties having reached complete and final agreement on all issues, the repudiation of that agreement thereafter constituted a refusal to bargain as a matter of law, irrespective of the bona fides of the Respondent's motives. *H. J. Heinz, supra.*

In addition, the Respondent's insistence at the May 20 meeting on the reservation of right to reduce wages unilaterally and without negotiation also was a refusal to bargain as a matter of law. The Respondent is required by the Act to bargain with the Union on such an issue. Contractual commitments nullifying the obligations imposed by the statute are contrary to public policy, and to insist upon such a commitment is to refuse to bargain. *Singer Mfg. Co.* v. *N. L. R. B.*, 119 F. (2d) 131 (C. C. A. 7), cert. den. 313 U. S. 595, 314 U. S. 705.

In addition, the Respondent's repeated withdrawals from commitments it had previously made do not seem consistent with the conclusion that it was negotiating in good faith with the Union in a bona fide attempt to negotiate a signed agreement. It reached what everyone regarded as a complete and final understanding on March 12. After this had been reduced to writing and signed by the Union the Respondent made new demands. The clerical error in this draft had nothing to do with the Respondent's insertion of new issues. After these had been raised, the Union, though it protested vigorously, ultimately announced, at the May 20 session, that it would accept the Respondent's new conditions. At this juncture Pleet raised the issue of modification of the hitherto agreed-to clause relating to struck work. This was adjusted to his satisfaction. For the third time the discussions had reached the point where all of the Respondent's outstanding demands had been met. Pleet then asked for the insertion of the clause allowing him to reduce wages unilaterally. Thereafter, Pleet told the employees that the contract which the union representatives wanted him to sign contained no greater benefits than they already had. It is not surprising if this was so, in view of the Respondent's constantly shifting position and its consistent attempts to modify its agreements. In addition the statement to the

employees is scarcely one to be expected from an employer genuinely seeking to reach agreement with the employees' representative. Thereafter the Union presented the Respondent with five distinct proposals designed to meet the Respondent's objections. Each was summarily rejected.

These successive repudiations and shifting positions are hardly indicative of good faith. On the contrary they are, in my judgment, consistent only with the conclusion that the Respondent was seeking to avoid executing an agreement with the Union. An indication of Pleet's reluctance to entering into any formalized arrangement is his refusal, at the June 18 meeting, to put the agreement respecting the grievance procedure in writing during the hiatus Youngman proposed, although stating that he would operate under it.

It is found that the Respondent did not negotiate with the Union in good faith for the purpose of reaching a basis of agreement but instead sought to avoid reaching such a basis. It is therefore found that the Respondent refused to bargain collectively with the Union, thereby interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act.[4]

The General Counsel also contends that the statement made by Pleet to the employees on May 22 to the effect that he "would not like to move from Williamsport" was a threat to move the plant. That statement was at best ambiguous. It may, however, have been merely an objective prediction of consequences beyond Pleet's control. In view of the care which Congress evinced in Section 8 (c) of the amended Act to protect expressions of view, argument, or opinion in employee relations, I am hesitant to find a threat of reprisal in an ambiguous declaration where a contrary, even though unlikely, interpretation is possible. It will therefore be recommended that the allegation of violation of Section 8 (a) (1) be dismissed.

IV. THE 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 set forth 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

Having found that the Respondent is engaging in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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[4] The Respondent asserts, and Pleet testified that, the demand for the unilateral wage reduction clause was motivated by a drop in the hosiery market. Whatever the exigencies, they did not relieve the Respondent of its statutory obligation to bargain, and Pleet's bona fides in this regard are not adequate as a matter of law to excuse the demand.

However, apart from the question of law the bona fides of the assertion are at least open to question in view of the Respondent's generally evasive tactics and the following other factors: (1) the contract already contained a provision permitting reopening for renegotiation of the wage clause; and (2) on cross-examination Pleet admitted that he could not state "as a fact" that the Respondent's billings had dropped between March 12 and May 22, without referring to the Respondent's records. He did not, however, consult those records to ascertain the fact, although they were available. In view of the indefiniteness of this testimony, the assertion that the alleged market break was a factor in the repudiation of the March 12 agreement must also fall. Additionally it is to be noted that the market was not cited as a factor in the negotiations until May 20, and then not in connection with the revisions demanded by the Respondent on April 22.

Having found that the Respondent has refused to bargain collectively it will be recommended that the Respondent, upon request, bargain with the Union and embody in a signed agreement any understanding reached.

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. American Federation of Hosiery Workers is a labor organization within the meaning of Section 2 (5) of the Act.
2. All service and production employees of the Respondent, excluding janitors, office and clerical, and supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act.
3. American Federation of Hosiery Workers was on November 12, 1946, and at all times since has been, the exclusive representative of all employees in the appropriate unit, within the meaning of the Act.
4. By failing and refusing to bargain collectively with American Federation of Hosiery Workers as the exclusive representative of its employees in the appropriate unit the Respondent has engaged in and is engaging in, unfair labor practices within the meaning of Section 8 (5) and 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 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.
7. The Respondent has not engaged in the following alleged unfair labor practices: threatening, warning and advising its employees not to assist, support, or become or remain members of the Union, under threat of moving the plant and loss of employment.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, it is recommended that the Respondent, Franklin Hosiery Mills, Inc., Williamsport, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with American Federation of Hosiery Workers as the exclusive representative of the employees in the appropriate unit;

(b) Engaging in any other acts in any manner interfering with the efforts of American Federation of Hosiery Workers to negotiate for or represent the employees as the exclusive bargaining agent in the aforesaid bargaining unit.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Upon request, bargain collectively with American Federation of Hosiery Workers as the exclusive representative of all employees in the appropriate unit and embody in a signed agreement any understanding reached;

(b) Post at its plant at Williamsport, Pennsylvania, copies of the notice attached hereto and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Fourth 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 for the Fourth Region in writing, within twenty (20) days from the date of service of this Intermediate Report what steps the Respondent has taken to comply therewith.

It is further recommended that the complaint be dismissed insofar as it alleges that the Respondent threatened, warned and advised its employees not to assist, support, or become or remain members of the Union, under threat of moving the plant and loss of employment.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, 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. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. 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.

Dated at Washington, D. C., this 27th day of December 1948.

CHARLES W. SCHNEIDER,
Trial Examiner.

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 BARGAIN collectively upon request with AMERICAN FEDERATION OF HOSIERY WORKERS as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of

employment or other conditions of employment, and embody in a signed agreement any understanding reached. The bargaining unit is:

All service and production employees, excluding janitors, office and clerical and supervisory employees.

WE WILL NOT engage in any other acts in any manner interfering with the efforts of AMERICAN FEDERATION OF HOSIERY WORKERS to negotiate for or represent our employees as the exclusive representative in the aforesaid bargaining unit.

FRANKLIN HOSIERY MILLS, INC.,
Employer.

By _____
(Representative) (Title)

Dated_____

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