

In the Matter of HARRIS-WOODSON Co., INC., and UNITED CANDY
WORKERS LOCAL INDUSTRIAL UNION No. 1274, C. I. O.

Case No. 5-C-2245

SUPPLEMENTAL DECISION AND AMENDED ORDER

September 12, 1949

On May 24, 1948, the Board issued its Decision and Order in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and directing that it cease and desist therefrom and take certain affirmative action. *Inter alia*, the Board found that the Respondent refused to bargain collectively with United Candy Workers Local Industrial Union No. 1274, C. I. O., herein called Local 1274, and ordered that the Respondent bargain with Local 1274, conditioned upon compliance by that labor organization with the provisions of Section 9 (f), (g), and (h) of the Act, as amended, within 30 days from the date of the Decision and Order.¹

On February 14, 1949, the Board issued an Order to Show Cause why the Board should not substitute the name "United Candy Workers of Lynchburg, affiliated with the Textile Workers Union of America, C. I. O." for the name "United Candy Workers Local Industrial Union No. 1274, affiliated with the Congress of Industrial Organizations," in its Order, dated May 24, 1948.

On February 28, 1949, the Respondent filed an answer in opposition to the rule to show cause and a motion to amend the Decision and Order, dated May 24, 1948, requesting, *inter alia*, that the bargaining provisions of said Decision and Order be deleted on the ground that neither union had complied with Section 9 (f), (g), and (h) within the period specified by the Board.

On March 8, 1949, the Board issued an order denying the Respondent's motion and directing that the record be reopened and that a further hearing be held for the purpose of determining whether or not United Candy Workers of Lynchburg, affiliated with the Textile Workers Union of America, C. I. O., is the same union as United

¹ 77 N. L. R. B. 819.

85 N. L. R. B., No. 207.

Candy Workers Local Industrial Union No. 1274, affiliated with the Congress of Industrial Organizations.

On June 8, 1949, after a hearing in which the Respondent and the Textile Workers Union of America, C. I. O., participated, Trial Examiner James A. Shaw issued his Supplemental Intermediate Report, in which he made findings of fact as to Local 1274's change in name and affiliation and concluded that United Candy Workers of Lynchburg, affiliated with the Textile Workers Union of America, C. I. O., herein called United, is the same union as Local 1274. Thereafter, the Respondent filed a motion to remand the case to the Trial Examiner² and exceptions to the Intermediate Report accompanied by a supporting brief.

The Respondent's request for oral argument upon said exceptions is hereby denied as the record, including the Respondent's exceptions and brief, adequately discloses the issues and the positions of the parties.

The Board has reviewed the rulings of the Trial Examiner made at the supplemental hearing and finds that no prejudicial error was committed. These rulings are hereby affirmed. The Board has considered the Supplemental Intermediate Report, the Respondent's exceptions thereto and its brief in support thereof, and the entire record in the supplemental proceeding, and hereby adopts the findings and conclusions of the Trial Examiner, as set forth in the Supplemental Intermediate Report, with the exceptions, additions, and modifications hereinafter set forth.

In his Supplemental Intermediate Report the Trial Examiner based his conclusion that the 2 unions are the same upon a finding that the membership of United consists of the same individuals that constituted the membership of Local 1274. Although the employees present at a membership meeting of Local 1274 voted unanimously to affiliate with the Textile Workers Union of America, herein called TWUA, and TWUA accepted the members of Local 1274 as members of TWUA, only about 18 of a total membership of approximately 23 were present at the meeting.³ The Respondent therefore contends that the member-

²The Respondent based its motion to remand upon the ground that the Supplemental Intermediate Report was "insufficient and inadequate to advise Respondent of the record basis for the Trial Examiner's findings of fact and conclusion and the legal basis for the Trial Examiner's conclusion," as required by Section 8 of the Administrative Procedure Act and Section 203.45 of the Board's Rules and Regulations. This motion is hereby denied because, in our opinion, the Supplemental Intermediate Report adequately states the reasons or the basis for the findings and conclusions made therein so as to comply with those provisions of the Administrative Procedure Act and the Board's Rules and Regulations relied upon by the Respondent.

³The record does not show the number of employees in the appropriate unit at the time of the supplemental hearing. Our Decision and Order, dated May 24, 1948, states that there were 26 employees in the unit at all times material therein.

ship of the 2 groups is not identical. Even if this were true,⁴ it is not controlling in view of the fact that at least approximately three-fourths of the members of Local 1274 are members of United.

The Respondent also contends that United was not "officially" recognized by TWUA and thus the members of Local 1274 have not become members of United, because TWUA's constitution provides that a local union becomes such upon receipt of a charter and United has not received a charter. Admittedly, United is not yet formally a local of TWUA and has not operated as such. The relationship between United and TWUA appears to be an informal arrangement of affiliation pending negotiation of a contract with the Respondent, at which time it is contemplated that a local charter will issue. The absence of such a charter does not preclude membership in United. Moreover, in view of the fact that both United and TWUA have complied with Section 9 (f), (g), and (h), it is immaterial whether United has formally affiliated with TWUA.⁵ We therefore reject this contention.

The Respondent's principal contention is that, by reason of the change in affiliation, the employees have changed their representative and that the TWUA and the CIO, the parent of Local 1274, are different entities in view of the introduction of a new contract of association and new supervision and control in connection with such matters as financial affairs, collective bargaining, and other forms of collective action. This contention places emphasis on the change with respect to the parent organization with which the employees' own organization is affiliated. We regard, as did the court in *Continental Oil v. N. L. R. B.*, 113 F. (2d) 473 (C. A. 10), "continuity of [the employees' own] organization" as the governing test in determining whether one labor organization is identical with another having a different name and affiliation. In that case, an employer refused to bargain with a labor organization affiliated with the AFL. Subsequently this labor organization became affiliated with the CIO. Without making a new request for bargaining, the CIO organization filed a charge of refusal to bargain upon which a complaint was issued. In enforcing the Board's order directing the employer to bargain with the CIO organization, the court stated that ". . . there was no such disruption or change in identity as to affect in any manner the validity of the order requiring the Petitioner to bargain collectively with the union."⁶

⁴ So far as appears, however, those employee members absent from the meeting have not split off from those who voted to affiliate with TWUA on that or any other question.

⁵ Cf. *Matter of Lane-Wells Co.*, 79 N. L. R. B. 252.

⁶ Cf. also, *Matter of Michigan Bell Telephone Company*, 85 N. L. R. B., No. 58, where we held that a change in affiliation of the contracting unions' parent organization did not render the unions' contract with the employer ineffective as a bar to a determination of representatives.

In the present case, despite the change in name and affiliation and the resulting consequences, we find that continuity of organization has been preserved, in view of the fact that the great bulk of the membership of United is the same as that of Local 1274 and the further fact that the officers of United are the same as those of Local 1274.⁷ We conclude therefore that United Candy Workers of Lynchburg, affiliated with the Textile Workers Union of America, C. I. O., is, for purposes of our original bargaining order, the same labor organization as United Candy Workers Local Industrial Union No. 1274, affiliated with the Congress of Industrial Organizations. We shall therefore substitute the name "United Candy Workers of Lynchburg, affiliated with the Textile Workers Union of America, C. I. O.," for the name "United Candy Workers Local Industrial Union No. 1274, affiliated with the Congress of Industrial Organizations," in our Order dated May 24, 1948.

In that Order we directed that the Respondent bargain with the Union, conditioned, however, upon compliance by the Union with Section 9 (f), (g), and (h) of the Act, as amended, within 30 days from the date of the Order. We will delete this condition from our Order, hereinafter set forth, as United and TWUA have complied with this condition within the time specified.

AMENDED 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 directs that its Order, dated May 24, 1948, be, and it hereby is, amended to provide as follows:⁸

The Respondent, Harris-Woodson Co., Inc., Lynchburg, Virginia, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Candy Workers of Lynchburg, affiliated with the Textile Workers Union of America, C. I. O., as the exclusive representative of all the production employees employed at the Respondent's Lynchburg, Virginia, plant, excluding maintenance and clerical employees, firemen, and supervisory employees as defined in the Act, as amended, with respect to rates of pay, wages, hours of employment, or other conditions of employment;

(b) Discouraging membership in United Candy Workers of Lynchburg, affiliated with the Textile Workers Union of America, C. I. O.,

⁷ The fact as to the identity of the officers is not mentioned in the Supplemental Intermediate Report.

⁸ Except as specifically modified herein, our Decision and Order, dated May 24, 1948, remains in full force and effect.

or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment;

(c) 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 United Candy Workers of Lynchburg, affiliated with the Textile Workers Union of America, C. I. O., 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 as amended:

(a) On request, bargain collectively with United Candy Workers of Lynchburg, affiliated with the Textile Workers of America, C. I. O., as the exclusive representative of all the production employees employed at its Lynchburg, Virginia, plant, excluding maintenance and clerical employees, firemen, and all supervisory employees as defined in the Act, as amended 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) Offer all those employees named in "Appendix A," attached hereto, who have not been reinstated, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, any employees who have been hired to replace said employees; and with respect to those employees who went on strike on October 4, 1946, or thereafter, and were subsequently reinstated and have not since left voluntarily, restore them to their seniority and other rights and privileges;

(c) Make whole all employees listed in "Appendix A" for any loss of pay that they may have suffered as a result of the Respondent's discrimination against them in the manner set forth in the decision herein of May 24, 1948, and in the section of the Intermediate Report, attached thereto, entitled "The remedy";

(d) Post at its plant in Lynchburg, Virginia, copies of the notice attached hereto and marked "Appendix B."⁹ Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall,

⁹ In the event that this Order is enforced by 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."

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;

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

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges that the Respondent violated Section 8 (1) of the Act by failing to comply with the Board's Decision and Order in Case No. 5-C-1900, as alleged in Paragraph XIII, subsection (b) of the complaint.

APPENDIX A

Alice Bowen	Otis Lipscomb
Gracie Campbell	Robert Phelps
Margaret Carter	Frank Richardson
Mamie Childress	Edith Shephard
Carrie S. Eckhardt	Lucy Stillwill
Louise Franklin	Annie Tyree
Nettie Holt	Mary Tyree
Rayland Jackson	Ida Wilkerson
Callie Johnson	Bessie Witt
Gertrude Laughorn	

APPENDIX B

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 in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist UNITED CANDY WORKERS OF LYNCHBURG, AFFILIATED WITH THE TEXTILE WORKERS OF AMERICA, C. I. O., 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.

WE WILL OFFER to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them, including Otis Lipscomb, whole for any loss of pay suffered as a result of the discrimination.*

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representatives 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 production employees employed at the respondent's Lynchburg, Virginia, plant, excluding maintenance and clerical employees, firemen, and all supervisory employees as defined in the Act, as amended.

*Alice Bowen	Gertrude Laughorn
Gracie Campbell	Robert Phelps
Margaret Carter	Frank Richardson
Mamie Childress	Edith Shephard
Carrie S. Eckhardt	Lucy Stillwill
Louise Franklin	Annie Tyree
Nettie Holt	Mary Tyree
Rayland Jackson	Ida Wilkerson
Callie Johnson	Bessie Witt

All our employees are free to become or remain members of the above-named union or any other labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such organization.

HARRIS-WOODSON, Co., INC.,
Employer.

By _____
(Representative) (Title)

Dated _____

NOTE.—Any of the above-named employees presently serving in the armed forces of the United States will be offered full reinstatement upon application in accordance with the Selective Service Act after discharge from the armed forces.

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