

In the Matter of CONLON BROTHERS MANUFACTURING COMPANY and
WASHING MACHINE WORKERS' UNION

Case No. 13-CA-194.—Decided January 16, 1950

DECISION

AND

ORDER

On November 2, 1949, 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, 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. The Washing Machine Workers' Union also filed a brief in which it endorsed the Trial Examiner's recommendations.

Pursuant to the provisions of Section 3 (b) of the Act, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-member panel [Members Houston, Reynolds, and Murdock].

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 and briefs, and the entire record in this case, and hereby adopts the findings,¹ 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, the National Labor Relations Board hereby orders that the Respondent, Conlon Brothers Manu-

¹Page 110 of the Intermediate Report contains an inadvertent error. On November 5, 1948, the Respondent filed a petition with the Board rather than the Regional Director. This correction does not, however, have any material effect upon the disposition of the issues herein.

facturing Company, Chicago, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Washing Machine Workers' Union as the representative of all its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment;

(b) In any manner interfering with the efforts of Washing Machine Workers' Union to bargain collectively with the Respondent.

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

(a) Upon request, bargain collectively with Washing Machine Workers' Union as the exclusive representative of all the employees in the appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment, and embody any understanding reached in a signed agreement;

(b) Post at its plant in Chicago, Illinois, copies of the notice attached to the Intermediate Report marked Appendix A.² Copies of said notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being 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 Thirteenth Region, in writing, within ten (10) days from the date of this Order what steps Respondent has taken to comply herewith.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Mr. Irving M. Friedman, for the General Counsel.

Wilhartz and Hirsch, by *Messrs. Samuel E. Hirsch* and *Warren Krinsky*, of Chicago, Ill., for the Respondent.

Mr. Edwin R. Hackett, of Chicago, Ill., for the Union.

STATEMENT OF THE CASE

Upon a charge filed on January 12, 1949, by Washing Machine Workers' Union, herein called the Union, the General Counsel for the Board, by the Regional

² This notice, however, shall be and it 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, "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

Director for the Thirteenth Region (Chicago, Illinois), issued his complaint, dated August 10, 1949, against Conlon Bros. Mfg. Co., 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 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 61 Stat. 136. A copy of the charge was served on the Respondent on January 14, 1949, and copies of the complaint and charge, and notice of hearing thereon served on the Respondent and the Union on August 11, 1949.

With respect to the unfair labor practices, the complaint alleged, in substance, that on or about December 17, 1948, the Respondent refused, and at all times since has refused, to bargain collectively with the Union, although the Union was and is the exclusive collective bargaining representative of the Respondent's employees within an appropriate bargaining unit.

On August 17, 1949, the Respondent filed its Answer, in which, while admitting the jurisdictional allegations of the complaint and the refusal to bargain, it denied the commission of unfair labor practices. The Answer specifically denied that the Union was a *bona fide* labor organization, denied the appropriateness of the unit alleged in the complaint on the ground that such a classification was unreasonable and arbitrary, and further denied that the Union had been designated in any valid and fair election.

Upon due notice, a hearing was held at Chicago, Illinois, on October 11, 1949, before the undersigned Trial Examiner, Charles W. Schneider. The General Counsel, the Respondent, and the Union were represented by counsel and participated in the hearing. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to argue the issues orally upon the record, and to file briefs and proposed findings of fact and law.

On October 25, 1949, a request by the General Counsel to extend the time for filing briefs was denied. Briefs were received from the General Counsel and the Respondent on October 27, 1949, and have been considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Conlon Bros. Mfg. Co. is an Illinois corporation. Its principal office and place of business is located in Chicago, Illinois, where it is engaged in the manufacture of washing machines.

In the course of its business the Respondent uses annually raw materials and parts valued in excess of \$1,000,000, of which approximately 60 percent is purchased from points outside the State of Illinois. The Respondent produces annually finished products valued in excess of \$1,000,000, of which approximately 90 percent is sold and transported in interstate commerce to States of the United States other than Illinois.

The Respondent concedes that it is engaged in commerce.

II. THE ORGANIZATION INVOLVED

The Respondent denies that the Union is a *bona fide* labor organization within the meaning of the Act. For the reasons set out hereinafter, this contention is found not to be sustained, and it is hereby found that Washing Machine Workers' Union is a labor organization within the meaning of Section 2 (5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The case arises out of the Union's petition for certification as collective bargaining representative. Upon this petition, a hearing was held at which the Respondent *inter alia* raised contentions reiterated in its Answer in the instant case, to the effect that the Union was not a labor organization entitled to certification, and to the effect that the plant-wide unit sought by the Union was inappropriate. On September 30, 1948, the Board handed down its Decision and Direction of Election, based upon the record made at the afore-mentioned hearing, in which it overruled the Respondent's contentions, and directed that an election be held within 30 days in the following bargaining unit, which it found to be appropriate: "All production, maintenance and shop employees, including all part time employees, and excluding office clericals and supervisors as defined in the Act." (*Conlon Brothers Manufacturing Company and Washing Machine Workers Union*, Case No. 13-RC-264).

The election was thereafter scheduled to be held on October 27, 1948, at the offices of the Respondent, between the hours of 11:45 a. m. to 12:15 p. m. and 1 p. m. to 1:30 p. m. The Board's agent appeared for the election at 12:30 p. m. on October 27, 1948, and because some part-time workers had left the plant at noon he determined to hold the election the 28th of October 1948. The Respondent did not consent to the new date. The Union did consent. The election was actually held the following day on October 28, 1948, during the same hours and at the same place as originally scheduled.

Forty-two of the approximately forty-four eligible voters cast ballots. Two of these were not counted, one being a void, the other a challenged ballot. Of the remaining 40 ballots, 21 were cast for and 19 against the Union. The balloting was fairly conducted, and all eligible voters were given an opportunity to vote their ballots in secret.

On November 4, 1948, no objections having been filed to the election within the 5 days permitted by the Board's Rules and Regulations after furnishing of the Tally of Ballots, the Regional Director, on behalf of the Board, issued his certificate of the Union as the exclusive bargaining representative for the appropriate unit.

On the following day, November 5, 1948, the Respondent filed with the Regional Director a petition requesting an order voiding the election on the ground that the adjourned election was inadequately noticed, and because of asserted non-compliance of the Union with Section 9 (h) of the Act.

On November 17, 1948, the Board denied the petition for the stated reason that it was not properly filed in accordance with the Rules and Regulations, and also because the petition stated "no valid grounds for setting aside the election."

Under date of December 10, 1948, the Union wrote the Respondent requesting a collective bargaining conference. Under date of December 14, 1948, counsel for the Respondent replied as follows:

Your favor of December 10th, addressed to Conlon Bros. Mfg. Co., was received.

Without prejudice to our rights, we would be glad to arrange for an informal conference with you and our client at our office. We are telephoning you to set the time of the appointment. We are writing this letter as a matter of record.

On January 6, 1949, the Union sent the following letter to counsel for the Respondent:

In the collective bargaining conference of December 17th the Washing Machine Workers Union presented its proposals. It was our understanding that the employer, Conlon Bros. Mfg. Co., would submit counter-proposals after it had the opportunity to give further study to the Union's proposals.

To date we have not received any such counter-proposals. We are interested in bringing about an early conclusion of this matter.

Will you please forward these counter-proposals, or execute the contract which the Union presented.

Counsel for the Respondent replied with the following letter dated January 7, 1949:

In reply to your favor of January 6th, we beg to state that the meeting we held in my office on December 17th was without prejudice to the rights of our client and without recognizing that we were under any obligation to enter into any collective bargaining with your client. It was with this understanding that we listened to your views.

I have conferred with my client and have informed it of the contents of your letter, and it has requested me to make the foregoing reply.

There is no evidence of any further communication between the Union and the Respondent.

The Respondent's answer concedes that from about December 10, 1948, it has refused to bargain with the Union or to recognize it as exclusive representative, the Respondent's position being that it was not under any legal obligation to do so for the reasons adverted to heretofore.

In the instant case, the Respondent reiterated the contentions it had raised in the representation case. No new considerations are presented. Both the Respondent and the General Counsel rest upon the representation record, insofar as those issues are concerned. No additional evidence was offered in the instant proceedings save (1) a stipulation with respect to the circumstances under which the election was held, substantially recounted heretofore; (2) the exchange of correspondence between the Union and the Respondent following the certification; and (3) the results of the election and the subsequent certification.

As has been seen, all the contentions of the Respondent with respect to the status of the Union, the composition of the appropriate unit, and the validity of the election, have been passed upon by the Board. No new considerations having been presented, the Board's disposition constitutes, for the Trial Examiner, the law of the case. The Respondent admits that it has refused to recognize and to bargain with the Union. The undersigned consequently makes the following findings:

It is found that the following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production, maintenance and shop employees, including all part time employees, and excluding office clericals and supervisors as defined in the Act.

It is further found that on November 4, 1948, the Union was, and at all times since has continued to be, within the meaning of Section 9 (a) of the Act, the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

It is further found that on December 17, 1948, and at all times thereafter, the Respondent failed and refused to recognize and to bargain with the Union as the exclusive representative of the employees in the appropriate unit.

It is further found that the Respondent thereby interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act.

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 described 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 has engaged in unfair labor practices it will be recommended that it cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

It having been found that the Respondent has refused to bargain collectively with the Union thereby interfering with, restraining, and coercing its employees, it will be recommended that the Respondent cease and desist therefrom and also, upon request, bargain collectively with the Union with respect to wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

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

CONCLUSIONS OF LAW

1. Washing Machine Workers' Union is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production, maintenance and shop employees of the Respondent, including all part time employees, and excluding office clericals and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Washing Machine Workers' Union was, on November 4, 1948, and at all times since has been, the exclusive representative within the meaning of Section 9 (a) of the Act of all the employees in the aforesaid unit for the purposes of collective bargaining.

4. By refusing to bargain collectively with Washing Machine Workers' Union, as the exclusive bargaining representative of the employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By said acts the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of 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 foregoing findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that Conlon Bros. Mfg. Co., Chicago, Illinois, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Washing Machine Workers' Union, as the exclusive representative of all its employees in the appropriate unit with respect to rates of pay, wages, hours of employment, or other conditions of employment;

(b) In any manner interfering with the efforts of Washing Machine Workers' Union to bargain collectively with the Respondent.

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

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

(b) Post at its plant in Chicago, Illinois, copies of the notice attached hereto marked Appendix A. Copies of such notice, to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by the Respondent's authorized 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 Thirteenth Region, in writing, within twenty (20) 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 the Respondent shall within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, notify the said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue its 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 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, 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 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 2nd day of November 1949.

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 NOT in any manner interfere with the efforts of WASHINGTON MACHINE WORKERS' UNION to bargain collectively with us. All our employees are free to become or remain members of this union, or any other labor organization.

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, 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, maintenance and shop employees, including all part time employees, and excluding office clericals and supervisors as defined in the Act.

CONLON BROS. MFG. Co.
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.