

In the Matter of LOUIS HORWITZ, ALBERT HORWITZ AND HENRY HORWITZ, CO-PARTNERS DOING BUSINESS AS HORTEx MFG. COMPANY and AMALGAMATED CLOTHING WORKERS OF AMERICA

*Case No. 16-C-1136.—Decided August 13, 1945*

*Mr. Lewis Moore*, for the Board.

*Fryer and Milstead*, by *Mr. Coyne Milstead*, of El Paso, Tex., for the respondents.

*Mr. E. B. Elfers*, of El Paso, Tex., for the Association.

*Mr. Ben Grodsky*, of counsel to the Board.

## DECISION

AND

## ORDER

### STATEMENT OF THE CASE

Upon a charge duly filed on October 14, 1944, by Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, herein called the Amalgamated, the National Labor Relations Board, herein called the Board, by the Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint, dated January 12, 1945, against Louis Horwitz, Albert Horwitz and Henry Horwitz, co-partners doing business as Hortex Mfg. Company, El Paso, Texas, herein called the respondents, alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing thereon, were duly served upon the respondents and the Amalgamated.

With respect to the unfair labor practices, the complaint alleged in substance: (1) that from about June 1, 1944, the respondents have assisted, dominated, contributed support to, and interfered with the administration of, Employees Benefit Association of Hortex Mfg. Company,<sup>1</sup> herein called the Association; (2) that during the same period, the respondents urged and persuaded their employees to join

<sup>1</sup> Erroneously referred to in the complaint as "Employees Benefit Association."

as a general partnership, having their principal office and place of business in El Paso, Texas. The respondents normally manufacture, sell, and distribute boys' sportswear, but for the past 2 years, approximately one-third or one-half of the respondents' entire operation has been devoted to the manufacture of combat trousers for the armed forces of the United States. The principal raw materials used are cotton cloth, cotton thread, and buttons. During the 6 months preceding the month of October 1944, the respondents purchased raw material valued at about \$200,000, approximately all of which was obtained from points outside of Texas. During the same period, the respondents sold and distributed finished goods valued at about \$400,000, of which approximately 80 percent was shipped to points outside of Texas.

The respondents concede, for the purposes of this proceeding, that they are engaged in commerce, within the meaning of the National Labor Relations Act.<sup>3</sup>

## II. THE ORGANIZATIONS INVOLVED

Amalgamated Clothing Workers of America is a labor organization affiliated with the Congress of Industrial Organizations. Employees Benefit Association of Hortex Mfg. Company is an unaffiliated labor organization, duly incorporated under the laws of the State of Texas. Both of these organizations admit to membership employees of the respondents.

## III. THE UNFAIR LABOR PRACTICES

### *Interference, restraint, and coercion; formation of the Association*

#### 1. Introduction

There is no record of union activity in the respondents' plant prior to 1942, when a few A. F. of L. circulars were distributed at the plant, without any further attempt to interest the employees in any particular local. In 1943, a few Amalgamated circulars were also distributed at the plant, but not until March 1944 did the Amalgamated make any real effort to organize the plant. At that time, Ceferino Anchondo, a local Amalgamated organizer, distributed circulars and authorization cards on several occasions to the respondents' employees as they entered or left the plant. As a result of this activity and visits to the homes of some employees, he secured about 60 members out of approximately 400 employees in the plant. On about June 15, Anchondo left El Paso for employment elsewhere and the campaign was continued by Organizer Efren Acosta, who obtained approximately 60 additional members. As indicated below, the Amalgamated's further

<sup>3</sup> The foregoing facts were stipulated by the parties.

and assist the Association; and (3) that by the aforesaid acts, the respondents have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

On January 18, 1945, the respondents filed their answer, admitting certain allegations of the complaint in respect to the character of their business, but denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at El Paso, Texas, on January 25, 26, and 29, 1945, before W. P. Webb, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondents, and the Association were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the beginning of the hearing, counsel for the Association submitted a written motion to intervene, which was granted by the Trial Examiner without objection. Pursuant to a timely and meritorious application by the respondents, the Trial Examiner, by order dated February 3, 1945, authorized the taking of the deposition of Louis Horwitz and made the deposition so taken a part of the record herein. During the course of the hearing the Trial Examiner made rulings on other motions and on objections to the admission of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds no prejudicial error. The rulings are hereby affirmed.

On March 27, 1945, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon all the parties, in which he found that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act. He recommended that the respondents cease and desist therefrom and take certain affirmative action.

Thereafter, the respondents duly filed exceptions to the Intermediate Report and a supporting brief. No request for oral argument before the Board at Washington, D. C., was made by any of the parties, and none was had.

The Board has considered the Intermediate Report, the respondents' exceptions and brief, and the entire record in the case, and, insofar as the exceptions are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

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

## FINDINGS OF FACT

### I. THE BUSINESS OF THE RESPONDENTS

The respondents, Louis Horwitz, Albert Horwitz, and Henry Horwitz, co-partners,<sup>2</sup> doing business as Hortex Mfg. Company, operate

<sup>2</sup> Albert and Henry Horwitz, sons of Louis Horwitz, are not active in the business. Both are in the armed forces.

efforts to organize these employees were impaired by the advent of the Association.

## 2. The formation and domination of the Association <sup>4</sup>

In the latter part of May or the first part of June 1944, employee Samuel Diaz, a gang leader in the packing and shipping department <sup>5</sup> which was located in the basement of the plant, undertook to get the employees interested in what he termed, "a kind of Company union" for the purpose of consolidating the social activities of the employees. He discussed this plan with Francisca de la Pena, a supervisor on the civilian "line": <sup>6</sup> Transito Alarcon, a pay-roll and personnel clerk; Adalberto Santaella, a cutter; Mauro Cortez, a shipping clerk for Government goods; and two machine operators, Aurora Barraza and Asuncion Amera. The idea was favorably received by these employees, and they formed themselves into a self-appointed committee of seven to develop the organization. The committee decided to enlarge the scope of the proposed organization as originally outlined by Diaz, and each member of the committee was requested to submit suggestions. The committee held its meetings in the shipping room of the plant or in another part of the plant basement. It was decided that the main purposes of the organization would be to arrange social functions; operate a savings and loan fund; arrange sick benefits; negotiate with the respondents for higher wages, and handle employee grievances with the respondents. Diaz told Floorlady Argentina Chavez <sup>7</sup> about the aims and purposes of the organization; however, she did not become a member of the committee, and attended only one of the committee meetings.

Diaz had two or three conversations with Louis Horwitz, senior partner of the respondents, in respect to the formation of the organization. Horwitz usually visited the shipping department several times a day. On one of these occasions, Diaz told him about the scheme to form an organization in the plant, its aims and objects, and

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<sup>4</sup> The findings of fact under this caption are based upon unrefuted evidence of witnesses for the Board, the respondents, and the Association.

<sup>5</sup> At that time, there were four other employees in the packing and shipping department. As Diaz had worked in that department much longer than the others, he was a gang leader. He had no authority to hire or discharge or effectively recommend any change in the employment status of any employee. Like the Trial Examiner, we find that he was not a supervisory employee.

<sup>6</sup> De la Pena was first a seamstress in the plant at \$18 a week. In June 1944, she was promoted to supervisor at \$35 a week straight salary. She inspects and reports on the work of the employees in that department. The 24 employees working under her were paid on an hourly basis. De la Pena is under the direct supervision of Harry Agee, superintendent of the civilian "line." That part of the plant engaged in the manufacture of civilian goods is called the civilian "line" and the other, the Government "line." We find that de la Pena was a supervisory employee, that in the minds of the employees she was reasonably identified with management, and that the respondents are responsible for her activities in matters pertaining to labor relations.

<sup>7</sup> The respondents admitted that Argentina Chavez was a supervisory employee.

gave him the names of those on the committee. Horwitz said that it was "up to" Diaz, and he could not tell him what or what not to do. Later, Diaz received Horwitz's permission to talk to the other employees in regard to the organization, and to hold meetings in the shipping room. Diaz asked Horwitz about the legality of such an organization, and Horwitz advised him to see a lawyer. Horwitz recommended Harold Potash, the respondents' own attorney. Potash declined to represent them because he was the respondents' attorney, but recommended Attorney E. B. Elfers. Diaz told Horwitz that Potash would not handle the matter and that they wanted to see Elfers. Horwitz gave them permission to leave their work for this purpose. They called on Elfers and he agreed to represent them. The committee then returned to the plant and worked until quitting time. They were away from work about 40 minutes. No deduction was made from their wages for the time lost from work. They were employed on an hourly basis.

Prior to consulting the attorneys, the committee had drawn up a written prospectus concerning the proposed organization,<sup>8</sup> stating that one of its several purposes was "To represent the employees in dealing with the employer on such matters as vacations, recreation, wages and salaries to the employees, obtaining proper bonuses for over production and the selection of proper foremen and chairladies." The document was typed by Alarcon in the respondents' office and on the respondents' paper, at no expense to the committee. A copy of the prospectus was given to Elfers.

Thereafter, with the knowledge and consent of the respondents, the committee began to hold daily membership meetings in the basement of the plant. About 6 such meetings were held, and they were so arranged that the employees on both the day and night shifts could attend in groups. The meetings usually lasted from 30 to 45 minutes, and no deductions were made from the pay of any employees for the time lost in attending these meetings.<sup>9</sup> The prospectus, which was in both English and Spanish, was read and discussed at these meetings.<sup>10</sup> Supervisor Francisca de la Pena attended 1 of these meetings with the employees on her "line." During the intervals between the meetings, and after the last meeting had been held, the prospectus was kept by Alarcon in the office. On various occasions, the employees were solicited in the plant during working hours to sign the prospectus, and some signed it in the office. About 342 employees signed the prospectus,

<sup>8</sup> In the prospectus, Supervisor de la Pena was proposed as one of the organization's first officers.

<sup>9</sup> The record shows that some of the employees lost about one-half hour each from work on account of attending these meetings. They were all paid on an hourly basis.

<sup>10</sup> According to Alarcon, at one of the meetings, an employee asked her if she could belong to both the C. I. O. and the Association at the same time, and she told her that it was best for the employees just to belong to the Association. Diaz and Santaella testified that they told some of the employees that they could join both organizations if they so desired.

as indicative of their willingness "to join the Association [and] to participate therein," including the following supervisory employees: Harry L. Agee, superintendent of the civilian "line"; Louis Carini, superintendent of the Government "line"; Ralph Caskey, office manager; and Argentina Chavez, floorlady.<sup>11</sup> None of these supervisory employees actually became a member of the Association, and none attended the meetings of the Association except Argentina Chavez, as related above.

In August the committee decided to elect temporary officers for the Association. About 500 ballots containing the names of the 7 members of the committee were prepared and distributed to the employees by Alarcon. The respondents' paper and mimeograph machine were used in the preparation of the ballots without expense to the committee. The employees were not given an opportunity to select their own candidates, but were required to vote for members of the committee only. After the employees had marked their ballots, they were turned in to Alarcon at the plant office, where they were counted and tabulated in the office by Diaz, Alarcon, and Mrs. Blaugrund, a typist, in the presence of Caskey, the office manager. Diaz was elected president of the Association; Santaella, vice president; Cortez, secretary; and Alarcon, treasurer. The election was held in the plant with the knowledge and consent of the respondents.

Pursuant to a decision to incorporate the Association, the articles of incorporation<sup>12</sup> and application for a charter which had been prepared by Attorney Elfers, were signed on August 1, by Santaella, Supervisor de la Pena, and Alarcon, and submitted to the Secretary of State for approval and issuance of a charter. After a public hearing in El Paso on October 18, which was compulsory under Texas law, the application was approved on October 23, by the Secretary of State, and the charter was granted. Employees Diaz, Alarcon, Santaella, and Cortez attended the public hearing on October 18, with the knowledge and consent of Horwitz. The hearing was held during working hours and each of these employees lost about 45 minutes from work. No deduction was made from their pay for this loss of time.

On or about November 15, the Association held a meeting of the employees at the Rainbow Club.<sup>13</sup> Notices of this meeting were passed out at the plant by Alarcon, Diaz, Santaella, and Cortez. Attorney Elfers attended the meeting and read and explained the charter. According to Diaz and Cortez, it was considered advisable to have an up-to-date roster of the Association's membership, as in October the respondents had reduced the number of their employees by 140 to 150

<sup>11</sup> The respondents admitted that these four employees were supervisory employees. The names of Agee, Carini, and Chavez were subsequently crossed off the prospectus

<sup>12</sup> As set forth in the articles, one of the Association's objectives was "Collective bargaining between the employees and the Hortex Mfg Company."

<sup>13</sup> This club or hall was rented by the Association for the meeting.

on account of the shortage of cotton goods. At this meeting, those present were given an opportunity to reaffirm their affiliation with the Association, or join it, if they had not previously signed the prospectus. About 104 signatures were thus secured. Subsequent to the meeting, the list was kept at the plant, and some 44 more signed it.

According to Diaz, after the Association's charter had been received, Attorney Elfers learned that charges had been filed with the Board by the Amalgamated, alleging that the Association was an illegal organization, and Elfers immediately informed the officers of the Association that no negotiations of any kind should be undertaken with the respondents until the legal status of the Association had been determined by the instant proceeding. Therefore the Association has never requested recognition by the respondents or attempted to bargain with the respondents in any manner. The Association has never adopted any constitution or bylaws and has not selected either a bargaining or grievance committee. The only committee that is functioning is a committee which was appointed at the Rainbow Club meeting to look after ill employees. The Association has no initiation fee, but collects weekly dues of 25 cents from each member. These dues are currently paid to Alarcon at the plant office. Other than a dance given during Christmas 1944, the Association has been inactive pending the termination of the instant proceeding. The respondents have never notified the Association that it could not continue to hold meetings in the plant if it so desired. However, no such meetings have been held in the plant since the receipt of the charter.

### 3. Conclusions

The facts set forth above clearly show that at the time the Amalgamated was conducting an organizational campaign among the respondents' employees, the Association was to a large degree formed on the respondents' time and property with their knowledge and apparent approval. The respondents contend, however, that no significance should be given to these circumstances in view of their established policy of permitting employees to use the company's time and property for personal purposes. We are not persuaded by this contention, especially in view of the fact that supervisory employees participated in the Association and thereby gave it the respondents' mark of approval. As indicated above, Supervisor de la Pena was one of the members of the Association's organizing committee and was a signatory to the application for a charter. She also attended the committee's organizational meeting and is presently a member of the Association. Moreover, four other supervisory employees signed the Association's prospectus. While these employees did not subsequently become members of the Association, their adherence to it at its critical

formative stage gave to the Association the prestige inherent in any manifestation of employer approval. The participation of management representatives in the formation of the Association is clearly prohibited by the Act. It precluded the Association from reflecting the free and uncoerced choice of the employees and acting as their bargaining representative.<sup>14</sup>

Under all the circumstances and upon the entire record, we find, like the Trial Examiner, that the respondents dominated and interfered with the formation and administration of the Association and contributed support to it, within the meaning of Section 8 (2) of the Act, and that thereby, by the conduct of its supervisory employees, and by the other acts of assistance related above, the respondents interfered with, restrained, and coerced its employees, within the meaning of Section 8 (1) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

The activities of the respondents set forth in Section III, above, occurring in connection with the operations of the respondents 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 respondents have engaged in and are engaging in unfair labor practices affecting commerce, we shall order that they cease and desist therefrom and take certain affirmative action to effectuate the policies of the Act.

We have found that the respondents dominated and interfered with the formation and administration of the Association and contributed support to it. We find that the effects and consequences of such domination, interference, and support render the Association incapable of serving the respondents' employees as a *bona fide* collective bargaining agency and that the recognition of the Association by the respondents as the bargaining representative of any of their employees would constitute an obstacle to the free exercise of the employees of the right to self-organization and to bargain collectively through representatives of their own choosing. Therefore, in order to effectuate the policies of the Act and to free the employees from the effects of the respondents' unfair labor practices, we shall order that the respondents refrain from

<sup>14</sup> *American Enka Corporation v N L R B*, 119 (2d) 60 (C C A. 4), enf'g 27 N. L. R. B. 1057. The respondents as well as the Association, also point to the lack of evidence that the respondent was hostile toward the Amalgamated. However, we do not regard this circumstance as significant in view of our finding that the respondents otherwise assisted the Association and participated in its formation.

recognizing the Association as the representative of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates, hours of employment, or other conditions of employment, and to completely disestablish the Association as such representative.

The maintenance of a company-dominated and supported organization presents a ready and effective means of obstructing self-organization of employees and their choice of their own representatives for the purpose of collective bargaining. The respondents' domination and interference with the Association, their contribution of support to it, and the activities of their supervisory employees, denied their employees the free opportunity to bargain collectively through representatives of their own choosing, and substantially deprived their employees of their right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, except in channels directed by the respondents. Because of the respondents' unlawful conduct and their underlying purpose, we are convinced and find that the unfair labor practices found are persuasively related to other unfair labor practices proscribed by the Act and that a danger of their commission in the future is to be anticipated from the course of the respondents' conduct in the past. The preventive purpose of the Act will be thwarted unless our order is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7, to prevent a recurrence of unfair labor practices, and thereby to minimize strife which burdens and obstructs commerce and thus effectuate the policies of the Act, we shall order the respondents to cease and desist from in any other manner infringing upon the rights guaranteed in Section 7 of the Act.

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

#### CONCLUSIONS OF LAW

1. Amalgamated Clothing Workers of America, affiliated with the Congress of Industrial Organizations, and Employees Benefit Association of Hortex Mfg. Company, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Employees Benefit Association of Hortex Mfg. Company and by contributing support to it, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

### ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Louis Horwitz, Albert Horwitz, and Henry Horwitz, co-partners doing business as Hortox Mfg. Company, El Paso, Texas, and their agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Employees Benefit Association of Hortox Mfg. Company, or with the formation and administration of any other labor organization, and from contributing support to Employees Benefit Association of Hortox Mfg. Company, or any other labor organization of their employees;

(b) In any other manner interfering with, restraining, or coercing their employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Amalgamated Clothing Workers of America or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Refrain from recognizing Employees Benefit Association of Hortox Mfg. Company as the representative of any of their employees for the purpose of dealing with the respondents concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Employees Benefit Association of Hortox Mfg. Company as such representative;

(b) Post at their plant at El Paso, Texas, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the respondents' representative, be posted by the respondents immediately upon receipt thereof, and maintained by them 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 respondents to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Sixteenth Region in writing, within ten (10) days from the date of this Order, what steps the respondents have 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 hereby disestablish Employees Benefit Association of Hortex Mfg. Company as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and we will not recognize it or any successor thereto for any of the above purposes.

We will not dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

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 Amalgamated Clothing Workers of America or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. All our employees are free to become or remain members of this union, or any other labor organization.

HORTEX MFG. COMPANY,

*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.