

In the Matter of WILSON ATHLETIC GOODS MFG. CO., INC. and  
TEXTILE WORKERS OF AMERICA, C. I. O.

*Case No. 3-C-939.—Decided April 30, 1947*

*Mr. Philip Licari*, for the Board.

*Messrs. John L. Cockrill* and *Richard Winkler*, of Chicago, Ill.,  
for the respondent.

*Mr. John Wolski*, of Buffalo, N. Y., for the Union.

*Mr. Paul Bisgjer*, of counsel to the Board.

DECISION

AND

ORDER

On October 1, 1946, Trial Examiner Horace A. Ruckel 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. On April 1, 1947, the Board heard oral argument at Washington, D. C., in which the respondent participated; the Union did not appear.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, the contentions advanced at oral argument before the Board, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications and additions noted below.

The respondent has admittedly refused to bargain with the Union, the duly certified bargaining representative of the respondent's employees in an appropriate unit described in the Intermediate Report. It urges, however, as a defense, that notwithstanding the Union's certification issued in the prior representation proceeding as a result of a Board-conducted secret election, the Union never represented a "true majority" because of its fraudulent and illegal preelection campaign. In support of its defense, the respondent offered to adduce at the hear-

ing evidence that the Union (1) promised the employees, if selected as their bargaining representative, to obtain for them a 30-cent hourly wage increase in disregard of lawful wage patterns established by the Wage Stabilization Board; (2) misrepresented to the employees that they were required to sign union membership cards to be eligible to vote in the Board election; and (3) represented that it was necessary to sign a second card in order to acquire membership in the Union. The Trial Examiner, on Board counsel's objection, excluded the proffered evidence, with certain exceptions, as insufficient to invalidate the certification. These rulings, the respondent argues, deprived it of a fair hearing in contravention of due process guaranteed by the Constitution. In its exceptions and brief, the respondent requested the Board to dismiss the complaint or, in the alternative, to remand the case for further hearing to receive the proffered evidence.<sup>1</sup>

We have considered the respondent's contentions and offer of proof, and find them to be without merit. Assuming that the respondent were able to prove all the facts which it specified in its offer of proof, these facts do not suffice to nullify the election results. The Union's so-called promise of a 30-cent wage increase,<sup>2</sup> even though such an increase might have been in excess of the then existing wage stabilization rates, constituted, at most, campaign propaganda which did not tend to impair the employees' freedom to select a bargaining representative.<sup>3</sup> Moreover, as the Board stated in the *Maywood Hosiery* case,<sup>4</sup> "Absent violence, we have never undertaken to police union organization or union campaigns, to weigh the truth or falsehood of official union utterances, or to curb the enthusiastic efforts of employee adherents to the union cause in winning others to their convictions."

<sup>1</sup> After oral argument before the Board, the respondent sent the Board a letter in which it proposed additionally that the Board "revive the [representation] case and arrange for a new election" to redetermine representatives. For the reasons hereinafter set forth, we reject this proposal.

<sup>2</sup> This so-called promise appears to be nothing more than a proposal to negotiate such a raise. In fact, the union circular, which the respondent offered in evidence and which the Trial Examiner rejected, merely stated that "In one of your plants in Schenectady, we are negotiating for a 30-cent an hour increase. We could do the same in Buffalo [the plant involved herein] if you vote for the C I O."

<sup>3</sup> *Matter of Curtiss-Wright Corporation*, 43 N. L. R. B. 795.

The record discloses that at least the Union's preelection campaign promise of a 30-cent wage increase came to the respondent's knowledge before the election. Thus, Plant Manager Cook testified that a day before the election he found a union circular purporting to contain such a promise (see footnote 2, *supra*). Consequently, having failed to make timely objection to the results of the election in the representation proceeding on this ground, the respondent, under the Board's settled practice, was thereby precluded from raising the question in this complaint proceeding. *Matter of Pittsburgh Plate Glass Company*, 15 N. L. R. B. 515, *enfd* 113 F. (2d) 698 (C. C. A. 8), *aff'd* 313 U. S. 146; *Matter of West Kentucky Coal Company*, 57 N. L. R. B. 89, *enfd* as modified 152 F. (2d) 198 (C. C. A. 6), *cert. den.* June 10, 1946; *Matter of Allis-Chalmers Manufacturing Company*, 70 N. L. R. B. 348. The respondent asserts, however, that after the election employees voluntarily informed it of the other two representations in question.

<sup>4</sup> *Matter of Maywood Hosiery Mills, Inc.*, 64 N. L. R. B. 146, 150. See also *Matter of Corn Products Refining Company*, 58 N. L. R. B. 1441.

Nor are we persuaded, under the circumstances of this case, that the Union's alleged misrepresentation that employees were required to sign a union membership card in order to be eligible to vote affected or prejudiced the outcome of the election.<sup>5</sup> Significantly, no assertion is made that the election was not attended by the customary procedural safeguards and certainly concerning eligibility; in fact, neither at the hearing nor in its brief did the respondent offer to show that any employee actually refrained from voting because of the misrepresentation in question. The Tally of Ballots discloses that out of 57 eligible voters, 51 cast valid ballots, of which 32 were for the Union, 19 against, and none was challenged. Consequently, even if it be assumed that the remaining 6 employees, who failed to vote, abstained from voting because of a misapprehension as to eligibility,<sup>6</sup> and that they would have cast ballots against the Union if they had voted, the Union nevertheless polled a majority.<sup>7</sup> Moreover, we find, contrary to the respondent's contention, that the misrepresentation was not of such a nature as to prevent a free choice of a bargaining agent by the employees who participated in the election, and that the ballots, cast in secrecy, reflected their true desires.

Finally, we are unable to perceive in what manner the Union's alleged representation that employees were required to sign a second membership card in order to become union members interfered with their freedom to select a bargaining representative by secret ballot.

Inasmuch as the excluded evidence is legally insufficient to nullify the results of the election which, we find, establishes the Union's majority during the period of the respondent's refusal to bargain, the Trial Examiner's failure to receive it was neither prejudicial to the respondent nor a denial of due process. Accordingly, we reaffirm our certification in the representation proceeding<sup>8</sup> and find, as did the Trial Examiner, that the respondent refused to bargain collectively with the Union, within the meaning of Section 8 (5) of the Act.

### ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations

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<sup>5</sup> Employee Vogel, a witness called by the respondent, denied that it was his "understanding" that he had to sign a union card to be eligible to vote, in fact, he testified, he believed he signed a card after the election. However, contrary to the implication in the Intermediate Report, we do not infer, for the purposes of decision, that the respondent, if permitted, would not have produced other witnesses to testify to the alleged representation in question.

<sup>6</sup> According to the stricken testimony of the respondent's witness, Holmes, a visiting superintendent of one of the respondent's other plants, he advised three or four employees before the election that they were eligible to vote without signing a union membership card.

<sup>7</sup> *Matter of The Lennox Furnace Company*, 64 N. L. R. B 669

Board hereby orders that the respondent, Wilson Athletic Goods Mfg. Co., Inc., Buffalo, New York, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, C. I. O., as the exclusive representative of all production and maintenance employees at the respondent's Buffalo, New York, plant, including watchmen, inspectors, shipping and stockroom clerks, but excluding office and clerical employees, time-study clerk, plant superintendent, production foreman, chief inspector, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively to recommend such action;

(b) In any manner interfering with the efforts of Textile Workers Union of America, C. I. O., to bargain collectively with it, as the exclusive representative of its employees in the appropriate unit described above.

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

(a) Upon request, bargain collectively with Textile Workers Union of America, C. I. O., as the exclusive representative of all its employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant in Buffalo, New York, copies of the notice attached to the Intermediate Report marked "Appendix A."<sup>8</sup> Copies of such notice, to be furnished by the Regional Director for the Third 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 at least 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 such notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Third Region (Buffalo, New York) in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

<sup>8</sup> 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 decree of a Circuit Court of Appeals, there shall be inserted, before the words "A DECISION AND ORDER," the words "DECREE OF THE UNITED STATES CIRCUIT COURT OF APPEALS ENFORCING."

## INTERMEDIATE REPORT

*Mr. Philip Lucasi*, for the Board.

*Mr. John L. Cockrill*, of Chicago, Ill., for the respondent.

*Mr. John Wolski*, of Buffalo, N. Y., for the Union.

## STATEMENT OF THE CASE

Upon a charge filed July 15, 1946, by Textile Workers Union of America, C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Third Region (Buffalo, New York), issued its complaint dated July 30, 1946, against Wilson Athletic Goods Mfg Co, Inc, 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 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With respect to the unfair labor practices, the complaint alleged in substance that the respondent on or about April 15, 1946, and thereafter, failed and refused to bargain collectively with the Union although since March 22, 1946, the Union has been the exclusive bargaining representative of a majority of the respondent's employees within an appropriate unit.

On August 5, 1946, the respondent filed an answer admitting some of the allegations of the complaint, but denying that it had engaged in any unfair labor practices.

Pursuant to notice, a hearing was held on August 27 and 28, 1946, at Buffalo, New York, before Horace A. Ruckel, the undersigned Trial Examiner, duly appointed by the Chief Trial Examiner. The Board and the respondent were represented by counsel and participated in the hearing. The Union was represented by its regional manager. Full opportunity to be heard and to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded all parties.

At the conclusion of the hearing, the parties were advised that they might argue orally before the Trial Examiner, and might file briefs with the Trial Examiner within ten days from the close of the hearing. Counsel for the Board and for the respondent argued orally. No briefs were filed.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

Wilson Athletic Goods Mfg. Co., Inc., is a Delaware corporation. It is engaged, at its plant in Buffalo, New York, in the manufacture of golf bags. During the past 12 months the respondent, at its Buffalo plant, has purchased raw materials valued in excess of \$500,000, approximately 55 percent of which was purchased outside the State of New York. During the same period the respondent sold finished products valued in excess of \$500,000, of which approximately 85 percent was shipped outside the State of New York.

## II THE ORGANIZATION INVOLVED

Textile Workers Union of America is a labor organization admitting to membership employees of the respondent. It is affiliated with the Congress of Industrial Organizations.

## III THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

## 1. The appropriate unit

On March 4, 1946, the Board issued its decision and direction of election in a representation case,<sup>1</sup> finding that all production and maintenance employees of the respondent at its Buffalo plant, including watchmen, inspectors, shipping and stockroom clerks, but excluding office and clerical employees, time study clerk, plant superintendent, production foreman, chief inspectors, and all other supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

No contention was made at the hearing in the instant case that the unit as found by the Board in the representation case was inappropriate, and no evidence was adduced in support of any other unit. It is found that the above-described employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

## 2. Representation by the Union of a majority in the appropriate unit

On April 9, 1946, the Board, pursuant to an election conducted on March 22, 1946, among the employees in the appropriate unit, certified the Union as the exclusive representative of all the employees within the appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment. As discussed and disposed of below, the respondent contends that the Union does not represent a "true majority" of its employees.

## 3. The refusal to bargain

The facts are not in dispute. On April 15, 1946, John Wolski, manager of the Buffalo Regional Joint Board, of the Union, wrote the respondent requesting a conference to discuss the terms of a proposed contract, a copy of which he enclosed. The respondent did not reply to this letter. On at least two occasions thereafter Wolski talked to R. C. Cook, the respondent's plant manager, on the telephone, and requested a conference with a representative of the respondent and recognition of the Union as bargaining representative of the respondent's employees. Each time, Cook stated, in effect, that he would refer the matter to the respondent's Chicago office. The last of such telephone conversations between Wolski and Cook was about May 15. Not having heard from the respondent, the Union, in June, took a strike vote, and Commissioner Driver of the United States Conciliation Service was assigned to the case. On June 25, 1946, in response to several telephone calls by Driver, the respondent wrote Driver refusing to meet with him to discuss the issues posed by the strike notice on the grounds that the Union did not represent a "true majority" of the respondent's employees. This refusal was communicated to the Union.

On July 23, 1946, after the filing of the charge in the instant case, the Regional Board wrote the respondent with respect thereto. The respondent replied on July 23 stating that it had not met with representatives of the Union because the Union had used "unfair" methods in its pre-election campaign, and contending

<sup>1</sup>Matter of *Wilson Athletic Goods Manufacturing Company and Textile Workers Union of America, C. I. O.*, 66 N. L. R. B. 263

that the Union did not represent a "true" majority of employees at the Buffalo plant, as evidenced by declarations of several employees to officers of the respondent, made subsequent to the election, that they did not wish to be represented by the Union.

The reasons set forth in the respondent's letter to the Board for not meeting with representatives of the Union, constituted, with minor embellishments, the respondent's sole defense to the complaint. For example, the respondent offered in evidence as an exhibit a circular distributed by the Union prior to the election stating, in effect, that if it won the election, it would attempt to negotiate for a 30-cent an hour wage increase. The respondent contends that this promise was illegal, and sufficient to excuse it from bargaining with the Union, because the maximum increase possible under a pattern set by the Wage Stabilization Board was 18½ cents an hour. The undersigned rejected the proffered exhibit. The respondent also attempted to show that several of its employees were misled by the Union into believing that it was necessary for them to sign some card other than one designating the Union as their bargaining representative before they could become full-fledged members of the Union, and that one employee believed that it was necessary for him to join the Union in order to vote in the election.<sup>2</sup> The undersigned sustained objections to most of such questions.

It would be difficult to discern the relevancy and sufficiency of the respondent's defense even were the Union relying for its proof of a majority on membership cards instead of, as here, on the result of an election. The Board has consistently held that when employees have expressed their considered opinions by a secret election which leaves no room for doubt as to their true desires, repudiation of their selection can be established only through the medium of an equally probative technique.<sup>3</sup> Even accepting the respondent's defense at its face value, the result of a Board election, in the absence of special circumstances not here shown, must be regarded as conclusive evidence of the employees' desires at the time of the election.<sup>4</sup>

The undersigned finds that on April 15, 1946, and at all times material thereafter, the respondent failed and refused to bargain collectively with the duly designated representative of a majority of its employees within an appropriate unit, thereby interfering with, restraining, and coercing their employees in the exercise of the 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 as 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 certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action which the undersigned finds will effectuate the policies of the Act.

<sup>2</sup> The employee in question, when called at a witness, was permitted over Board counsel's objections to testify that, in fact, he did vote in the election and was not asked to join the Union until after the election.

<sup>3</sup> *Matter of The Century Oxford Manufacturing Corporation*, 47 N L R B 835, enf'd 140 F. (2d) 541 (C C A 2), cert den 323 U. S 714; *Matter of Appalachian Electric Power Company*, 47 N L R B 821, enf'd as mod. 140 F. (2d) 217 (C. C A 4).

<sup>4</sup> Cf *Matter of Anderson Manufacturing Company*, 58 N L R B 1511

It has been found that the respondent has refused to bargain collectively with the Union as the representative of its employees in an appropriate unit. The undersigned will recommend that, upon request, the respondent bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit in respect to rates of pay, wages, hours, and other terms and conditions of employment.

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

#### CONCLUSIONS OF LAW

1. Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All production and maintenance employees of the respondent at its Buffalo, New York, plant, including watchmen, inspectors, shipping and stockroom clerks, but excluding office and clerical employees, time-study clerk, plant superintendent, production foreman, chief inspector, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Textile Workers Union of America was, on March 22, 1946, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

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

5. By the above acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

#### RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that Wilson Athletic Goods Mfg Co., Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America as the exclusive representative of all production and maintenance employees at the respondent's Buffalo, New York, plant, including watchmen, inspectors, shipping and stockroom clerks, but excluding office and clerical employees, time-study clerk, plant superintendent, production foreman, chief inspector, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action;

(b) In any manner interfering with the efforts of Textile Workers Union of America to bargain collectively with it

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

(a) Upon request, bargain collectively with Textile Workers Union of America as the exclusive representative of all production and maintenance employees employed at the respondent's Buffalo, New York, plant, including watchmen, inspectors, shipping and stockroom clerks, but excluding office and clerical employees, time study clerk, plant superintendent, production foreman, chief inspector, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a written, signed agreement;

(b) Post in its Buffalo, New York, plant, copies of the notice attached hereto and marked "Appendix A" Copies of said notice, to be furnished by the Regional Director for the Third Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof and be maintained by it for at least 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 such notices are not altered, defaced, or covered by any other material;

(c) File with the Regional Director for the Third Region within ten (10) days from the date of receipt of this Intermediate Report a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, 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.

HORACE A. RUCKEL,  
*Trial Examiner.*

Dated October 1, 1946.

“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 TEXTILE WORKERS UNION OF AMERICA, C I O, to bargain collectively with us.

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 and maintenance employees, including watchmen, inspectors, shipping and stockroom clerks, excluding office and clerical employees, time-study clerk, plant superintendent, production foreman, chief inspector, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action

WILSON ATHLETIC GOODS MFG. CO., INC,  
*Employer.*

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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