

In the Matter of A. J. SIRIS PRODUCTS CORPORATION OF VIRGINIA and
INTERNATIONAL LADIES' GARMENT WORKERS UNION, A. F. OF L.

Case No. 5-CA-198.—Decided June 7, 1950

DECISION AND ORDER

On January 25, 1950, Trial Examiner David London 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.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed.² The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, and the entire record in the case, and hereby adopts the findings, 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, as amended, the National Labor Relations Board hereby orders that the Respondent, A. J. Siris

¹ Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this proceeding to a three-member panel [Chairman Herzog and Members Houston and Styles].

² We find no merit in the Respondent's contention that the Trial Examiner's refusal to postpone the hearing in this case until after March 1, 1950, constituted prejudicial error. The Respondent was represented at the hearing by Mr. Selig Port. Although Mr. Port noted his appearance as being limited to a request for a "postponement of the case," he remained at the hearing until the taking of all testimony was completed. Indeed, during the course of the hearing he entered an objection to a motion by the General Counsel for an overnight continuance. Moreover, the only reason advanced by the Respondent for a continuance was the fact that of the two officers of the Respondent familiar with the case, one had just returned from a business trip, and one was preparing for such a trip. It was urged that these individuals had had insufficient time to prepare for this case. We note, however, that both individuals were in town at the time and that the complaint in this proceeding had issued about 2 months earlier. In these circumstances, we, like the Trial Examiner, find that there existed insufficient justification for a postponement. Cf. *Mission Oil Company*, 88 NLRB 743.

Products Corporation of Virginia, Newport News, Virginia, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union affiliations, activities, or sympathies, or those of their coworkers; threatening to close, or to move the operations of the plant should the employees join or retain membership in a labor organization or be successful in organizing the plant; and

(b) In any 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 International Ladies' Garment Workers Union, A. F. of L., or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

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

(a) Post at its plant in Newport News, Virginia, copies of the notice attached to the Intermediate Report and marked Appendix.² Copies of the notice, to be furnished by the Regional Director for the Fifth 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 said notices are not altered, defaced, or covered by any other material; and

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

INTERMEDIATE REPORT

Mr. Harold G. Biermann, for the General Counsel.

Schlesinger & Krinsky, of New York, N. Y., and *Mr. Selig Port*, of New York, N. Y., for the Respondent.¹

Mr. A. H. Saffr, of Baltimore, Md., for the Union.

² Said notice, however, shall be and it hereby is, amended by striking from the first paragraph thereof the words "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."

¹ Schlesinger & Kirby appeared for Respondent on its answer, but did not appear at the hearing.

STATEMENT OF THE CASE

Upon an amended charge filed on June 10, 1949, by International Ladies' Garment Workers Union, A. F. of L., herein called the Union, the General Counsel for the National Labor Relations Board,² by the Regional Director for the Fifth Region (Baltimore, Maryland), issued a complaint dated November 14, 1949, against A. J. Siris Products Corporation of Virginia, herein called the Respondent. The complaint alleged that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8, subsection (a) (1), and Section 2, subsections (6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act.

Copies of the complaint, amended charge, and notice of hearing were duly served.

With respect to the unfair labor practices, the complaint alleged, in substance, that during the period from or about November 19, 1948, and continuously thereafter to and including the date of the issuance of the complaint above described, the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act by: (a) Urging, persuading, and warning its employees by threats of reprisal or force or promise of benefit to refrain from assisting, becoming or remaining members of the Union or engaging in concerted activities for the purposes of collective bargaining or other mutual aid or protection; (b) questioning its employees concerning their membership in and activities on behalf of the Union; (c) keeping under surveillance the organizational activities of its employees and of the Union; (d) threatening to close down its plant should the Union succeed in its effort to organize the employees; (e) threatening its employees with loss of employment should they assist, become, or remain members of the Union; (f) urging and assisting its employees to withdraw from membership in the Union; (g) threatening to move its plant to a different location should the Union succeed in organizing its employees; (h) threatening to close its plant before it would deal with a union; (i) threatening to close down its plant should the Union win a scheduled Board election; (j) directing supervisory employees to attend union meetings and inform the Company as to employees in attendance there. Respondent's answer denied that it had committed the unfair labor practices alleged in the complaint.

Pursuant to notice, a hearing was held on January 4, 1950, at Norfolk, Virginia, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel was represented by counsel, the Respondent by Selig Port, its vice president and comptroller, and the Union by its representative. Though Port noted his appearance as being limited to a request for a "postponement of the case," he remained at the hearing until the taking of all testimony was completed and during the course thereof entered an objection to a motion for an overnight continuance by the General Counsel. Respondent's motion for a postponement of the hearing until "some time after March first" was predicated on Port's statement "that the two individuals who are familiar with the proceeding" were not present for the following reasons: Burt J. Siris (one of Respondent's officials) "returned unexpectedly a few days" prior to the hearing from a trip to Europe and "had not had a chance to review" the pending proceeding. Abner J. Siris, Respondent's president,³ though in

² The General Counsel and the attorney representing him at the hearing are referred to as the General Counsel. The National Labor Relations Board is referred to as the Board.

³ As appears from the verification of Respondent's answer.

New York at the time of the hearing, was then making preparation for a trip "absolutely essential for the business." Inquiry of the General Counsel disclosed that there would be no evidence offered by him involving Burt J. Siris, but that the conduct of Abner J. Siris would be the subject of testimony to be offered in support of some of the allegations of the complaint. There being, in my opinion, no proper showing why the hearing should be postponed, Respondent's motion for a continuance until after March 1, 1950, was denied. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. No evidence was introduced on behalf of Respondent, nor have briefs been received from any of the parties.

Upon the entire record in the case, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Respondent, a Virginia corporation, is engaged in the city of Newport News, Virginia, in the manufacture of powder puffs. It receives all of its raw materials from the A. J. Siris Corporation of New York, New York. After Respondent has processed the raw materials into finished products, the goods are shipped from Respondent's Virginia plant direct to the customers of the A. J. Siris Corporation of New York, throughout the United States. During 1948, Respondent received and processed raw material, consisting chiefly of cotton goods, thread, and paste valued in excess of \$500,000, virtually all of which came from outside the Commonwealth of Virginia. During the same period Respondent manufactured and shipped finished products with a sales value in excess of \$1,000,000, virtually all of which was shipped to points outside the Commonwealth of Virginia.⁴ Respondent's answer did not deny, and I find that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Ladies' Garment Workers Union, A. F. of L., is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

The Union began its campaign to organize Respondent's employees in the latter part of 1948. On January 21, 1949, claiming it represented a majority of Respondent's production employees, the Union filed a petition with the Board requesting that it be certified as representative of such employees for the purpose of collective bargaining under the Act. Pursuant thereto, the Regional Director on February 11 ordered that a hearing be held on said petition on February 24 at Baltimore, Maryland. The hearing was held as scheduled. Thereafter, the Board, on April 25 directed that an election be held to determine whether Respondent's production employees desired to be represented by the

⁴ The foregoing information was stipulated by Respondent in a representation proceeding, 5-RC-257, involving this Respondent, at a hearing conducted in Baltimore, Maryland, on February 24, 1949, of which I have taken judicial notice at the request of the General Counsel.

Union. On May 16, the Union filed a charge with the Board, charging that Respondent had violated Section 8 (a) (1) and (5) of the Act. At an election on June 29, participated in by Respondent's production employees, a majority of the votes cast therein were against representation by the Union.

During all times relevant, Abner J. Siris was the president of Respondent, Hyman Markowitz was its plant manager at Newport News, and Elva Barbera was a supervisor in said plant, having authority to responsibly direct other employees.

*B. Restraint, coercion, and interference*⁵

In the latter part of the fall of 1948, shortly after Vera L. Steele, while employed by Respondent, signed a union application blank, Barbera asked her if she had signed such an application, if she knew whether "any of the girls had signed" similar applications, and was instructed by Barbera, in the event Steele had signed such an application, to secure its return. On the day before the hearing in Baltimore, Barbera asked Steele and Pauline Ray, also employed by Respondent, if they were going to the hearing.

On or about February 27, after the hearing in Baltimore, Barbera told Steele that she, Barbera, "wished the girls would withdraw from the union because [they] would be hurt." At the same time, Barbera told her "that Mr. Siris would spend thousands of dollars before he would let the union come into the plant" and that "if the union came in . . . there would be padlocks put on the doors."

In early January 1949, Barbera asked Hazel L. Howell, a packer employed by Respondent, if "she went to the [union] meeting the night before."

On or about February 25, 1949, Barbera asked Lugenia Spikes, employed in Respondent's pasting department, whether she belonged to the Union and told her if she did, "to get out of it," that "Mr. Siris would pay thousands of dollars to keep the union out [and] would close the plant before he would have the union in there." Later, Barbera told her that if they had an election "the plant would be closed and [the employees] wouldn't have a job." At about the same time, Barbera told Howell that Mr. Siris would give a raise if he could get back their union application blanks and that Mr. Markowitz "would make arrangements for [them] to go to a notary and recall [their] cards."

In January 1949, A. J. Siris called a meeting attended by representatives of each of the seven departments. Working conditions were discussed pro and con and Siris promised the employees a "half-cent raise" per gross. On the following day, Markowitz called a meeting and advised the employees that he had heard from Mr. Siris and that the employees "could forget about the raise, that [Siris] had thought he was dealing with friends, but when he got back to New York he found out he wasn't, and that if this union talk wasn't shut up . . . that he was going to close the plant down."

On May 12 at about 2:45 p. m., Siris addressed all of the employees and told them "he would close the plant down before he would tolerate the union, that he had had troubles with the union in New York and he didn't intend to have the same troubles [there], that he would move his plant back to New York."

⁵ The facts found in this subsection are based on the uncontradicted, composite testimony of Hazel L. Howell, Vera L. Steele, Lugenia Spikes, and Pauline Ray.

Concluding Findings

On the facts above found, I conclude that by the following conduct Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act:

(1) Barbera's interrogation of Steele and Spikes concerning their union membership and that of other employees;

(2) Barbera's questioning of Howell as to whether the latter attended a union meeting in January 1949;

(3) Barbera's warning to Steele and Spikes, respectively, (a) that "the girls . . . would be hurt" unless they withdrew their union applications, and that "if the union came in . . . there would be padlocks put on the doors," and (b) that Siris would close the plant if the employees "had an election," and similarly, that he would close the plant rather than "have the union in there";

(4) Barbera's statement to Howell that Siris would grant a raise if he could get the employee's union application blanks back and that Markowitz would make arrangements for doing so;

(5) Markowitz' repetition of Siris' message that the employees "could forget about the raise" promised them the day before;

(6) Markowitz' threat that "if this union talk was not shut up that [Siris] was going to close this plant down";

(7) Siris' threat to the employees on May 12 that "he would close the plant down . . . and move [it] back to New York . . . before he would tolerate the union."

At this stage of our experience under the Act, I deem it unnecessary to cite Board or court authority to sustain the foregoing conclusions. The conduct last above found, in my opinion, clearly constitutes interference with, restraint, and coercion of Respondent's employees in the exercise of rights guaranteed them by Section 7 of the Act.

There remains for consideration Barbera's interrogation of Steele and Ray as to whether they were going to the hearing in Baltimore on February 24. Standing alone, one might well conclude that such an inquiry was posed for the legitimate purpose of enabling Barbera to plan her workload during the absence of Steele and Ray.⁶ However, Barbera's other violative conduct above found, occurring both before and after her interrogation of Steele and Ray, convinces me that her intent on the occasion in question was for the purpose of securing information concerning an activity of Respondent's employees for which Section 7 of the Act guarantees complete privacy.⁷ Accordingly, I find that by Barbera's questioning of Steele and Ray, under the circumstances found above, Respondent violated Section 8 (a) (1) 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,

⁶ Respondent, however, chose not to make Barbera available as a witness to shed light on the purpose of her question.

⁷ *Standard-Coosa-Thatcher Company*, 85 NLRB 1358.

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, I will recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. Because of the Respondent's unlawful conduct and its underlying purpose and tendency, I find that the unfair labor practices found are persuasively related to the other unfair labor practices proscribed and that danger of their commission in the future is to be anticipated from the course of the Respondent's conduct in the past.⁸ The preventive purpose of the Act will be thwarted unless my recommendations are consistent 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 industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, I will recommend that the Respondent cease and desist from in any manner infringing the rights guaranteed in Section 7 of the Act.⁹

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

CONCLUSIONS OF LAW

1. International Ladies' Garment Workers Union, A. F. of L., is a labor organization within the meaning of the Act.
2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
3. 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 above findings of fact and conclusions of law, I hereby recommend that the Respondent, A. J. Siris Products Corporation of Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union affiliations, activities, or sympathies, or those of their coworkers; threatening to close, or to move the operations of the plant should the employees join or retain membership in a labor organization or be successful in organizing the plant; and

(b) 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 International Ladies' Garment Workers Union, A. F. of L., or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of

⁸ *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426, 61 S. Ct. 693.

⁹ *William Spencer, d/b/a Alliance Rubber Company*, 76 NLRB 514, footnote 4.

collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Post at its plant in Newport News, Virginia, copies of the notice attached hereto and marked "Appendix." Copies of the notice, to be furnished by the Regional Director for the Fifth 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 said notices are not altered, defaced, or covered by any other material; and

(b) File with the Regional Director for the Fifth Region within twenty (20) days from the receipt of this Intermediate Report, a report in writing, setting forth in detail the manner and form in which the Respondent will comply with the foregoing recommendations.

It is further recommended that, unless the Respondent shall within twenty (20) days from the receipt of this Intermediate Report notify 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 203.46 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 or to any other part of the record or proceeding (including rulings upon all motions or objections) as is relied 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. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 25th day of January 1950.

DAVID LONDON,
Trial Examiner.

APPENDIX

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 interrogate our employees concerning their union affiliations, activities, or sympathies, or those of their coworkers; nor will we threaten to close or to move the operations of the plant should our employees join or retain membership in a labor organization, or be successful in organizing the plant.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist INTERNATIONAL LADIES' GARMENT WORKERS UNION, A. F. of L., or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

A. J. SIRIS PRODUCTS CORPORATION OF VIRGINIA,

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.