

recommended that Respondent, upon reasonable request, make available to the Board and its agents all records pertinent to an analysis of the amount due as back pay.

The unfair labor practices found reveal on the part of the Respondent such a fundamental antipathy to the objectives of the Act as to justify an inference that the commission of other unfair labor practices may be anticipated. The preventive purposes of the Act may be frustrated unless Respondent is required to take some affirmative action to dispel the threat. It will be recommended, therefore, that Respondent cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by the Act.

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

CONCLUSIONS OF LAW

1. Amalgamated Clothing Workers of America, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of the employees named above, the Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

3. All production and maintenance employees including factory clericals, record keepers, and other employees in the shipping department, warehouse employees, warehousemen, stockroom clerks, record keepers in the cutting department, bundle boys and mechanics in the sewing department, cleaners, janitors, and sweepers of Mac Smith Garment Company, Inc., at its shirt manufacturing plant in Gulfport, Mississippi, exclusive of foremen in the cutting department, foremen, assistant foremen, floorladies, and head mechanics in the sewing department, foremen and floorladies in the pressing department, floorladies in the boxing department, foremen in the shipping department, other supervisors, office-clerical employees, watchmen, and guards, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. Amalgamated Clothing Workers of America, C. I. O., was on June 15, 1949, and at all times since has been, the exclusive representative within the meaning of Section 9 (a) of the Act of all employees in the aforesaid unit for the purposes of collective bargaining.

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

[Recommended Order omitted from publication in this volume.]

AMERICAN TWINE & FABRIC CORPORATION *and* TEXTILE WORKERS UNION OF AMERICA, CIO. *Case No. 1-CA-912. December 29, 1951*

Decision and Order

On June 22, 1951, Trial Examiner Frederic B. Parkes, 2nd, issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair

97 NLRB No. 127.

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 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 Respondent's exceptions, and the entire record in the case, and hereby adopts the Trial Examiner's findings of fact, but, for the reasons stated below, rejects his conclusion that the Respondent violated the Act, and his recommendations which flow therefrom.

The sole violation alleged in the complaint in this case is a refusal by the Respondent on and after April 12, 1951, to bargain with the charging Union. On the facts disclosed by the record and fully set forth in the Intermediate Report the Board would, under ordinary circumstances, have found the violation as alleged, and issued the order recommended by the Trial Examiner.

In this case, however, the Union had been certified pursuant to a petition which was filed and investigated by the Board at a time when the CIO, with which the Union is affiliated, was not in compliance with the filing requirements of the Act, and when under the Supreme Court's decision in the *Highland Park* case,² the Board was without authority to conduct such investigation. For the reasons stated in the Board's decision in *The Advertiser* case,³ we find that the statute, as recently amended, precludes our issuing an order based upon the Respondent's "failure to honor" the certificate issued to the charging union. We are therefore compelled to dismiss the complaint herein.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein against the Respondent be, and it hereby is, dismissed.

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

² *N. L. R. B. v Highland Park Manufacturing Co.*, 341 U. S. 322.

³ *The Advertiser Company, Inc.*, 9 NLRB 604. See also *Reynolds & Manley Lumber Company, Inc.*, 97 NLRB 188.

Intermediate Report

STATEMENT OF THE CASE

Upon a charge duly filed by Textile Workers Union of America, CIO, herein called the Union, the General Counsel of the National Labor Relations Board,¹

¹ The General Counsel and his representative at the hearing are referred to as the General Counsel. The National Labor Relations Board is herein called the Board.

by the Regional Director of the First Region (Boston, Massachusetts) issued a complaint dated May 8, 1951, against American Twine & Fabric Corporation, 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, as amended, 61 Stat. 136, herein called the Act. Copies of the charge, complaint, and notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the Respondent had refused to bargain collectively with the Union as the exclusive bargaining representative of the Respondent's employees in an appropriate bargaining unit, although in an election conducted under the supervision of the Board's Regional Director a majority of the employees in the bargaining unit had designated and selected the Union as their representative for the purposes of collective bargaining.

The Respondent in its answer admitted certain allegations of the complaint, denied that it had engaged in the alleged unfair labor practices, and set forth certain affirmative defenses to the complaint's allegations, contending, in brief, that the proceedings of the Board in Case No. 1-RC-1170, an earlier and ancillary representation proceeding out of which the instant case arose, and the Board's disposition of the Respondent's objections to the election and challenges to votes cast, "are arbitrary, unreasonable, illegal and oppressive and have denied the respondent due process of law and the equal protection of the laws which is guaranteed to it under the Constitution of the United States."

Pursuant to notice, a hearing was held on May 28, 1951, at Dover, New Hampshire, before Frederic B. Parkes, 2nd, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel and the Union by an official representative. 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 hearing and in its answer, the Respondent urged that the complaint herein "is defective in that it has not been signed by any proper authorities, as appears by the copy filed with the respondent, and should be dismissed." The complaint was not signed by any official of the Board. Since the Board's Rules and Regulations do not provide that the complaint should be signed and since, in any event, the notice of hearing, to which the complaint was attached, was signed by the Regional Director, the undersigned finds the Respondent's contentions in this regard to be without merit.

Upon the conclusion of the hearing, the undersigned advised the parties that they might argue at that time before, and file briefs or proposed findings of fact and conclusions of law, or both, within 7 days from the close of the hearing, with the Trial Examiner. None of the parties argued orally and no briefs or proposed findings of fact and conclusions of law have been filed with the undersigned.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

American Twine & Fabric Corporation, a New Hampshire corporation with its principal office and place of business at Salmon Falls, New Hampshire, is engaged in the manufacture, sale, and distribution of seat covers and related products. During the past 12-month period, the Respondent purchased raw

materials valued in excess of \$100,000, of which more than 50 percent was shipped to the Respondent's plant from points outside the State of New Hampshire. During the same period, the Respondent manufactured finished products, such as seat covers and other paper fabric covers, valued in excess of \$100,000 and its sales were in excess of \$100,000, of which more than 50 percent was made and shipped to points outside the State of New Hampshire. The Respondent concedes it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Textile Workers Union of America, CIO, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Sequence of events; the representation proceeding*

Upon a petition for certification filed by the Union in Case No. 1-RC-1170, on August 17, 1949, and after hearing held thereon, the Board, on October 12, 1949, issued a Decision and Direction of Election in which it directed an election among the following employees of the Respondent whom the Board found constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production and maintenance employees, excluding executives, office and clerical employees, guards, watchmen, professional employees, and all supervisors. On November 4, 1949, an election by secret ballot was conducted under the supervision of the Regional Director for the First Region. The tally of ballots showed that of the 142 ballots cast, 70 were cast for the Union, 68 were cast against the Union, and 4 were challenged, and that, accordingly, the challenged ballots were sufficient in number to affect the results of the election. On November 9, 1949, the Respondent filed with the Board a "Protest of Election," urging that the election be declared null and void upon the following grounds: (1) The ballots challenged by the Respondent at the election might affect the result and (2) since the Union "threatened, coerced, intimidated, frightened, and influenced" employees eligible to vote in the election, the results of the election did not represent the untrammelled wishes of the employees.

Following an investigation, the Regional Director on December 23, 1949, issued his "Consolidated Report on Objections and Challenged Ballots," recommending that the Respondent's objections be overruled and that the challenges to the ballots of Louise Pelletier, Olive Stackpole, and Emma Smith be overruled and their ballots be opened and counted, and that the challenge to the ballot of Celina Gagnon be sustained. The Respondent duly filed exceptions to the Regional Director's report, excepting to those portions of the report which recommended that the Respondent's objections be overruled and that the challenged ballots of Pelletier and Stackpole be counted. On April 19, 1950, the Board directed that a hearing be held on the issues raised by the Respondent's objections and exceptions and directed that the hearing officer make findings and recommendations in respect to the issues.

On May 11, 19, and 25, 1950, a hearing was held before a hearing officer of the Board. On July 10, 1950, the hearing officer issued his report and recommendations, recommending that the objections to the election be overruled and that the challenge to the ballot of Pelletier be overruled and the ballot be counted but that the challenge to the ballot of Stackpole be sustained. In regard to the ballots of Smith and Gagnon, the hearing officer recommended that the Regional

Director's recommendation be affirmed, in the absence of exceptions thereto. Thereafter, the Respondent duly filed with the Board exceptions to the report of the hearing officer, excepting to the recommendations that the objections to the election be overruled and that the ballot of Pelletier be opened and counted.

On October 20, 1950, the Board issued its Supplemental Decision and Certification of Representatives in Case No. 1-RC-1170.² Therein, the Board affirmed the rulings of the hearing officer at the hearing, adopted his recommendation that the objections to the election be overruled, and in the absence of exceptions to his recommendations as to the challenged ballots of Smith, Gagnon, and Stackpole, adopted his recommendations in regard to them. However, the Board overruled his recommendation in regard to the ballot of Pelletier and sustained the challenge to her ballot. Accordingly, the challenges were sustained as to the ballots of Pelletier, Stackpole, and Gagnon, but were overruled as to Smith. Since Smith's ballot could not affect the result of the election, the Board did not order it to be counted. As a result of the determination of the challenges, the tally of ballots revealed that a majority of the valid votes had been cast for the Union and the Board, accordingly, certified the Union as the statutory representative of the employees in the appropriate unit.

About November 30, 1950, the Respondent filed a complaint in the United States District Court for the District of New Hampshire, requesting that the Union be temporarily enjoined and restrained from the exercise of any rights acquired under the decision and certification by the Board and that the Court review the decisions and entire proceedings of the Board in Case No. 1-RC-1170. Thereafter, the Union filed a motion to dismiss the Respondent's complaint. Following a hearing on the motion to dismiss, the Judge of the United States District Court for the District of New Hampshire filed on March 21, 1951, his Rescript and Order, granting the Union's motion to dismiss the Respondent's complaint.

On April 3, 1951, the Union sent the Respondent the following letter:

This is to advise you that Textile Workers Union of America, CIO, is hereby making formal demands upon the American Twine and Fabric Corporation to sit down with the Textile Workers Union of America, CIO, certified bargaining agent for all employees of your company and discuss the matter of wages, hours and other conditions of work in accordance with the collective bargaining authority vested in our union by the National Labor Relations Board.

May I suggest that conferences on this matter begin Thursday, April 12, 1951 at 10:00 a. m. at the offices of your company, or any other suitable place in Dover, New Hampshire.

An early reply to this request will be appreciated.

In reply thereto, counsel for the Respondent sent the following letter, dated April 12, 1951:

Your letter of April 3rd addressed to American Twine, requesting a conference on April 12, 1951, to discuss the matter of wages, hours and other conditions of work in accordance with the collective bargaining authority vested in your union by the National Labor Relations Board, has been referred to us for attention as we are counsel for the American Twine & Fabric Corp.

Please be advised that the American Twine & Fabric Corp. does not recognize any rights which you claim as certified bargaining agent for the production employees of the American Twine & Fabric Corp, as a result of the election held on November 4, 1949, on the ground that the election was unfair,

² *American Twine & Fabric Corporation*, 91 NLRB No. 168.

illegal and oppressive, and because of threats, coercion and intimidation exercised by certain representatives of Textile Workers Union of America upon certain employees of the company.

In accordance with the decision of the U. S. District Court, Judge Aloysius J. Connor, under date of March 21, 1951, "if and when a final order is issued as authorized by the terms of Sub-section (c) of Section 10, the right to judicial review of the entire record thereupon accrues to the plaintiff as provided in Sub-section (f)."

The American Twine and Fabric Corporation intends to avail itself of its right to a judicial review of the entire record in accordance with the procedure outlined in Judge Connor's decision.

B. Contentions of the Respondent

In its answer, the Respondent contends that the election held on November 4, 1949, should be set aside for the same reasons it relied upon in its initial protest to the election. In addition, the Respondent makes the following contentions in its answer in regard to the representation proceeding:

14. That the Findings of Fact and Rulings of Law made by the Hearing Officer after the hearing on the issues presented by the respondent's protest of the election, which Findings and Rulings were approved by the National Labor Relations Board, are not sustained by the evidence and by the law and are arbitrary, unreasonable, illegal and oppressive.

15. That the Rulings made by the Hearing Officer during the progress of the hearing with regard to the admission and exclusion of evidence, which Rulings were objected to by the respondent, and subsequently approved by the National Labor Relations Board, are arbitrary and illegal; that the Ruling of the Hearing Officer, which was approved by the National Labor Relations Board, permitting unfair and prejudicial argument by counsel for the Union, was arbitrary and contrary to law and should not have been sustained; that by reason of the aforesaid Rulings made during the conduct of the hearing by the Hearing Officer, and subsequently approved by the National Labor Relations Board, the respondent was not given a fair hearing and has been deprived of its rights in an arbitrary and illegal manner.

16. That the aforesaid Rulings, Report and Recommendations of the Hearing Officer and the "Supplemental Decision and Certification of Representatives" of the National Labor Relations Board based thereon, are arbitrary, unreasonable, illegal and oppressive and have denied the respondent due process of law and the equal protection of the laws which is guaranteed to it under the Constitution of the United States.

C. Conclusions as to the appropriate unit, the majority status of the Union, and the refusal to bargain

At the hearing in the instant proceeding, the Respondent offered no additional evidence in support of its contentions as to the validity of the election. Accordingly the Respondent's entire case is based on the record made in the representation proceeding. Since the Respondent's contentions and arguments in that proceeding have been fully considered and disposed of by the Board, the undersigned is bound by the Board's rulings therein.

In view of the foregoing and upon the entire record, the undersigned finds that (1) all production and maintenance employees of the Respondent, excluding executives, office and clerical employees, guards, watchmen, professional employ-

ees, and all supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act; (2) on and at all times after October 20, 1950, the Union was and now is, by virtue of Section 9 (a) of the Act, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment; (3) on April 12, 1951, and at all times thereafter, the Respondent refused to recognize or bargain with the Union as the duly designated representative of its employees in an appropriate unit in violation of Section 8 (a) (1) and (5) 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

Since it has been 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 designed to effectuate the policies of the Act. Having found that the Respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, the undersigned will recommend that the Respondent upon request bargain collectively with the Union.

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, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
 2. All production and maintenance employees of the Respondent, excluding executives, office and clerical employees, guards, watchmen, professional employees, and all supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.
 3. On October 20, 1950, Textile Workers Union of America, CIO, was, at all times since has been, and now is, the representative of a majority of the Respondent's employees in the appropriate unit described above for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.
 4. By refusing on April 12, 1951, and at all times thereafter, to bargain collectively with Textile Workers Union of America, CIO, as the exclusive representative of all its 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 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.
 6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.
- [Recommended Order omitted from publication in this volume.]

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 engage in any acts in any manner interfering with the efforts of TEXTILE WORKERS UNION OF AMERICA, CIO, to negotiate for or represent the employees in the bargaining unit described below.

WE WILL bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described below with respect to wages, rates of pay, hours of employment and other conditions of employment and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our production and maintenance employees, excluding executives, office and clerical employees, guards, watchmen, professional employees, and all supervisors.

AMERICAN TWINE & FABRIC CORPORATION,
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.

MORRISON MILLING COMPANY and UNITED PACKINGHOUSE WORKERS OF AMERICA, C. I. O. *Case No. 16-CA-230. December 29, 1951*

Decision and Order

On March 29, 1951, Trial Examiner Max Goldman 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. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions thereto and the entire record in the case, and, for the reasons set forth below, hereby reverses the Trial Examiner in his holding that the Respondent violated Section 8 (a) (5) and (1) of the Act.

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Murdock].