GEIGY COMPANY, INC. *and* GENERAL TEAMSTERS UNION, LOCAL 431, AFL. *Case No. 20–CA–605. June 20, 1952*

Decision and Order

On December 27, 1951, Trial Examiner Wallace E. Royster issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief. The Respondent also filed a motion to reopen the record and make offer of proof. This motion is denied for reasons set forth below.

The Board [1] 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 and brief, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions: [2]

1. The Trial Examiner found, and we agree, that the Respondent on July 2, 1951, through its foreman and resident representative, Kauffman, unlawfully refused to bargain with the Union, in violation of Section 8 (a) (5) and (1) of the Act.

The Respondent contends that Kauffman's refusal to bargain on that date was based on a good faith doubt as to the Union's majority status. However, the events of July 2 demonstrate that Kauffman's entire course of conduct on that day was motivated solely by a rejection of the principle of collective bargaining and by a desire to gain time in which to undermine the Union. Thus, as the Trial Examiner found, when Kauffman learned of the Union's organizational activities, he lost no time [3] in calling the employees together and in warning them that adherence to the Union would probably prevent the restoration of overtime and would probably result in a drastic reduction of their annual work period. Moreover, when the employees indicated to Kauffman that they would abandon the Union if overtime was restored, he promised that he would do his best to secure the reinstatement of overtime. Like the Trial Examiner, we find that these threats

[1] Pursuant to 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 Styles and Peterson].

[2] We find that Respondent's operations affect commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction over its operations.

[3] The Union had been designated by a majority of the employees on June 29, a Friday. Kauffman testified that he first learned of the employees' adherence to the Union from some of the employees who returned to the plant on June 29, after working hours. The meeting with the employees was called on the first work day thereafter, July 2.

of reprisal and promises of benefit violated Section 8 (a) (1) of the Act.

About an hour after this meeting, representatives of the Union approached Kauffman and presented contract proposals, stating that they represented the employees. Kauffman, however, refused to enter into negotiations, asserting that he did not believe that the Union *any longer* represented the employees.

When the union representatives continued to press their contract demands, Kauffman countered with a suggestion that the Union representatives meet with the employees. Such a meeting was promptly held, and Kauffman, who participated therein over the Union's objection, reiterated at this second meeting the substance of his earlier promises and threats. At the close of the meeting, the employees took a vote in which a majority voted against the Union.

In view of the foregoing circumstances, and upon the entire record, we find that Kauffman's failure and refusal to recognize and deal with the Union on July 2 was not motivated by a good faith doubt as to the Union's majority status, but was an integral part of a deliberate plan to circumvent the statutory obligation to recognize and bargain with the duly designated representative. It is clear that Kauffman thereby hoped to, and did, gain time to complete the task he had set himself of destroying the Union's majority status. We find, therefore, that Respondent's conduct on July 2, 1951, constituted a violation of Section 8 (a) (5) and (1) of the Act.[4]

2. The Respondent contends that the authorization cards signed by the employees on June 29, designating the Union as their bargaining representative, should not be given any weight by the Board as proof of the Union's majority status, alleging that such signatures were obtained by representations that the cards did not bind the employees to join the Union or to pay dues or initiation fees.[5] In support of this contention, the Respondent cites the testimony of one of the employees at the hearing.[6] However, the same employee testified, without contradiction, that the union organizer made it clear to the employees when they signed the cards that they were thereby designating the Union to bargain for them with the Respondent, and the cards contained such an express designation. We find, therefore, that the cards, whether or not binding upon the employees as applications for membership in the Union, constituted valid designations of the Union as

[4] *Everett Van Kleeck & Company, Inc.*, 88 NLRB 785, enfd. 189 F. 2d 516 (C. A. 2); *Joy Silk Mills*, 85 NLRB 1263, enfd. 185 F. 2d 732 (C. A. D. C.); *Dismuke Tire and Rubber Company, Inc.*, 93 NLRB 479, *Reeder Motor Co.*, 96 NLRB 831.

[5] These cards were in form applications for membership in the Union, specifying the amount of initiation fees and dues, but containing, in addition, language expressly designating the Union as the bargaining agent of the employees.

[6] There is no evidence, however, that any demand was in fact made upon the employees for payment of initiation fees or dues.

the bargaining representative of the employees. That is all that the Act requires.[7]

3. Respondent filed with the Board a motion to reopen the record to take further evidence concerning (a) an alleged turnover in the personnel of the bargaining unit since June 29, 1951, and (b) Respondent's readiness at all times to consent to a Board-conducted election.

(a) Where an employer has, as in the case at bar, unlawfully refused to bargain with a union which, at the time of such refusal, represented a majority of the employees, the Board finds it necessary in order to effectuate the policies of the Act to require the employer to bargain with that union, despite its subsequent failure to retain its majority.[8] And this is so, regardless of the size of the turnover in the employee complement since the refusal to bargain.[9] Consequently, proof that there has been such turnover in the instant case could not affect our determination that the issuance of an order requiring the Respondent to bargain with the Union is necessary to remedy its violation of Section 8 (a) (5).

(b) Proof that the Respondent was willing on July 2, 1951, or at any other time, to consent to an election would not affect our finding that the Respondent's questioning of the Union's majority status on that date was in bad faith. The Board is of the opinion, as it has frequently held with judicial approval, that where an employer's challenge of a union's majority status is accompanied by such unlawful antiunion conduct as we have found to have occurred in this case, such challenge is made in bad faith, even though the employer professes to be willing to enter into a consent election.[10]

For all the foregoing reasons, the Respondent's motion is denied.

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 Geigy Company, Inc., at Fresno, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with General Teamsters Union, Local 431, AFL, as the exclusive representative of all its employees in

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[7] See *National Motor Bearing Co.*, 5 NLRB 409, 428, enfd. as mod. 105 F. 2d 652 (C A. 9); *Continental Oil Co.* v. *N. L. R. B.*, 113 F. 2d 473 (C. A. 10); *Webster Manufacturing, Inc.*, 27 NLRB 1338, 1346.

[8] The reasons underlying this position have been recently restated in *Lancaster Foundry Corp.*, 82 NLRB 1255, and *Metropolitan Life Insurance Co.*, 91 NLRB 473.

[9] *Ibid; Franks Bros. Company* v. *N. L. R. B.*, 321 U. S. 702.

[10] See cases cited in footnote 4, above. See, also, *Ken Rose Motors Inc*, 94 NLRB 868, enfd in *N. L. R. B* v. *Ken Rose Motors, Inc.*, 193 F. 2d 769 (C. A. 1). As indicated in those cases, an employer's willingness to enter into a consent election in a context of unlawful conduct is not indicative of an acceptance of the principle of collective bargaining but rather reflects the employer's belief that his illegal conduct has precluded success by the union in such an election.

its Fresno, California, plant, excluding office employees and supervisors, with respect to rates of pay, hours of employment, or other terms or conditions of employment.

(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 General Teamsters Union, Local 431, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in 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 a condition of employment 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) Upon request, bargain collectively with General Teamsters Union, Local 431, AFL, as the exclusive representative of all the employees in the above-described unit with respect to wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its plant near Fresno, California, copies of the notice attached to the Intermediate Report and marked "Appendix A."[11] Copies of such notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by other material.

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

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a charge filed by General Teamsters Union, Local 431, AFL, herein called the Union, the General Counsel of the National Labor Relations Board issued his complaint, dated October 18, 1951, against Geigy Company, Inc., herein called the Respondent, alleging that the Respondent had engaged in unfair labor practices

[11] This notice shall be amended by substituting the words "A Decision and Order" for the words "The Recommendations of a Trial Examiner" in the caption thereof. If this Order is enforced by a United States Court of Appeals, there shall be substituted for the aforesaid words, "A Decision and Order," the following: "A Decree of the United States Court of Appeals Enforcing an Order."

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. The burden of the complaint is that the Respondent unlawfully refused to bargain with the Union and interfered with, restrained, and coerced its employees in respect to rights guaranteed by Section 7 of the Act.

Respondent's answer asserts that the Union is not the majority representative of its employees and denies the commission of unfair labor practices. Pursuant to notice, a hearing was held at Fresno, California, on November 27, 1951, before the undersigned Trial Examiner. The General Counsel and the Respondent were represented by counsel, participated in the hearing, and were afforded opportunity to examine and cross-examine witnesses and to introduce evidence bearing on the issues. Memorandum briefs have been received from counsel for the General Counsel and counsel for the Respondent.

Upon the entire record in the case and from my observations of the witnesses, I make the following:

Findings of Fact

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a New York corporation engaged in the business of producing, manufacturing, and distributing insecticides, with its principal office in New York City. Respondent has offices and plants in various States of the United States, including a plant located near Fresno, California, which is the operation here involved.

II. THE LABOR ORGANIZATION INVOLVED

General Teamsters Union, Local 431, an affiliate of International Brotherhood of Teamsters, Chauffers, Warehousemen, and Helpers of America, AFL, is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

The Refusal To Bargain; Interference, Restraint, and Coercion.

Respondent's Fresno operation began in May 1951 and in late June about 15 workers constituted the regular crew. On Wednesday, June 27, Carlton C. Kauffman, Respondent's foreman in charge of the manufacturing operations and its resident representative responsible for making the necessary decisions with respect to hiring and firing the workers in the crew, told the employees that upon instruction from Respondent's New York office, the workweek was being cut from 48 hours to 40 for the reason that some of the employees had been refusing overtime. It was impractical, he said, to operate the additional hours without a full crew. Because of this development, one of the employees arranged for a representative of the Union, Claud L. Spencer, to meet with the employees on the afternoon of June 29. The meeting took place and 13 of the 15 employees then designated the Union as their bargaining representative.

Foreman Kauffman testified that he learned on June 29 that the employees had called in a representative of the Union and because of this development and because, he said, he was having difficulty in production, he called all the employees together on the morning of Monday, July 2, at about 8:30 and told them that he wanted to discuss matters which were not "going right" in the plant and their decision to join the Union. Kauffman told the employees, he

testified, that he did not believe a union would benefit them but that the Respondent was indifferent as to what action they might take. Someone of the men said, according to Kauffman, that all they wanted was a restoration of overtime. Kauffman replied that he would do his best to accomplish this if all would promise to work the additional hours. Kauffman went on to say, he testified, that if the men persisted in their plan to have union representation, the Respondent probably would hire 50 or 60 additional employees, get the year's production out in a short time, and then operate as a warehouse. He warned them further that with union representation they probably would not work more than 40 hours a week. The meeting ended and the men returned to work. About an hour later, Spencer and Walter Biggers, representing the Union, came to the plant. Spencer told Kauffman that the Union represented the employees and asked him if he had authority to sign a contract. Kauffman replied that he could do so only if authorized by his superiors and that he did not believe the employees wanted such representation. Biggers retorted that they had signed applications for the Union and exhibited some papers but did not offer them for examination. Kauffman suggested that a meeting be held with the employees to determine their desires. Biggers and Spencer agreed. The employees were again called together with Kauffman in attendance. Biggers first spoke to them, telling them of the advantages to be attained by representation. Kauffman, following him, said that if he had to pay union-scale wages, he wanted men of experience and that the present employees were not in that category. Kauffman repeated the warning that he had uttered earlier in the day, that if the men selected the Union the Respondent would probably operate its plant in production for only a portion of the year. When one of the men, according to Kauffman, said that they wanted a 48-hour week and that if such a schedule was established, they would not need the Union, Kauffman told them he could not promise that many hours, but would do his best to see that they got overtime. Someone suggested that a vote be taken on the question and with the agreement of the union representatives and in the absence of Kauffman, Spencer, and Biggers, the balloting took place. It resulted in 6 votes for the Union and 9 against The union representatives left the plant. A day or two later, overtime was restored.

The uncontroverted evidence indicates, and I find, that all of Respondent's employees in its Fresno plant, excluding office employees and supervisors, as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

On June 29, 1951, I find that a majority of the employees in the appropriate unit designated the Union as their representative for purposes of collective bargaining within the meaning of Section 9 (a) of the Act and that the Union thereby became the exclusive representative of all the employees in the unit for purposes of collective bargaining in regard to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The evidence, clearly established by Kauffman's own admissions,[1] is that as soon as he learned of the activity of Respondent's employees in respect to unionization, he employed effective means to combat it. It is no defense for Kauffman to say, as he did, that he was presenting his own opinion, not necessarily that of the Respondent, when he spoke to the employees and that his references to the possible curtailment of employment and to a possible increase in the length of the workweek were his speculations upon probabilities. The employees looked to Kauffman as the representative of their employer. The words "personal opin-

[1] Because the testimony of witnesses for the General Counsel is in substantial accord with that of Kauffman, I see no necessity for detailing it.

ion" were not sufficiently magic to dispel in the minds of the employees the conviction that it was the representative of their employer to whom they were listening. Of course, Kauffman's promise that he would try to restore overtime work was alluring and his prediction that unionization would result in a retention of the 40-hour week and further that the number of employees would be increased sufficiently so as to complete the year's work quickly, were alarming. Both threats and allurements are tools of coercion and Kauffman used them. The fact that the balloting on the morning of July 2 resulted in the rejection of the Union by those who just a few days before had selected it, speaks convincingly of the success attending Kauffman's efforts. His purpose in calling to the employees' attention the probable results of their conduct had its desired effect—the rejection of the Union.

I find that any loss of majority sustained by the Union following June 29, 1951, is inevitably and directly to be traced to the coercive remarks Kauffman made to the employees on July 2. As these remarks were of such character as to interfere with, restrain, and coerce employees in the exercise of rights guaranteed by Section 7 of the Act, they constituted a violation of Section 8 (a) (1) of the Act, and I so find. Of course, the Respondent may not be permitted to reap the benefit of its unfair labor practice. As the Union's loss of majority is attributable to Respondent's unfair labor practices and as it had been designated by a majority of the employees in an appropriate unit, I find that Respondent's refusal on July 2 and thereafter to bargain with the Union by attempting to deal directly with the employees was an unlawful refusal within the meaning of Section 8 (a) (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 its operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action which I find will effectuate the policies of the Act.

Having found that the Respondent has unlawfully refused to bargain with the Union, it will be recommended that upon request it do so with respect to wages, hours, and other terms and conditions of employment and if an understanding is reached, embody such understanding in a signed agreement.

Having found that the Respondent subjected its employees to unlawful threats and promises in an attempt to persuade them to forego rights guaranteed in Section 7 of the Act and since I am persuaded its entire course of conduct indicates a fixed intent to defeat the self-organization of its employees, it will be recommended that the 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. General Teamsters Union, Local 431, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All of Respondent's employees in its Fresno, California, plant, excluding office employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. General Teamsters Union, Local 431, AFL, was on June 29, 1951, and at all times since has been the exclusive bargaining representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on July 2, 1951, to bargain collectively with the Union as the exclusive bargaining representative of the employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of 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.

[Recommendations 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 bargain collectively upon request with GENERAL TEAMSTERS UNION, LOCAL 431, AFL, as the exclusive representative of all employees in the following bargaining unit with respect to 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 bargaingaining unit is:

All of our employees in the Fresno plant, excluding office employees and supervisors as defined in the Act.

WE WILL NOT in any 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 GENERAL TEAMSTERS UNION, LOCAL 431, AFL 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, 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.

GEIGY COMPANY, 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.