

all supervisors as defined in the Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election³ omitted from publication in this volume.]

³In its brief, the Intervenor asserts that the Petitioner is "fronting" for a non-complying local union. The fact of compliance by a labor organization, which is required to comply, is a matter for administrative determination and is not litigable by the parties. Moreover, the Board is administratively satisfied that the Petitioner is in compliance. See *Sunbeam Corporation*, 94 NLRB 844, 98 NLRB 525; *Swift & Company*, 94 NLRB 917; cf. *Highland Park Manufacturing Company*, 71 S. Ct. 489.

R. & J. UNDERWEAR CO., INC. and AMALGAMATED CLOTHING WORKERS
UNION OF AMERICA, C. I. O. *Case No. 1-CA-1007. November 13,*
1952

Decision and Order

On June 23, 1952, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices within the meaning of Section 8 (a) (1) of the Act, 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 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 exceptions and brief, and the entire record in the case, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.²

Order

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

¹Pursuant 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 Houston and Murdock].

²The Trial Examiner found an independent violation of Section 8 (a) (1) of the Act based on the "broad and undetailed" testimony of Union Organizer Costello to the effect that certain supervisors looked out of a plant window while he was distributing union literature. The record contains no other reference to this passing statement by Costello. We do not consider the foregoing sufficient evidence to warrant a conclusion that the Respondent's representatives unlawfully surveyed Costello or the employees by observing their activities from the window. Accordingly, we do not adopt this particular finding of the Trial Examiner.

Board hereby orders that the Respondent, R. & J. Underwear Co., Inc., New London, Connecticut, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Engaging in surveillance and interrogating its employees concerning concerted activities.

(b) In any like or related 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 Amalgamated Clothing Workers Union of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other 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.

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

(a) Post at its plant at New London, Connecticut, copies of the notice attached to the Intermediate Report herein and marked "Appendix A."³ Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the Respondent's representatives, 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 its 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.

(b) Notify the Regional Director for the First Region, in writing, within ten (10) days from the date of this Decision and Order, what steps have been taken to comply herewith.

Intermediate Report and Recommended Order

The complaint herein alleges that the Respondent has violated Section 8 (a) (1) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, by interrogating employees concerning their union affiliations, warning them against union membership or assistance, and keeping their concerted activities under surveillance. The answer denies the allegations of unfair labor practice.

³ This notice shall be amended by substituting for the words "The Recommendations of a Trial Examiner" in the caption thereof the words "A Decision and Order." If this Order is enforced by a United States Court of Appeals, the notice shall be further amended by substituting for said words "Decision and Order" the words "A Decree of the United States Court of Appeals, Enforcing an Order."

A hearing was held before me at New London, Connecticut, on June 2, 1952. Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE RESPONDENT'S BUSINESS AND THE LABOR ORGANIZATION INVOLVED

It was admitted and stipulated and I find that the Respondent, a Connecticut corporation, is engaged in the manufacture of children's underwear and sleeping garments; during the 12 months immediately preceding the hearing the Respondent purchased raw materials valued at more than \$250,000, of which approximately 95 percent was shipped to its plant at New London, Connecticut, from points outside the State of Connecticut; during the same period the Respondent sold products valued at more than \$500,000, of which approximately 75 percent was shipped to points outside the State. It was admitted and I find that the Respondent was engaged in commerce within the meaning of the Act.

It was admitted and stipulated and I find that the Union is a labor organization and admits to membership employees of the Respondent.

II. THE UNFAIR LABOR PRACTICES

References hereinafter made to the evidence, not ascribed to named witnesses, represent uncontradicted testimony, or findings where conflicts have been resolved; findings are made herein on the basis of reliable, probative, and substantial evidence on the record considered as a whole and the preponderance of the testimony taken, and evidence in conflict with the findings which is not discussed has not been credited.

Disagreement must be resolved concerning the supervisory status of Antupit, son-in-law of Aronson, who in turn is secretary of the Respondent and one of its "owners," and as general plant manager is the highest ranking official at the New London plant. Antupit testified that he worked with the sales department and in the factory during the past year; that he is in the process of learning various parts of the business; that he assists Aronson, Supervisor Schweid in laying out fabric, and Superintendent Drago, who is directly beneath Aronson in authority; "that the employees regard [him] as a boss"; and that many girls have asked him whether they would lose their jobs if the Union came in and they did not join it.

Whether or not Antupit is in fact a supervisor (he denied that he hires, fires, or assigns work), his status in the business and his relationship to Aronson warrant the employees' conclusion that he is their boss. I find that he effectively represents the Respondent in dealing with employees, and that it is responsible for his conduct. (Drago's meetings with MacDonald, referred to *infra*, suggest business contacts. Antupit's testimony that he is included in such meetings may further indicate his own position as a company representative.)

The Union commenced a campaign in May or June 1951 to organize the Respondent's employees. Contacts were made with employees, and leaflets were distributed in front of the plant. On July 31, the Union filed a representation petition,¹ and a hearing thereon was held on August 24. (No decision has been issued.) In the meantime, in an attempt to organize a committee, a meeting of employees was called for 7:30 p. m. on August 20 at the Crocker House, a hotel in New London.

¹ Case No. 1-RC-2368.

Costello, the union organizer, testified that about 5 or 10 minutes after 7 o'clock³ he saw Antupit in a lounge chair in the hotel lobby at a point where the latter could observe both entrances to the stairs leading to the second floor, where the meeting was to be held. Antupit could also observe those who entered from either of two streets on which the hotel fronts. He could not see an entrance from a third street, or anyone who used that entrance and the elevator to the second floor. Going outside, Costello also saw Schweid at the corner, about 250 feet from the hotel entrance.

The employees who arrived, some of whom entered the hotel and saw Antupit, were directed by Costello to the Fern Restaurant, where they remained until about 9 o'clock. They then returned to the Crocker House, saw Schweid at the corner, passed within 5 to 10 feet of Antupit, who was still seated in the lobby, and went to the meeting room upstairs. When they descended, about 10:30, Antupit and Schweid were gone.

There is no direct evidence that the Respondent knew of the scheduled union meeting. That it had knowledge can be inferred only from its awareness and knowledge of union activities, from the fact that there were discussions between management and employees concerning such activities, from the further fact that the plant is a small one and relationships are intimate, and from the presence of Antupit and Schweid.⁴

In connection with the latter element, Antupit, who denied that he had known of the union meeting, testified that he has on many occasions met at the hotel with a Mr. MacDonald, a salesman for the American Thread Company, who is a friend of Drago's. The purpose has been "just to get together"; MacDonald "has quite a few stories." Antupit testified further that he had on prior occasions met Drago and MacDonald at either the Crocker House or the Mohican Hotel, which is about a block away. His statement that they did not have an appointment on August 20 might explain the uncertainty as to place of meeting; but he later testified that they had arranged to meet at either hotel. They also "figured" to meet at about 8 or 8:30. Whether or not Schweid was included in the "figuring" does not appear; he did not testify. Nor is there any explanation for their presence before 7:30, so far in advance of the allegedly anticipated time of meeting MacDonald but promptly enough for the union meeting. Antupit stated that he left the Crocker House at about or shortly after 9 o'clock.

Testifying after Antupit, Drago referred to a more definite arrangement to meet between 8 and 8:30 at either the Crocker House or the Mohican. But he declared that he was late, arriving at 10 or 10:15; that he and MacDonald were at the Crocker House for 15 or 20 minutes, and that they then went to the Mohican, where they "finally" met Antupit. Besides the differences in the testimony of Antupit and Drago, further variances appear in a previous statement by the latter.

I do not credit these explanations of the presence of Antupit and Schweid. I find that they appeared at and near the meeting place to observe the employees' activities. In any event, their presence without credible explanation created the impression of surveillance and constituted interference.⁴ That they remained as long as they did is a tribute to their persistence. Allowing for the indefinite-

³ Antupit testified that he got to the hotel about 7:30. But he indicated further that he had been there for more than 15 minutes when various employees arrived.

⁴ As inference may be drawn from the fact that when employee Murphy told Antupit in the lobby that she had come to hear both sides of the story, he did not inquire further concerning the nature of the "story." We do not know whether Antupit's look of surprise was prompted by the meeting or by Murphy's attendance.

⁴ *John S. Barnes Corporation*, 92 NLRB 589; *Roxboro Cotton Mills*, 97 NLRB 1359; *Tennessee Egg Company*, 93 NLRB 846.

ness of both the time and place of the alleged appointment, which is itself suspect since Antupit could be summoned in less time than he spent in the hotel lobby, there is no explanation for Schweid's presence outside. He did not assume a vantage point in the other hotel, the alternative rendezvous. Drago and MacDonald, when they arrived, would not have to be sought out, but could easily find Antupit and Schweid in either hotel.

Schweid was evidently not merely looking into a store window when Romano, one of the employees, called to him and he turned his back. If we speculate further on the possibility, unsupported by testimony, that he hoped to see Drago and MacDonald going to the Crocker House or the Mohican, we must note that he was on the corner long before and also long after the time claimed to have been set.

In addition to the "tendency" of such surveillance to interfere, actual interference occurred when Farinella, another employee, saw Schweid as she approached the hotel on her way to the meeting: she returned to her car, and did not attend the meeting. Further actual interference is manifest in the postponement of the meeting as the group moved to the Fern Restaurant, and in the consideration of the idea "that maybe the meeting had better be put off to some future date."

Costello's broad and undetailed but uncontradicted testimony that over a period of 3 or 4 months supervisors "would station themselves directly by the window facing the street" while he distributed literature in front of the plant to employees coming to work likewise warrants a finding of surveillance.⁵ Visible to him, the supervisors were presumably also visible to the employees.

In support of the allegation of interference by warning against union activities, Romano testified that a group of employees one day called Aronson over and asked whether they should vote for the Union; Aronson replied that the shop is small, could not meet union demands, and would have to shut down, and he cited the case of another plant which had been forced to move because of inability to meet union demands.

Considering the absence of any pattern of threats, the atmosphere in which the discussion took place, and the relative credibility of the respective witnesses, I credit Aronson's denial that he threatened the employees while indicating his own opinion or preference. Pointing to benefits which the employees had received, Aronson made no threat to remove them. Nor was the reference to three (as Aronson testified) firms which had to move or cease operations a veiled threat; here the veil was not penetrated.

In evaluating Aronson's statement, I noted that he made no direct reference to any likelihood that the Respondent might move; his was a reply to a question, not a self-impelled speech; and there is no charge of other threatening remarks. While a statement purporting merely to indicate the natural result of the interplay of economic and social forces may be coercive when made by one "who has the power to change prophecies into realities,"⁶ I find no interference under the circumstances noted above and in the absence of reference to or suggestion of the speaker as the operating force who might translate prophecy into reality.

As for interference by interrogation, I find a violation of the Act occurred when Supervisor Hartell, "a little aggravated," asked employee Ragona⁷ "how come [she] was so acquainted with the union" organizer. Respondent's argument to the contrary notwithstanding, this was no mere "expression of a view"; Ragona felt called upon to, and did, offer an explanation for her conversation with the organizer.

⁵ *May Department Stores Company*, 59 NLRB 976.

⁶ *N. L. R. B. v. W. O. Nabors Company*, 196 F. 2d 272 (C. A. 5).

⁷ The transcript is hereby corrected to show her name as Blanche A. Ragona.

Another instance of interrogation occurred the day after the meeting, when Antupit asked Murphy how the meeting had turned out. I do not credit Antupit's version of the conversation, which differed from a statement prior to the hearing in which he undertook to narrate his conversation with Murphy.

Whatever may elsewhere have been determined concerning an employer's request for information on employees' union activities, the inquiries here were directed toward the actions of the employees questioned and called for explanations of their concerted activities. The Board has recently reiterated as follows its estimate of interrogation: "An employer's interrogation of an employee concerning any aspect of union activity is a violation of Section 8 (a) (1). *Standard-Coosa-Thatcher Company*, 85 NLRB 1358."⁸

The Respondent's concluding argument that there is no evidence of substantial merit to support a finding of unlawful surveillance appears to rest on the assumption that surveillance "is done in secret," not "in full view." The argument and the assumption overlook the restrictive effect of the mere presence of management representatives.

If there be any recognizable expertise at this level, the finding of tendency to interfere is to be supported regardless of what differing conclusions might elsewhere be drawn because of an estimate of the effect of allegedly contrary and more favorable conduct. It is one thing to say that on the record as a whole there is no substantial evidence of interference; another to come to a different conclusion because of the absence of other violations. Other violations are not alleged; interference is found. To insist on evidence of actual interference as distinguished from proof of a reasonable tendency to interfere is to deny expertise, to preclude a valid attempt to maintain the purposes of the Act before the breakdowns which it seeks to avoid are fully realized, and to ignore established precedent.⁹ (As noted above, actual interference has been found herein.)

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section II, above, occurring in connection with the 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.

IV. THE REMEDY

Since it has been found that the Respondent has engaged in and is engaging in certain unfair labor practices affecting commerce, I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It has been found that the Respondent, by surveillance and interrogation concerning concerted activities, interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act. I shall therefore recommend that the Respondent cease and desist therefrom.

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

⁸ *Jackson Press, Inc.*, 96 NLRB 897, cited in *J. D. Jewell, Inc.*, 99 NLRB 61.

⁹ *Goodall Company*, 86 NLRB 814.

2. By surveillance and interrogation of its employees concerning concerted activities, thereby interfering with, restraining, and coercing them 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.

3. The aforesaid 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, as amended, we hereby notify our employees that:

WE WILL NOT engage in surveillance or interrogate our employees concerning concerted activities.

WE WILL NOT in any like or related 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 Amalgamated Clothing Workers Union of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other 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.

All of our employees are free to become, remain, or to refrain from becoming or remaining members in good standing in Amalgamated Clothing Workers Union of America, C. I. O., or any other labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

R. & J. UNDERWEAR 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.

THE BIRDSALL-STOCKDALE MOTOR COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE No. 750. *Case No. 30-CA-113. November 14, 1952*

Supplemental Decision and Amended Order

On September 11, 1952, Trial Examiner William E. Spencer issued his Supplemental Intermediate Report in the above-entitled proceeding.
101 NLRB No. 83.