

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 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 Southern California Out-of-town Department of the International Ladies' Garment Workers' Union, A. F. of L., 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 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 National Labor Relations Act, as amended. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

WE WILL offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights or privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination.

Fannie Howard
Jeannette Haugen
Marcella Freed

TERRI LEE OF CALIFORNIA,
Employer.

Dated..... By.....
(Representative) (Title)

CONNIE LYNN MANUFACTURING CORPORATION

Dated..... By.....
(Representative) (Title)

VIOLET GRADWOHL

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

TEXTRON PUERTO RICO (TRICOT DIVISION) and TEXTILE WORKERS UNION LOCAL 24,877, ILA-AFL. Case No. 24-CA-424. December 28, 1953

DECISION AND ORDER

On August 31, 1953, Trial Examiner Thomas N. Kessel 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 Board 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 finds merit in the Respondent's exceptions.

We do not agree with the Trial Examiner that the preponderance of the evidence establishes that the Respondent, in violation of Section 8 (a) (5) and (1) of the Act, refused to bargain with the Union about the grievance concerning Carrasquillo's discharge. The Union's initial letter of February 18, 1953, to the Respondent acknowledges that the Union had exhausted the first two stages of the grievance procedure. The record is utterly devoid of any evidence to indicate that the Respondent did not in good faith deal with the merits of the grievance during the first two stages. The third and final stage provided by the contract is arbitration. The exchange of correspondence between the Union and the Board's field examiner shows that the Union's position at its last conference with the Respondent was that all the issues relating to the Carrasquillo grievance should be submitted to arbitration. Thus, the record establishes, at the most, that the Respondent refused to comply with the Union's request that the Respondent submit to arbitration the dispute arising out of that discharge. Whether or not such refusal constituted a breach of the collective-bargaining agreement, it did not, in itself, constitute a violation of Section 8 (a) (5) and (1) of the Act. Accordingly, we shall dismiss the complaint.

[The Board dismissed the complaint.]

Intermediate Report and Recommended Order

Upon a charge filed by Textile Workers Union Local 24,877, ILA-AFL, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-fourth Region (Santurce, Puerto Rico), issued his complaint dated May 29, 1953, against Textron Puerto Rico (Tricot Division), 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, 61 Stat. 136, herein called the Act. Copies of the complaint, the charge, and a notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged that the Union, the certified representative of the Respondent's employees, had requested the Respondent, on or about February 18, 1953, and on various occasions thereafter, to bargain collectively with it concerning the grievance of one of Respondent's employees, and that the Respondent refused and continues to refuse to comply with this request to bargain in violation of Section 8 (a) (5) and (1) of the Act.

The Respondent failed to file an answer to the complaint in accordance with the provisions of Section 102 20, et seq., of the Board's Rules and Regulations. At the hearing held in this

proceeding counsel appearing for the Respondent orally admitted all allegations of the complaint except those relating to commission of conduct violative of the Act. Respondent's counsel also took the position that if the facts alleged in the complaint were true, they nevertheless do not, under the circumstances of this case, constitute a violation of the Act.¹

Pursuant to notice, a hearing was held at Santurce, Puerto Rico, on June 18, 1953, before Thomas N. Kessel, 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 thereof. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded all parties. After the hearing closed the General Counsel and the Respondent filed briefs with the undersigned which have been carefully considered.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Puerto Rico corporation with its principal office and place of business located in Humacao, Puerto Rico, manufactures and sells textile products. The parties stipulated at the hearing that in the preceding 12-month period the Respondent had imported nylon and acetate yarns from the continental United States valued in excess of \$500,000, and that in the same period it had exported tricot cloth valued in excess of \$500,000.

The Respondent admits and it is hereby found that it is engaged in commerce within the meaning of Section 2 (6) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Textile Workers Union Local 24,877, ILA-AFL,² formerly known as Amalgamated Trade Unions Council, ILA-AFL, is a labor organization admitting to membership employees of the Respondent.

¹Respondent's counsel, Jaime Pieras, moved at the hearing for an extension of time to file an answer and for a postponement of the hearing. In support of this motion counsel argued that Newell Garfield, Jr., Respondent's manager, was absent from Puerto Rico in the United States, and that his presence was required for the drafting of an answer and for the conduct of the defense. The record shows that on June 5, 1953, counsel for the Respondent had filed a motion with the Regional Director requesting postponement of the hearing originally noticed for June 15, 1953, for the reason that Mr. Pieras, who was handling the case for his firm, was to be absent from Puerto Rico at that time for personal reasons, and that he alone knew the facts and law involved in this case. This motion was denied by the Regional Director without prejudice to its renewal before the Trial Examiner to be assigned to hear the case. On June 9, 1953, the motion for postponement was renewed before the undersigned who thereupon postponed the hearing until June 18, 1953, to suit the convenience of Mr. Pieras. No mention was made on this occasion of lack of familiarity by Mr. Pieras of the Respondent's defenses or the need to consult with Mr. Garfield as to the legal defenses or facts in the case. On the contrary, the request for postponement was granted in consideration of Mr. Pieras' asserted special knowledge of the law and facts in the case and to avoid any prejudice to the Respondent which might result from his necessary absence from the hearing. Because the Respondent's defenses stated orally at the hearing by Mr. Pieras were received for consideration as fully as though incorporated in a formal answer duly filed, and because the necessity for Mr. Garfield's presence at the hearing was not convincingly shown, the foregoing motion was denied.

²The Union has been listed in the formal documents in this proceeding without reference to its number. As the record reveals that the Union is identified by a local number, these documents are hereby amended to include such number.

III. THE UNFAIR LABOR PRACTICES

A. The pertinent facts

The facts in this case are essentially documentary. The Union was certified on July 8, 1952, as the collective-bargaining representative of all the Respondent's production and maintenance employees with certain exclusions at its Humacao, Puerto Rico, plant. On September 8, 1952, the Union and the Respondent signed a collective-bargaining contract effective until October 30, 1957. On February 18, 1953, the Respondent discharged one of its employees, Domingo Negrón Carrasquillo, allegedly for forging certain work records. On the same day the Union communicated with the Respondent as follows:

Having taken the necessary steps in accordance with Article #10, Sections (a) and (b) of our agreement, we want to submit to your consideration the case of Domingo Negrón Carrasquillo, a permanent worker. Said worker was laid off from his work on February 18, 1953.

In accordance with Article # IX paragraph #2 of our agreement which states that in case of any complaint the employee will continue working until the same is settled, the Union requests that said worker be reinstated to his job until said complaint is adjusted.

By letter dated February 23, 1953, the Respondent replied to the Union, stating in pertinent part:

Your letter of February 18 has been received and its contents studied. Apparently you are under the impression that a complaint is involved in this case and that the employee must remain working until it is solved. In this case there was no complaint at all. The employee was discharged and inasmuch as a complaint cannot arise after the employee has been discharged, there is no cause for complaint.

Thereafter, at a conference held on April 7, 1953, between representatives of the Union and the Respondent, the latter took the following position set forth in the letter of April 24, 1953, from Jose L. Novas, Esq., to Maria A. Candelario, the Board's field examiner:

It is the position of the Company that in accordance with the provisions of Article X (1) (d) of the current collective bargaining agreement with the charging union, the discharge of an employee is not an arbitrable issue subject to the grievance procedure of said agreement. The discharge of an employee would be subject to this procedure only when it can be shown that the Company took such action as a result of the union activities of the discharged employee.

In closing, please be advised that the Company has never refused, upon appropriate request by the Union, to submit to the grievance committee any matter involving the interpretation of any of the provisions of the collective bargaining agreement.

As evidenced by an exchange of letters between Miss Candelario and Hipólito Marcano, Esq., the Union took the position at the April 7, 1953, conference that an employee's discharge, whether for union activities or other reasons, was grievable under the contract, and opposed any construction to the effect that the contract reserved to the Respondent as an exclusive management function the right to discharge employees for any reason unrelated to union activities without being required to negotiate with the Union concerning grievances resulting from such discharges.

B. The contentions of the parties

The conflicting positions of the parties stem primarily from their opposing constructions of article X of the contract. This article is entitled "Settlement of Grievances" and states:

1. Any grievance which may arise during the life of this collective bargaining agreement shall be taken care as follows: (There follows in subparagraphs (a), (b), and (c)

an outline of the several steps in the grievance procedure from the initial complaint to the aggrieved employee's supervisor or department head to arbitration of the grievance by a board of 5 persons named in the contract and to be composed as directed therein).

(d) In the event of an alleged discriminatory discharge for union activities of any of the employees covered by this contract, such discharge shall be submitted to the procedure of complaints and grievances as ordained.

2. The term "grievance" as used in the aforementioned procedure shall consist solely of disputes that arise in the interpretation or the application of the particular clauses of this agreement and of alleged violations of same. The fifth member (of the board of arbitrators) shall not be empowered to add, detract or modify any of the clauses of this contract, neither substitute his discretionary power for that of the Company or the Union, nor exercise any function or attribution of the Company or of the Union.

The Respondent's brief reiterates its position stated in the April 24, 1953, letter by its attorney, Jose L. Novas, that article X, 1 (d), of the contract limits the grievance procedure to discharges of employees resulting from union activities, and argues, alternatively, that even if the contract may be construed to require application of the grievance procedure to cases of discharge for other causes, the Respondent's refusal to abide by the contract in this respect does not constitute an unlawful refusal to bargain under the Act, but involves merely a breach of contract remediable in an action at law.

The General Counsel disputes the limitation upon the grievance procedure attributed by the Respondent to article X, 1 (d), and contends that the contract preserves the Union's statutory right to bargain with the Respondent concerning grievances of the kind here involved, and that the Respondent, by its unwillingness to entertain and process the grievance filed by the Union in behalf of Carrasquillo has unlawfully refused to bargain as required by Section 8 (a) (5) of the Act.

Conclusions

It is well settled that grievances and grievance procedure are normal and proper subjects of collective bargaining, and that the bargaining rights with respect thereto of the collective-bargaining representative are derived from statute and not from contract.³ While a bargaining representative may conceivably surrender its statutory rights in a contract, such renunciation will not be found to exist unless expressed in clear and unequivocal language.⁴ The instant contract does not permit such finding.

Article X, 2, of the contract defining the term "grievance" as used in the grievance procedure outlined in article X, 1, is complete within itself, and does not depend upon a consideration of other portions of the contract for its meaning. It states clearly and precisely that "grievances" shall consist of disputes arising from interpretation or application of the contract and of its alleged violations. Nothing in this definition indicates that only those employee discharges resulting from union activities are grievable. On the contrary, the clear import of the definition is that the grievance procedure applies to all discharges, however caused, which result in disputes over the interpretation or application of the contract. This construction is unaffected by the provision of article X, 1 (d), applying the grievance procedure to cases of alleged discharge for union activities, as this provision is completely detached and exists independently from the definition of "grievances" in article X, 2. Moreover, it would not, as the Respondent contends, limit the scope of that definition even if a contemporaneous reading of both clauses were required to give each its full meaning. Rather, as the General Counsel points out in his brief, article X, 1 (d), expressly includes within the broad scope of grievances defined in article X, 2, disputes regarding discharges for union activities, presumably to eliminate any possible doubt that these grievances also are to be processed in accordance with the procedure outlined in the contract.

To allow the Respondent's view as to the limiting effect of article X, 1 (d), on the grievance procedure to prevail, would improperly require nullification of other portions of the contract which are plainly consistent with acceptance of the broader interpretation herein

³Cities Service Oil Company, 25 NLRB 36, enfd. in part 122 F. 2d 149 (C. A. 2), North American Aviation, Inc., 44 NLRB 604

⁴California Portland Cement Company, 101 NLRB 1436.

ascribed to article X, 2. The general purpose and plan of the contract derived from a reading of the document as a whole would thereby be defeated in violation of accepted rules of contract interpretation.⁵ Thus, article X, 1, states at the outset that the grievance procedure is applicable to "any grievance," and article IX, 2, provides for continuance of employment during the processing of "any grievance" (emphasis supplied). I accord these references to "any grievance" the obvious meaning conveyed thereby, that they are sufficiently inclusive to encompass grievances resulting from discharges for alleged cause, as in the case of the employee herein involved, as well as discharges for union activities.

Other sections of the contract similarly support the General Counsel's position. Article VIII, 6, provides for access by the Union to the Respondent's offices to discuss grievances and complaints, but no limitation is imposed on the type of grievances or complaints which may be discussed. Article VII which details management functions arrogates authority to the Respondent concerning publication of work rules, imposition of certain conditions of employment, and the effectuation of "promotion, reduction in grade, or transfer of employees in accordance with the needs of the business." No mention, however, appears regarding discharge of employees without recourse to the grievance procedure, although if the contract were to repose such authority in the Respondent it may reasonably be assumed that it would be listed as a management function. Indeed, nowhere does the contract expressly or impliedly reserve such right to the Respondent.

It is abundantly clear that the instant contract does not entail any surrender by the Union of its statutory right to bargain with the Respondent concerning grievances over employee discharges. Accordingly, the Respondent was required by the Act to bargain with the Union by discussing with it the merits of the grievance concerning Carrasquillo's discharge.⁶ Thus the Respondent has refused, and continues to refuse, to do in violation of Section 8 (a) (5) and Section 8 (a) (1) of the Act.

In contending that the complaint should be dismissed because its conduct consists at most of a breach of contract for which a remedy is obtainable in the courts, the Respondent misconceives the theory of the complaint and the jurisdiction of the Board. As noted, the violation in this case resulted from the Respondent's denial of the Union's statutory, not contract, rights. While, as the Respondent correctly points out, this conduct may also constitute a legally actionable breach of its contract with the Union, this circumstance does not divest the Board of its jurisdiction to protect the public interest affected by the Respondent's unlawful conduct.⁷

To dispel a further misapprehension revealed in the Respondent's brief, it should also be noted that while the contract provides for arbitration as a final step in the grievance procedure, it is not here found that the Respondent violated the Act by refusing to arbitrate Carrasquillo's grievance, but that its misinterpretation of the contract has impelled it to refuse to consider the grievance on its merits at all, thereby violating Section 8 (a) (5) of the Act. As this finding does not depend upon a consideration of whether a refusal to arbitrate under the contract is civilly redressable, the Respondent's references to the Act's legislative history and to judicial precedents to support the view that a mere violation of contract terms is not an unfair labor practice, are inapposite.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent as described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and Territories, 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 by refusing to bargain with the Union concerning the grievance relating to the discharge of Domingo Negron

⁵Primary rules of contract interpretation require the contract to be read as a whole, to interpret every part with reference to the whole, and if possible to interpret the contract so as to give effect to its general purpose. Williston on Contracts, sec. 618.

⁶See *California Portland Cement Company*, *supra*, and the Supplemental Decision in the same case, 103 NLRB 1375.

⁷See *N. L. R. B. v. Newark Morning Ledger Co.*, 120 F. 2d 262 (C. A. 2).

Carrasquillo, it will be recommended that the Respondent upon request discuss and negotiate said grievance with the Union, as well as any grievances which may be presented from time to time by the Union concerning employees in the appropriate unit represented by the Union who may in the future be discharged by the Respondent.

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. The Union is a labor organization within the meaning of Section 2 (5) of the Act.
2. All production and maintenance employees of the Respondent at its Tricot Division plant in Humacao, Puerto Rico, including the driver-messenger, but excluding professional employees, office clerical employees, foremen, foreladies, guards, watchmen, 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. The Union at all times material herein has been, and still is, the exclusive bargaining representative of the employees in the foregoing appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act.
4. By failing and refusing to bargain with the Union concerning the grievance presented by the Union in behalf of an employee in the foregoing appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) and Section 8 (a) (1) of the Act.
5. 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.]

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 bargain collectively upon request with Textile Workers Union Local 24,877, ILA-AFL, as the exclusive representative of all employees in the bargaining unit described below concerning the grievance relating to the discharge of Domingo Negrón Carrasquillo, as well as any grievances which may be presented from time to time concerning other employees in the appropriate unit who may be discharged in the future. The bargaining unit is:

All production and maintenance employees of Textron Puerto Rico (Tricot Division) at its Tricot Division plant in Humacao, Puerto Rico, including the driver-messenger, but excluding professional employees, office clerical employees, foremen, foreladies, guards, watchmen, and supervisors as defined in the Act.

TEXTRON PUERTO RICO (TRICOT DIVISION),
Employer.

Dated By.....
(Representative) (Title)

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