

HARRIS-LANGENBERG HAT COMPANY *and* UNITED HATTERS, CAP AND MILLINERY WORKERS INTERNATIONAL UNION, A.F.L. Case No. 14-CA-1048. January 28, 1954

### DECISION AND ORDER

On October 9, 1953, Trial Examiner Thomas S. Wilson 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's request for oral argument is hereby denied as the record, including the exceptions and brief, adequately presents the issues and positions of the parties.

The Board 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, the brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

### ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Harris-Langenberg Hat Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Hatters, Cap and Millinery Workers International Union, A. F. L..

(b) Interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Hatters, Cap and Millinery Workers International Union, A.F.L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid and protection, or to refrain from any or all of such activities except to the extent that such rights 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 United Hatters, Cap and Millinery Workers International Union, A.F.L. as the

exclusive representative of the employees in the appropriate unit herein found.

(b) Post in its plant at Mascoutah, Illinois, copies of the notice attached to the Intermediate Report as Appendix A.<sup>1</sup> Copies of said notice, to be furnished by the Regional Director for the Fourteenth Region, shall, upon being signed by the Respondent's representatives, be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

<sup>1</sup>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." In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

## Intermediate Report

### STATEMENT OF THE CASE

Upon a charge duly filed by United Hatters, Cap and Millinery Workers International Union, A.F.L., herein called the Union, on August 4, 1953, the General Counsel of the National Labor Relations Board, by the Regional Director for the Fourteenth Region (St. Louis, Missouri), issued its complaint dated August 5, 1953, alleging that Harris-Langenberg Hat Company, herein called the Respondent, had refused to bargain collectively with the Union as the exclusive bargaining representative of the Respondent's employees within the appropriate bargaining unit and was thereby 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 the notice of hearing were duly served upon the Respondent and the Union.

The Respondent duly filed its answer wherein it admitted certain allegations of the complaint but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on September 14, 1953, at St. Louis, Missouri, before the undersigned Trial Examiner. The General Counsel, the Union, and the Respondent were represented at the hearing by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. On October 5, 1953, the Respondent filed a brief to which it attached its brief in Case No. 14-RC-2222, the representation proceeding.

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

Harris-Langenberg Hat Company is a corporation duly organized under and existing by virtue of the laws of the State of Missouri with its principal office at 1112 Washington Ave., St. Louis, Missouri, and factories at Mascoutah and Lebanon, Illinois, and Marthasville, New Haven, and Berger, Missouri, where at all times material hereto, Respondent has been

continuously engaged in the manufacture of men's hats and caps. The Respondent, in the course and operation of its hat and cap factories, annually sells and ships men's hats and caps in excess of \$25,000 in value from its Missouri factories to points outside the State of Missouri.

The Respondent admits, and the undersigned finds, that the Respondent is engaged in commerce within the meaning of the Act.

## II. THE ORGANIZATION INVOLVED

United Hatters, Cap and Millinery Workers International Union, A.F.L., is a labor organization admitting to membership employees of the Respondent.

## III. THE UNFAIR LABOR PRACTICES

### A. The refusal to bargain

On July 7, 1953, the Board held in Case No. 14-RC-2222,<sup>1</sup> the representation case involving these same parties at the Respondent's plant at Mascoutah, Illinois, that the appropriate bargaining unit was: "All production and maintenance employees at the [Respondent's] Mascoutah, Illinois, plant, excluding office clerical employees, professional employees, and supervisors as defined in the Act."

Respondent has raised, as the sole issue here, the same question decided by the Board in Case No. 14-RC-2222, namely, the appropriateness of the unit found by the Board to constitute the appropriate unit. Respondent contended here, as in the representation proceeding, that the appropriate unit should be the production and maintenance employees at all of its five factories--not just those at the Mascoutah plant. This exact question was decided adversely to Respondent's contention in the representation proceeding.

Respondent presented at the instant hearing--as newly discovered evidence--4 pamphlets circulated subsequent to the election at Mascoutah by the Union to the employees of all 5 plants, indicating that the Union desired to organize the employees of Respondent at all 5 plants, together with a newspaper article indicating that union officials ultimately desired to bargain with Respondent on behalf of the employees at all of the plants. These prove, according to Respondent, "that the Union recognizes a strong interdependence and mutuality of interest among all the employees of the five plants of Respondent and furthermore is definitely holding out to the employees, although not the Board, that they are being organized as a single five-plant bargaining unit."

The Respondent's brief in Case No. 14-RC-2222 shows that a union pamphlet expressing similar sentiments was introduced therein and the same argument as made here was made to, and considered by, the Board in making its decision in that case. Thus the evidence produced at the instant hearing is merely cumulative evidence and the decision in Case No. 14-RC-2222 is *res adjudicata* of the issue Respondent raises again here.

In addition to the fact that the undersigned is bound by the decision of the Board in Case No. 14-RC-2222 by the doctrine of *res adjudicata*, the evidence presented does not prove the unit found by the Board in Case No. 14-RC-2222 to be inappropriate but only that a 5-plant unit may also become appropriate. <sup>2</sup>Section 9 (c) (5) of the Act does not prevent a determination that the single-plant unit is appropriate because the geographical considerations existing here with plants as far separated as 102 miles is sufficient to justify the finding so that the extent of organization is not the controlling factor in that determination. <sup>3</sup>

The undersigned, therefore, finds, in accordance with the Board's decision, that all production and maintenance employees at the Respondent's Mascoutah, Illinois, plant, excluding office clerical employees, professional 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.

It was stipulated by the parties that on August 7, 1953, the Regional Director, based upon an election held on July 30, 1953, certified the Union as the exclusive bargaining representative of the employees in the above-found appropriate unit in accordance with Section 9 (a) of the Act. As no evidence to the contrary has been produced at this hearing, the undersigned,

<sup>1</sup>106 NLRB 19.

<sup>2</sup>Norfolk Southern Bus Co., 159 F. 2d 516 (C. A. 4).

<sup>3</sup>L. Wieman Company, 106 NLRB 1167

therefore, finds that on August 7, 1953, and at all times thereafter, the Union was, and still is, the duly certified exclusive bargaining representative of the employees of the Respondent in the aforementioned appropriate unit.

It was stipulated at the hearing that, on August 14, 1953, and at all times thereafter, the Respondent has refused to bargain with the Union as the exclusive bargaining representative of the employees in the aforementioned appropriate unit. At the instant hearing the Respondent indicated that its refusal to bargain was based upon its desire to test the question of the appropriateness of the unit above found in the courts.

Accordingly, the undersigned finds that on August 14, 1953, and at all times thereafter, the Respondent has refused to bargain with the Union as the exclusive bargaining representative of the employees in the above-found appropriate unit in violation of Section 8 (a) (5) and (1) of the Act. It is further found that thereby the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8 (a) (1) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, 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

It having been found that the Respondent engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. It having been found that on August 14, 1953, and at all times thereafter, the Respondent refused to bargain collectively with United Hatters, Cap and Millinery Workers International union, A.F.L., it will be recommended that the Respondent, upon request, bargain collectively with said Union.

In the opinion of the undersigned, the unfair labor practices committed by the Respondent in the instant case are not such as show an underlying intent to evade the responsibilities of the Respondent under the Act and hence the undersigned will not issue a broad cease-and-desist order in this case.

Upon the basis of the above foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

#### CONCLUSIONS OF LAW

1. United Hatters, Cap and Millinery Workers International Union, A.F.L., is a labor organization within the meaning of Section 2 (5) of the Act.
2. All production and maintenance employees of the Respondent's Mascoutah, Illinois, plant, excluding office clerical employees, professional 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. At all times since August 7, 1953, the Union has been and now is the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.
4. By failing and refusing on, and at all times since, August 14, 1953, to bargain collectively with United Hatters, Cap and Millinery Workers International Union, A.F.L., as the exclusive representative of the employees in the aforesaid 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 undersigned 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.]

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 in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Hatters, Cap and Millinery Workers International Union, A.F.L., or any other 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, and 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 our employees are free to become or remain members of this union, or any other labor organization.

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

All production and maintenance employees at the Company's Mascoutah, Illinois, plant excluding office clerical employees, professional employees, and supervisors as defined in the Act.

HARRIS-LANGENBERG HAT COMPANY,  
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.

SOUTH TEXAS CHAPTER, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC. and LODGE 1276, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL

LOCAL UNION NO. 1423, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL and INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL

LOCAL 1423, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, AFL and INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL. Cases Nos. 39-CA-266, 39-CB-31, and 39-CB-29. January 28, 1954

DECISION AND ORDER

On May 29, 1953, Trial Examiner C. W. Whittemore issued his Intermediate Report in the above-entitled proceedings, finding that the Respondents had engaged in and were engaging