

In the Matter of WORCESTER WOOLEN MILLS CORPORATION and TEXTILE WORKERS UNION OF AMERICA, C. I. O.

Case No. 1-C-2871.—Decided August 15, 1947

Mr. Thomas H. Ramsey, for the Board.

Messrs. Howard W. Cowee and Simon G. Friedman, of Worcester, Mass., for the respondent.

Messrs. Manuel Traves and Charles Auslander, of Worcester, Mass., for the Union.

Mr. Paul Bisgyer, of counsel to the Board.

DECISION

AND

ORDER

On November 21, 1946, Trial Examiner Martin S. Bennett 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 of the Trial Examiner 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 modifications and additions noted below.

The respondent has admittedly refused to bargain with the Union, the duly certified bargaining representative of the respondent's employees, in an appropriate unit described in the Intermediate Report. It seeks to justify its refusal, however, on the grounds that (a) the Board election at which the Union was chosen was invalid because ineligible persons were permitted to vote; (b) the Union lost its majority after the election; and (c) the respondent was relieved of its bargaining obligations because the Union distributed two allegedly

disparaging circulars after its certification. At the hearing, the Trial Examiner excluded certain evidence offered by the respondent in support of its defense.

We have considered the respondent's contentions and offer of proof and find them to be without merit. As discussed in the Intermediate Report, the contention that the election was invalid is substantially the same contention as that made in the representation proceeding which the Board found to be untenable.¹ For this reason, and because the excluded evidence was not shown to be unavailable at the time of the representation hearing but, on the contrary, was concededly merely "additional" to the evidence there adduced, the Trial Examiner's rulings were proper.²

Nor are we impressed with the respondent's argument that it was relieved of its statutory duty to bargain because of the Union's alleged loss of majority. Like the Trial Examiner, we find that, at the time of the respondent's refusal to bargain, the Union's certification, which had been issued only a month before on the basis of a secret election conducted 4 months earlier under Board auspices,³ remained in full force and effect. Clearly, as we have often held, and as the courts have agreed, administrative expediency and stable labor relations require that reasonable durability be accorded to Board determinations based upon the results of secret elections, and that the choice of a majority recently expressed therein not be subject to revocation with every shift in sentiment or personnel.⁴ At any rate, we are not convinced that the record sufficiently rebuts the presumption of the Union's continuing status as majority representative, as reflected in the certification. For, even assuming that eight of the employees, who terminated their employment after the election, had cast ballots in favor of the Union, that fact alone would not conclusively establish that the Union no longer represented a majority of the employees. There is no certainty,

¹ The respondent excepts to the Trial Examiner's exclusion of the evidence given at the representation hearing. We, like the Trial Examiner, however, have considered the representation record in making our determinations herein. Under Section 9 (d) of the Act, the certification and record in the representation proceeding comprise part of the record in proceedings before the Circuit Court of Appeals for enforcement or review of a Board order based on a violation of Section 8 (5) of the Act.

² *Matter of Pittsburgh Plate Glass Company*, 15 N. L. R. B. 515, enf'd 113 F. (2d) 698 (C. C. A. 8), aff'd 313 U. S. 146; *Matter of West Kentucky Coal Company*, 57 N. L. R. B. 89, enf'd as mod., 152 F. (2d) 198 (C. C. A. 6), cert. denied 328 U. S. 866; *Matter of Allis-Chalmers Manufacturing Company*, 70 N. L. R. B. 348; *Matter of Swift and Company*, 63 N. L. R. B. 718, enf'd as mod 162 F. (2d) 575 (C. C. A. 3).

³ The delay in the issuance of the certification following the prehearing election was occasioned solely by the Board's investigation and consideration of the objections and challenges made in the representation case.

⁴ *Matter of The Century Oxford Manufacturing Corporation*, 47 N. L. R. B. 835, enf'd 140 F. (2d) 541 (C. C. A. 2), cert. denied 324 U. S. 714; *Matter of Botany Worsted Mills*, 41 N. L. R. B. 218, enf'd 133 F. (2d) 876 (C. C. A. 3), cert. denied 319 U. S. 751; *Matter of Cheney California Lumber Co.*, 62 N. L. R. B. 1208, enf'd 154 F. (2d) 112 (C. C. A. 9).

for example, that the four other employees, who also quit after the election, had not cast votes against the Union, or that formerly anti-union employees had not changed their attitude toward the Union.⁵

Finally, we are not persuaded that the Union's distribution of two union circulars, which the Trial Examiner declined to receive in evidence, constitutes a defense to the complaint herein. One circular amounted to nothing more than an appeal for members and was apparently issued about a week after certification and before the refusal to bargain. The other was issued 3 weeks after the refusal and contained a severe criticism of the respondent for not recognizing the Union. It is clear, and we find, that these circulars neither motivated, nor constitute a valid reason for, the respondent's failure to bargain with the Union, as the duly certified representative of its employees.

Accordingly, we find, as did the Trial Examiner, that the respondent refused to bargain collectively with the Union, within the meaning of Section 8 (5) of the Act.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Worcester Woolen Mills Corporation, Cherry Valley, Massachusetts, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, C. I. O., as the exclusive representative of all production and maintenance employees at the respondent's Cherry Valley, Massachusetts, plant, excluding office and clerical employees, executives, foremen, and all other supervisory employees, with respect to wages, rates of pay, hours of employment, and other conditions of employment;

(b) In any manner interfering with the efforts of Textile Workers Union of America, C. I. O., to bargain collectively with it, as the exclusive representative of its employees in the appropriate unit described above.

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

(a) Upon request, bargain collectively with Textile Workers Union of America, C. I. O., as the exclusive representative of all its employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours of employment, and other conditions of employ-

⁵ In reaching this conclusion, we, unlike the Trial Examiner, find it unnecessary to rely on the assumption that the Union obtained additional adherents among the respondent's employees.

ment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant in Cherry Valley, Massachusetts, copies of the notice attached to the Intermediate Report, marked "Appendix A."⁶ Copies of such notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by the respondent's representative, be posted by the 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 such notices are not altered, defaced, or covered by any other material;

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

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

INTERMEDIATE REPORT

Mr. Thomas H. Ramsey, for the Board.

Messrs. Howard W. Cowee and *Simon G. Friedman*, of Worcester, Mass., for the respondent.

Messrs. Manuel Traves and *Charles Auslander*, of Worcester, Mass., for the Union.

STATEMENT OF THE CASE

Upon an amended charge duly filed on September 27, 1946, by Textile Workers Union of America, C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the First Region (Boston, Massachusetts), issued its complaint dated October 7, 1946, against Worcester Woolen Mills Corporation, herein called respondent, alleging that respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint accompanied by notice of hearing were duly served upon respondent and the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that respondent, on or about August 26, 1946, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in an appropriate unit, although a majority of the employees in said unit, in an election conducted by the Board on or about March 22, 1946, had designated the Union as their representative for the purposes of collective bar-

⁶ This notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "The Recommendations of a Trial Examiner" and substituting in lieu thereof the words "A Decision and Order." In the event that this Order is enforced by decree of a Circuit Court of Appeals, there shall be inserted, before the words "A Decision and Order," the words "Decree of the United States Circuit Court of Appeals Enforcing."

gaining, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Thereafter, respondent filed an answer in which it admitted the allegations of the complaint with respect to the nature of its business and that it had refused to bargain with the Union as the representative of its employees in an appropriate unit, alleged that the election in which the Union was designated as representative of respondent's employees was invalid and that the Union was not chosen by a majority of the employees eligible to vote, and denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on November 7, 1946, at Worcester, Massachusetts, before the undersigned Trial Examiner, Martin S. Bennett, duly designated by the Chief Trial Examiner. The Board and respondent were represented by counsel and the Union by its representatives, and all participated in the hearing. Full opportunity to be heard and to introduce evidence bearing upon the issues was afforded all parties¹ as well as an opportunity to file briefs or proposed findings and conclusions. A brief has been received from respondent.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Worcester Woolen Mills Corporation, a Massachusetts corporation with its plant and offices located at Cherry Valley, Massachusetts, is engaged in the manufacture, sale, and distribution of woolen cloth. During the calendar year 1945, respondent purchased for its plant raw materials valued in excess of \$100,000, of which approximately 30 percent was received from points outside the Commonwealth of Massachusetts. During the same period, respondent manufactured at its plant woolen cloth valued in excess of \$150,000, of which approximately 70 percent was shipped to points outside the Commonwealth of Massachusetts.

Respondent admits that it is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. The appropriate unit

On July 11, 1946, after a hearing duly held, the Board issued a Decision and Direction² wherein it found, in accordance with the agreement of the parties, that all production and maintenance employees at the Cherry Valley plant of respondent, excluding office and clerical employees, executives, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

¹ The exclusion by the undersigned of certain testimony offered by respondent is discussed hereinafter.

² *Matter of Worcester Woolen Mills Corporation*, 69 N. L. R. B. 425. A prehearing election was conducted on March 22, 1946, and a hearing was held on April 30, 1946.

The complaint herein alleges, respondent's answer admits, and the undersigned finds that the above-described unit constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

2. Representation by the Union of a majority in the appropriate unit

The Tally of Ballots furnished to the parties after the election on March 22, 1946, showed that 63 of 67 eligible voters cast ballots, of which 30 were for the Union, 19 were against the Union and 14 were challenged. In its Decision and Direction of July 11, 1946, after considering various objections to the election and challenges of ballots, the Board directed that certain challenged ballots be opened and counted. A revised Tally of Ballots was served upon the parties on July 19, which showed that of 67 eligible voters, 59 cast valid votes, of which 32 were for the Union and 27 against. On July 25, 1946, the Board certified the Union as the representative of the employees in the unit heretofore mentioned for the purposes of collective bargaining.

It is the position of respondent that the Union has not been the representative of a majority of the employees in the appropriate unit, and it sought to adduce testimony herein to the effect that: (1) eight employees who were permitted to vote in the aforesaid election were not employees of respondent; (2) six employees who voted and were not challenged should not have been permitted to vote, but were not challenged only because of statements made by the Board agent to the observer for respondent; and (3) before the election, the Union had engaged in an unlawful strike which coerced employees into voting for the Union in the election.

As appears from the Board's Decision and Direction, *supra*, from the record in the representation proceeding, and as respondent admits herein, these precise contentions were raised by respondent in the proceeding and were there litigated and decided adversely to respondent. In addition, respondent concedes that proof of the same general character, but less detailed, was adduced by it in the representation proceeding. Furthermore, respondent does not contend that any of the testimony offered by it in the instant proceeding was not known to it at the time of the prior proceeding or that the witnesses who would give such testimony were unavailable at that time.³ Under the circumstances, the undersigned excluded the testimony offered by respondent⁴

Respondent further contends that a turn-over of employees resulted in a loss of majority by the Union. The parties stipulated that 10 named employees were terminated by respondent on various dates between March and July, prior to the certification; that 2 other named employees were terminated in September 1946; and that of this group of 12, 8 who are not named and whose exact termination dates are not disclosed, participated in a strike of respondent's employees in February 1946, and were on a picket line. It is respondent's position, apparently, that these 8 because of their strike activity in February, cast ballots in March in favor of the Union and that their termination by respondent deprived the Union of its majority.

³ The case of one employee, Patrick Foley, who left respondent's employ on or about March 22, 1946, was not raised at the prior hearing on April 30. Although respondent does not contend that it was unable to present Foley's case at that time, assuming that Foley were actually ineligible to vote, the improper counting of his ballot could not affect the Union's majority.

⁴ *Matter of Swift and Company*, 63 N. L. R. B. 718 See *N. L. R. B. v. West Kentucky Coal Company*, 152 F. (2d) 198 (C. C. A. 6), cert. den. 328 U. S. 866.

As noted above, the names of these 8 and their termination dates, other than as included in the large group of 12, are not revealed. In addition, assuming that the terminated employees had been identified and that they are assumed to have cast ballots in behalf of the Union, it may also be assumed that the Union has obtained additional adherents among other employees in the plant.⁵ Furthermore, it is well settled that a majority status once ascertained through the processes of the Board must be accorded recognition for a reasonable length of time⁶ In the instant case, the refusal to bargain, as appears hereinafter, followed the election by 5 months and the certification by 1 month, not an unreasonable time after those dates. Respondent's contention herein is rejected.

The undersigned finds that on and at all times after March 22, 1946, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid bargaining unit, and, pursuant to Section 9 (a) of the Act, the Union was on March 22, 1946, and at all times thereafter has been and is the exclusive representative of all employees in the aforesaid unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

The complaint alleges and respondent's answer admits that on or about August 5 and on or about August 9, 1946, the Union requested respondent to bargain collectively with respect to rates of pay, wages, hours of employment and other conditions of employment, and that on or about August 26, 1946, and at all times thereafter, respondent refused and is refusing to bargain collectively with the Union

The undersigned finds that respondent, on August 26, 1946, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The undersigned finds that the activities of respondent, set forth in Section III, above, occurring in connection with the operations of respondent set forth 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 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. It having been found that respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that respondent upon request bargain collectively with the Union.

⁵ The record does not disclose that any changes have taken place since the election with respect to the size of the appropriate unit.

⁶ *N. L. R. B. v The Century Oxford Manufacturing Corporation*, 140 F. (2d) 541 (C. C. A. 2), cert den. 324 U. S 714; *N. L. R. B v Appalachian Electric Power Co*, 140 F. (2d) 217 (C. C. A 4); *Matter of Cheney California Lumber Co.*, 62 N. L. R. B. 1208.

Because of the basis of respondent's refusal to bargain, as indicated in the facts found, and because of the absence of any evidence that danger of other unfair labor practices is to be anticipated from respondent's conduct in the past, the undersigned will not recommend that respondent cease and desist from the commission of any other unfair labor practices. Nevertheless, in order to effectuate the policies of the Act, the undersigned will recommend that respondent cease and desist from the unfair labor practices found and from in any manner interfering with the efforts of the Union to bargain collectively with it.⁷

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, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

2 All production and maintenance employees at the Cherry Valley plant of respondent, excluding office and clerical employees, executives, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. Textile Workers Union of America, C. I. O., was on March 22, 1946, and at all times thereafter has been, the exclusive representative of the 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 August 26, 1946, and at all times thereafter, to bargain collectively with Textile Workers Union of America, C. I. O., as the exclusive representative of all its employees in the aforesaid appropriate unit, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (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, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (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

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, the undersigned recommends that respondent, Worcester Woolen Mills Corporation, Cherry Valley, Massachusetts, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, C. I. O., as the exclusive representative of all production and maintenance employees employed at its Cherry Valley, Massachusetts, plant, but excluding office and clerical employees, executives, foremen, and all other supervisory employees

⁷ See *N. L. R. B. v. Express Publishing Company*, 312 U. S. 426.

with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action;

(b) In any manner interfering with the efforts of Textile Workers Union of America, C. I. O., to bargain collectively with it in behalf of the employees in the aforesaid appropriate unit.

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

(a) Upon request bargain collectively with Textile Workers Union of America, C. I. O., as the exclusive representative of all its employees in the aforesaid appropriate unit, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant at Cherry Valley, Massachusetts, copies of the notice attached to the Intermediate Report and marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being signed by respondent's representative, 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 respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the First Region in writing, within ten (10) days from the receipt of this Intermediate Report what steps respondent has taken to comply herewith.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring respondent to take the action aforesaid

As provided in Section 203.39 of the Rules and Regulations of the National Labor Relations Board, Series 4, effective September 11, 1946, any party or counsel for the Board may, within fifteen (15) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.38 of said Rules and Regulations, file with the Board, Rochambeau Building, Washington 25, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof; and any party or counsel for the Board may, within the same period, file an original and four copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the parties and shall file a copy with the Regional Director. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.65. As further provided in said Section 203.39, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

MARTIN S. BENNETT,
Trial Examiner.

Dated November 21, 1946.

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 Textile Workers Union of America, C. I. O., as the exclusive representative of all employees in the bargaining unit described herein with respect to wages, 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 Cherry Valley plant, excluding office and clerical employees, executives, foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action.

We will not in any manner interfere with the efforts of the above-named Union to bargain with us or refuse to bargain with said Union as the exclusive representative of all our employees in the above-described appropriate unit.

WORCESTER WOOLEN MILLS 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.