

purpose of dealing with fish buyers on the one hand, and as collective bargaining representative in their dealings with their respective employees on the other hand, and by being the recipient of financial and other aid from the said owners and captains, Respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (a) (2) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

10. Respondent did not violate Section 8 (a) (3) or 8 (b) (2) of the Act with respect to Abelsen's employment, as alleged in the complaint.

[Recommendations omitted from publication in this volume.]

WILKENING MANUFACTURING COMPANY *and* UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 416, CIO. *Case No. 4-CA-627. September 23, 1952*

Decision and Order

On April 25, 1952, Trial Examiner Louis Plost 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 and the General Counsel filed exceptions and briefs.

The Board¹ has reviewed the Trial Examiner's rulings 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 briefs and exceptions, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions, corrections,² and modifications.

The Board, following a hearing upon a petition filed under Section 9 (c) of the Act, ordered an election by secret ballot held in an appropriate unit³ of the Respondent's employees in order to determine a collective bargaining representative.⁴ The election was

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case three-member panel [Members Houston, Styles, and Peterson]

² We note and correct the following inadvertent errors in the Intermediate Report: (1) The Union was certified by the Board on September 6, 1951, not on September 7, 1951; (2) the Respondent's first refusal to bargain occurred on September 13, 1951, not on September 12, 1951; (3) the phrase, "including the employees listed in Appendix A" should be included in the description of the appropriate unit. These errors do not affect the Trial Examiner's ultimate conclusions nor our concurrence therein.

³ The Respondent does not, as the Trial Examiner indicates in his report, take issue in the present proceeding with the appropriateness of the unit as found by the Board.

⁴ 93 NLRB No 171.

conducted, and the tally of ballots showed that 28 employees voted for, and 26 employees against, the Union. Thereafter, the Respondent filed objections to the conduct of the election, which set forth in detail its grounds for objections. The Regional Director for the Fourth Region thereupon thoroughly investigated the matter and issued his report and recommendation on objections. He found that the Respondent's objections raised neither substantial nor material issues, and recommended that the Board certify the Union. The Board, after considering the matter, issued a Supplemental Decision and Direction.⁵ The Regional Director thereafter issued a supplemental report and recommendation on objections, to which the Respondent filed a comment in which it requested the Board to order a new election. After careful consideration of the entire record in the matter, including the Employer's original objections and comment, the Board issued its Second Supplemental Decision and Certification of Representatives.⁶ The Respondent then filed a petition for reconsideration wherein it again set forth all the facts and issues of the entire matter, and wherein, *for the first time*, it requested that a formal hearing be held.⁷ Again the Board carefully reviewed the Employer's petition and the entire record in the case, and thereafter denied the petition for reconsideration.

The Trial Examiner found that the Respondent refused to bargain with the Union in violation of the Act. As an affirmative defense, the Respondent urges, *inter alia*, that it was not, and could not have been, guilty of a refusal to bargain as the Union never established a clear right to represent its employees "because of the closeness of the result of the election and the confusion that attended the election," and, therefore, that the Board erred in certifying the Union. We find, as we did in the representation proceeding, that these contentions are without merit. The Respondent also urges that, as no formal hearing was held to take evidence as to the incidents of the election to which it had objected, it should now be given the opportunity, as a matter of due process, to introduce evidence concerning such incidents in this complaint proceeding.⁸

The instant case is not one in which the Respondent attempts to introduce additional evidence newly discovered, or evidence earlier unavailable; nor does the Respondent contend that the Board failed to consider certain evidence which had been presented.

⁵ 95 NLRB No. 13.

⁶ 96 NLRB 3.

⁷ The Respondent's petition for reconsideration was dated September 14, 1951, the day after its first refusal to bargain with the certified union.

⁸ The Respondent had repeatedly urged the Board to set aside the election, and did not urge that a formal hearing on the matters urged in its objections be held until after the Board had certified the Union.

In the instant situation, following the representation case hearing, the Respondent submitted certain statements to the Board concerning the conduct of the election and urged that the election results were not conclusive. We examined those statements and accepted as true most of the Respondent's allegations as to what took place. With respect to those allegations which raised factual issues, we found the Regional Director's substantially uncontradicted report of his investigation adequate to resolve the conflict. We then concluded, in accordance with our Rules and Regulations,⁹ that no further formal hearing was necessary and that there was no warrant for setting aside the election. We accordingly certified the Union. Having again reviewed the entire case in the instant complaint proceeding, we are of the same opinion. We accordingly find that the denial of an opportunity to the Respondent to submit proof in support of allegations which the Board has already on numerous occasions either accepted as true or resolved on the basis of the substantially uncontradicted report of our Regional Director's investigation, is not a deprivation of due process.¹⁰

We therefore find, like the Trial Examiner, that by refusing to bargain with the Union, the Respondent violated Section 8 (a) (5) and (1) of the Act.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Wilkening Manufacturing Company, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Automobile, Aircraft and Agricultural Implement Workers of America, Local 416,

⁹ Sec. 102.61 (b) of National Labor Relations Board Rules and Regulations, Series 6 (effective March 1, 1951, at the time the events herein occurred) provided: "If exceptions are filed, either to the report on challenged ballots, objections, or both if it be a consolidated report, and it appears to the Board that such exceptions do not raise substantial and material issues with respect to the conduct or results of the election, the Board may decide the matter forthwith upon the record, or may make other disposition of the case. If it appears to the Board that such exceptions raise substantial and material factual issues, the Board may direct the regional director or other agent of the Board to issue and cause to be served upon the parties, a notice of hearing on said exceptions before a hearing officer."

¹⁰ In the instant hearing the records of the representation proceeding were received in evidence. Those records include the Respondent's objection to the conduct of the election, the Regional Director's report and recommendation on objections, the Board's supplemental decision and direction, the Regional Director's supplemental report and recommendation, the Respondent's comment to the Regional Director's supplemental report and recommendation, the Board's second supplemental decision and certification of representatives, the Respondent's petition for reconsideration of the Board's decision, and the Board's order denying the petition. All documents now made a part of the record, and which will be incorporated in the record before a court, fully set forth what the Respondent now desires to show by the testimony of witnesses.

CIO, as the exclusive bargaining representative of all its employees in the following unit:

All office and clerical employees of the Respondent at its Philadelphia, Pennsylvania, operations, including the employees listed in Appendix A, attached hereto, and the industrial engineer clerk, but excluding guards, truck drivers, the warehouse multigraph machine operators, the secretaries to the president, treasurer, and chief accountant, to the vice president and general manager, to the vice president in charge of sales, and to the personnel manager, the typist clerk in the office of the production manager, the engineer draftsman, the draftsman, the tracer, the gauge checker, the test mechanic, the shipping clerk, the receiving and stores clerk, the expeditor, and all supervisors as defined in the Act.

(b) In any matter interfering with the efforts of said Union to bargain collectively with the Respondent on behalf of the employees in the aforesaid appropriate unit.

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

(a) Upon request, bargain collectively with United Automobile, Aircraft and Agricultural Implement Workers of America, Local 416, CIO, as the exclusive representative of its employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Philadelphia, Pennsylvania, operations, copies of the notice attached hereto and marked "Appendix B."²¹ Copies of said notice, to be furnished by the Regional Director for the Fourth 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 a period of sixty (60) consecutive days thereafter in conspicuous places, including places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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

Appendix A

Accounting Department—Bookkeeping Machine Operator, Comptometer Operators-Clerks, Original Entry Bookkeeper, Payroll Machine Operator.

²¹ 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."

P. B. X.—Telephone Operator, Relief Operator and File Clerk.
Purchasing Department—Typist Clerk.
Sales & Order Department—Stenographer, Ediphone Typist,
 Stenographer (Ediphone), Ediphone Typist.
Advertising Department—Typist Clerks, Clerks, Stenographer.
Industrial Sales & General—Office Boy, Typist Clerks, Clerk.
Multigraph & Printing—Vari-typer and Multigraph.
Safety & Stores—Stenographer and Cafeteria Supervisor.
Quality Control—Clerks.
Production Control Office—Typist Clerks, Inventory Clerk-
 Machine Operator.
Payroll Department—Timekeeper, Comptometer Operator.
Quality Control (Foundry)—Clerk.
Foundry Office—Typist Clerks.
Warehouse—Comptometer and Billing Machine Operator, Clerks,
 Inventory-Machine Operator, Inventory Clerk-Manual, Billing Ma-
 chine Operators, Telephone Operator, Typist Clerk.
Engineering Department—Secretary, Specifications Clerks, Typist
 Clerks.

Appendix B

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order 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 requested with UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 416, CIO, as the exclusive representative of all our employees in the bargaining unit described below, with respect to rates of pay, wages, hours of employment, and other conditions of employment; and, if an understanding is reached, we will embody such an understanding in a signed agreement. The bargaining unit is:

All office and clerical employees at our Philadelphia, Pennsylvania, operations including the employees listed in Appendix A, attached hereto, and the industrial engineer clerk, but excluding guards, truck drivers, the warehouse multigraph machine operators, the secretaries to the president, treasurer, and chief accountant, to the vice president and general manager, to the vice president in charge of sales, and to the personnel manager, the typist clerk in the office of the production manager, the engineer draftsman, the drafts-

man, the tracer, the gauge checker, the test mechanic, the shipping clerk, the receiving and stores clerk, the expeditor, and all supervisors as defined in the Act.

WE WILL NOT interfere with the efforts of the above Union to bargain with us, and we will not refuse to bargain collectively with that Union as the exclusive representative of the employees in the bargaining unit set forth above.

WILKENING MANUFACTURING 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.

Intermediate Report

STATEMENT OF THE CASE

Upon an amended charge¹ duly filed by United Automobile, Aircraft and Agricultural Implement Workers of America, Local 416, CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for its Fourth Region (Philadelphia, Pennsylvania), issued a complaint dated February 27, 1952, against Wilkening Manufacturing Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

Copies of the complaint and the amended charge together with a notice of hearing were duly served upon the Respondent and the Union.

In substance the complaint alleges that the Respondent, since September 12, 1951, has refused to bargain collectively with the Union as the exclusive representative of all its employees in an appropriate unit, and thereby has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the Act. In substance, the answer (and amended answer) of the Respondent denies that the unit alleged is appropriate. Affirmatively, it is the Respondent's position that the Board erred in its determination of the appropriate unit in Case No. 4-RC-994² and that it may not now be required to bargain as to a unit which is not appropriate, and erroneously determined.

Pursuant to notice a hearing was held before Louis Plost, the duly designated Trial Examiner, on March 31, 1952, at Philadelphia, Pennsylvania.

At the hearing all parties were represented, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to argue orally on the record, and to file briefs and proposed findings and conclusions. The undersigned granted a motion to amend the complaint in order to correct an inadvertent omission and granted a motion to file an amended answer. The parties argued orally on the record. A date was

¹ The original charge was dated and filed October 22, 1951. The amended charge was dated and filed November 13, 1951.

² 96 NLRB 3.

fixed for the filing of briefs and proposed findings and conclusions with the undersigned.³ A brief has been received from the Respondent.

At the close of the hearing the undersigned granted a motion by the General Counsel to conform the pleadings to the proof with respect to names, dates, spelling, and like matters.

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 corporation duly organized under and existing by virtue of the laws of the State of Delaware, is engaged and, at all times material herein, has been engaged, at plants located at Philadelphia, Pennsylvania, and at Toronto, Canada, in the manufacture of piston rings.

In the course and conduct of its operations at its Philadelphia, Pennsylvania, plant during the year ending this date, the Respondent purchased raw materials valued at in excess of \$500,000, over 80 percent of which, in value, was received directly from points outside the Commonwealth of Pennsylvania.

In the course and conduct of its operations at its Philadelphia, Pennsylvania, plant during the year ending this date, Respondent caused to be manufactured products valued in excess of \$3,000,000, approximately 95 percent of which, in value, was shipped to points outside the Commonwealth of Pennsylvania.

II. THE ORGANIZATION INVOLVED

United Automobile, Aircraft and Agricultural Implement Workers of America, Local 416, CIO, is a labor organization within the meaning of Section 2 (5) of the Act, and admits employees of the Respondent to membership.

III. THE UNFAIR LABOR PRACTICES

A. *The refusal to bargain*

1. The appropriate unit and the Union's representation therein

There is no dispute that following a hearing upon a petition duly filed under Section 9 (c) of the Act, and docketed in the office of the Fourth Region of the Board as Case No. 4-RC-994, the Board on March 29, 1951, ordered an election by secret ballot held in an appropriate unit for collective bargaining among certain of the Respondent's employees in order to determine a collective bargaining representative, the unit being described as follows:

All office and clerical employees at Respondent's Philadelphia, Pennsylvania operations, including the industrial engineer clerk, but excluding guards, truck drivers, the warehouse multigraph machine operators, the secretaries to the president, treasurer, and chief accountants, to the vice-president and general manager, to the vice president in charge of sales, and to the personnel manager, the typist clerk in the office of the production manager, the engineer draftsman, the draftsman, the tracer, the gauge checker, the test mechanic, the shipping clerk, the receiving and stores clerk, the expeditor, and all supervisors as defined in Section 2, subsection (11) of the Act.

³ The date for filing briefs, etc., was extended by the Chief Trial Examiner to April 22, 1952.

The election was conducted on April 27, 1951; the employees selected the Union. Thereafter on May 1, the Respondent filed objections to the conduct of the election, setting forth the grounds for its objections in detail; on May 28, after conducting an investigation on the Respondent's objection, the Regional Director for the Fourth Region issued his report and recommendations on objections wherein he reported that the Respondent's objections raised no substantial nor material issues and recommended that the Board certify the Union. After the issuance of a Supplemental Decision and Direction and an order amending the same by the Board, the Regional Director on August 6, issued a supplemental report and recommendation on objections to which the Respondent on August 7, 1951, filed its comment.

On September 7, 1951, the Board issued its Second Supplemental Decision and Certification of Representatives wherein the entire matter and all the issues therein raised were treated in detail and the Union was certified. On September 14, the Respondent filed with the Board a petition for reconsideration wherein it argued the entire matter and set forth all the facts and issues in detail.

On October 4, 1951, the Board denied the Respondent's petition for reconsideration.

The undersigned being bound by the Board's determination and upon the entire record in the case, considered as a whole, finds that at all times material herein a unit for the purposes of collective bargaining among the Respondent's employees, effected by the instant proceeding, consisted of the unit hereinabove described, and further finds in accordance with the Board's determination that the said unit was represented for the purposes of collective bargaining by the Union.

2. The refusal to bargain

All the parties joined in the following stipulation :

That on or about September 12, 1951, by telephone, confirmed by letter on the same day, Union Representative Edward G. Wilms, acting on behalf of the Union, asked the Respondent's Vice-President, D. A. Cowhig, acting on behalf of the Respondent, for a bargaining conference, which request was rejected by Mr. Cowhig in a telephone conversation with Mr. Wilms held on the following day, and that by telephone conversation held on October 8, 1951, as confirmed by letter dated October 15, 1951, Union Representative Harold Rochelle, acting for the Union, asked Mr. Cowhig for a negotiating meeting which request was rejected during that same conversation, and that at no time up to and including the present date has the Respondent been willing to bargain with the Union, the exclusive bargaining agent for the employees involved in this matter.

The Respondent contends now, in effect, that it cannot be required to bargain with the Union for the reason that the Board erred in certifying the Union and further contended at the hearing that it be permitted to retry the representation matter (4-RC-994) in order to preserve an effective challenge of the Board's action for future court appeal.

The Respondent admitted that all testimony to be offered was the same as had been previously urged by it to the Board and passed upon in the representation proceeding.

The undersigned refused to accept testimony on matters raised in the representation matter (4-RC-994) and suggested that the Respondent preserve its position by an offer of proof. The offer was made and rejected by the undersigned who then called attention that the Board's Rules permitted an appeal directly to the Board from the undersigned's adverse ruling. The Respondent failed to so appeal the ruling.

The Respondent adduced evidence of matters occurring *after* the Board's certification of the Union.

David A. Cowhig, vice president and general manager of the Respondent, testified that between the date of the representation election, April 27, 1951, and the Union's request to bargain, September 12, 1951, 10 of the Respondent's employees who had voted in the election left the Respondent's employ; that between September 12 and October 8, 1951, 4 additional employees quit.

The undersigned does not consider that the above testimony, which he credits, presents any facts which in any way effect the Respondent's duty to bargain with the certified Union representing its employees. The undersigned so finds.

The parties stipulated that on October 21, 1951, an individual employee of the Respondent filed a decertification petition with the Board's Regional Office seeking to decertify the Union. The petition was dismissed by the Regional Director.⁴ On January 25, 1952, a petition for review of this action was filed with the Board. The appeal was denied by the Board, March 3.

The undersigned finds that the filing of the decertification petition did not in any way affect the Respondent's duty to bargain with the Union.⁵

The undersigned therefore concludes and finds that on September 13, 1951, and at all times since, the Respondent has refused to bargain collectively with the Union as the exclusive representative of all its employees in the hereinabove described appropriate unit, and that by such refusal the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 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 has been found that the Respondent has engaged in unfair labor practices by refusing to bargain collectively with the designated representative of its employees. It will therefore be recommended that it cease and desist therefrom and from like and related conduct. It will further be recommended that the Respondent bargain collectively, upon request, with the Union as the exclusive representative of its employees in the aforesaid appropriate unit.

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

CONCLUSIONS OF LAW

1. Wilkening Manufacturing Company, Philadelphia, Pennsylvania, is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. United Automobile, Aircraft and Agricultural Implement Workers of America, Local 416, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

3. All office and clerical employees at Respondent's Philadelphia, Pennsylvania, operations, including the industrial engineer clerk, but excluding guards, truck drivers, the warehouse multigraph machine operators, the secretaries to

⁴ 4-RD-75.

⁵ See *N. L. R. B v. Sanson Hostery Mills*, 195 F. 2d 350 (C. A. 5).

the president, treasurer, and chief accountants, to the vice president and general manager, to the vice president in charge of sales, and to the personnel manager, the typist clerk in the office of the production manager, the engineer draftsman, the draftsman, the tracer, the gauge checker, the test mechanic, the shipping clerk, the receiving and stores clerk, the expeditor, and all supervisors as defined in Section 2, subsection (11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. United Automobile, Aircraft and Agricultural Implement Workers of America, Local 416, CIO, was on September 6, 1951, and at all times since has been, the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing on and after September 12, 1951, to bargain collectively with the aforesaid Union as the exclusive representative of the employees in the aforesaid appropriate unit, the Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8 (a) (5) of the Act.

6. By the aforesaid unfair labor practice the Respondent has been and now is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8.(a) (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication in this volume.]

BOSS OVERALL CLEANERS *and* ODDIS ROGERS

AMALGAMATED CLOTHING WORKERS OF AMERICA, LOCAL 268, CIO *and* ODDIS ROGERS. *Cases Nos. 21-CA-1097 and 21-CB-351. September 23, 1952*

Decision and Order

On January 22, 1952, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled consolidated proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and briefs in support of their exceptions.

The Board¹ 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 Inter-

¹ Pursuant 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 [Members Houston, Murdock, and Styles].