

WE WILL NOT interrogate our employees concerning their union membership, sympathies, or activities, promise them benefits if they refrain from such activities; or threaten them with discharge, directly or indirectly, if they participate in such activities.

WE WILL NOT in any like 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 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 991, AFL, 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 and 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 as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or refrain from becoming members of the above-named union, or any other labor organization, except to the extent that the right to refrain may be affected by a lawful agreement requiring membership in a labor organization as a condition of employment.

WEST BROS., INC.,
Employer.

Dated By
(Representative) (Title)

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

W. T. GRANT COMPANY and RETAIL CLERKS INTERNATIONAL ASSOCIATION, A.F.L. Case No. 6-CA-585. April 24, 1953

DECISION AND ORDER

On March 6, 1953, Trial Examiner George Bokak 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. He also found that the Respondent had not engaged in other unfair labor practices alleged in the complaint. Thereafter, the Respondent filed exceptions to the Intermediate Report.

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, Styles, and Peterson].

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 had considered the Intermediate Report, the Respondent's exceptions, and the entire record in this 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, as amended, the

National Labor Relations Board hereby orders that the Respondent, W. T. Grant Company, of Elkins, West Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Granting wage increases to its employees during the pendency of a representation petition for the purpose of causing its employees to vote against a labor organization.

(b) Interrogating its employees about attendance at a union meeting.

(c) Advising its employees that collective bargaining with a labor organization would be futile.

(d) Threatening to close its Elkins, West Virginia, store in the event of excessive demands or a strike by a labor organization.

(e) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Retail Clerks International Association, A.F.L., or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such 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) Post at its store at Elkins, West Virginia, copies of the notice attached to the Intermediate Report and marked "Appendix A."¹ Copies of said notice, to be furnished by the Regional Director for the Sixth Region, shall, after being duly signed by the Respondent's representative, be posted immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. The Respondent shall take reasonable steps to insure that such notices are not altered, defaced, or covered by any other material.

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

¹ This notice, however, shall be, and it hereby is, amended by striking from the first paragraph thereof the words "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 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 Retail Clerks International Association, A. F. L., herein called the Union, and upon complaint and notice of hearing issued and served by the General Counsel,

and an answer having been filed, a hearing upon due notice was held at Elkins, West Virginia, on November 5, 6, and 7, 1952, before the undersigned Trial Examiner, involving allegations of unfair labor practices in violation of the National Labor Relations Act, 61 Stat. 136, herein called the Act, by W. T. Grant Company, herein called the Respondent.

The complaint alleged that the Respondent violated Section 8(a) (1) of the Act by various ways detailed in the complaint. All parties were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, to argue the issues orally upon the record, and to file briefs, proposed findings of fact, and conclusions of law. The parties argued orally upon the record but did not file briefs.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Delaware corporation having its principal office in New York City, operates approximately 482 retail stores in 39 States of the United States and is engaged in the retail selling of general merchandise. During a recent 12-month period, the Respondent at its 482 stores sold merchandise and supplies in an amount in excess of \$100,000,000. During the same period, the Respondent at its Elkins, West Virginia, store, the only one here involved, purchased merchandise and supplies in excess of \$190,000 for sale and use at said store. Of this amount approximately 90 percent came from points outside the State of West Virginia. During the same representative period, the Respondent at its Elkins, West Virginia, store had total sales in excess of \$225,000.

The Respondent concedes, and I find, that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Retail Clerks International Association, A. F. L., is a labor organization within the meaning of the Act admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES¹

A. Interference, restraint, and coercion

Sometime early in February 1952,² the Union began to organize the about 22 employees who then constituted the nonsupervisory personnel of the Respondent's store at Elkins, West Virginia. The Respondent soon became aware of this activity because shortly thereafter Arthur Brill, the then store manager, made reference to the Union's organizational campaign at the regular weekly meeting of the employees that took place every Tuesday morning in the half-hour period just before the store opened for business. Brill told the employees they could do as "they pleased" about joining the Union but by paying union dues "he really didn't think they could increase [their] salaries or anything," since their pay and other working conditions were "equal to that of other stores in Elkins."

Sometime in March, Gerald Donaldson, who became assistant manager of the store on March 7, asked employee Millicent Phillips if she was going to a union meeting. Before becoming assistant manager, Donaldson held the nonsupervisory position of a window trimmer. While Phillips testified that to her best recollection the conversation with Donaldson occurred in March she also testified, "I don't think he was made the assistant manager at that time." In view of Phillips' inability to fix the time of her questioning by Donaldson as occurring after Donaldson became a supervisor, I am unable to impute to the Respondent any liability for Donaldson's questioning of Phillips. However, early in May, at a time when Donaldson was assistant manager, he asked employee Virginia Newlon if she was going to a union meeting. Newlon was leaving her apartment and the door to the apartment of Donaldson, who lived next door, was open. Donaldson noticed Newlon and then put the above question to her.

¹ The findings hereinafter made are based primarily upon undisputed and credited testimony except where otherwise indicated.

² The events hereinafter described all took place in 1952.

On March 7 the Union filed a representation petition with the Board. On March 31 the Board issued a notice setting the representation hearing for April 9. On May 6 the Board directed that an election be held. On May 12, Medford Barr, who succeeded Brilas store manager on February 26, agreed with a field examiner of the Board that the election should take place on May 23 on the store premises and before the opening of the store for business.³

On May 13, the day following Barr's meeting with the field examiner, the regular Tuesday meeting of the store employees took place. Barr announced that the Respondent was giving a dinner for the employees immediately following the close of work on May 22, at a private dining room in a local restaurant. In urging all the employees to come to the dinner Barr emphasized that attendance would be limited to the employees. The Respondent had customarily sponsored about two dinners a year none of which, however, had been limited to the employees and each of whom had previously been permitted to bring a guest. The reason, as the record indicates, was that the previous dinners were primarily social affairs whereas the one scheduled for May 22 primarily concerned, as we shall see, the election to take place the following morning.

All but four of the employees attended the dinner held on the eve of the election. The employees congregated at the dining hall shortly after the closing of the store at 5 p.m. and most of them remained until about 10:30 p.m. Following the completion of the meal, the employees were addressed by Store Manager Barr and then by Barr's superior, District Manager Joseph Reynolds. A question and answer period followed the speeches.

Barr stated that he had refrained from talking about the Union in the store when some of the employees had asked questions about it, but now he was going to talk about the Union. He referred to the election to be held the next morning and urged all the employees to vote. They were told they could do as they pleased about joining or voting for the Union and that no one would be discriminated against for doing so. Barr said that the Union could not help the employees "in any way" and only made promises it "could not fulfill." He referred to a competing store which had just signed a contract with the Union providing for a wage scale lower than the minimum scale paid by the Respondent which Barr said "paid as well as any store in Elkins "

Barr stated that the Elkins "store was governed by a manual and that he didn't see how the employees . . . could benefit by the union . . . that they would still operate under this manual."⁴ The testimony makes clear that both Barr and Reynolds laid considerable stress on the manual. Barr stated "that regardless of what the Union said, that they had to go by that book, they had to run the store by the manual." Reynolds "said all their stores were governed and run by the Grant manual and that nothing would change that; that they would still go by the manual." Or as another witness put it, "Mr. Reynolds told us he didn't see how we could benefit by unions; that he was going to follow the store manual and that we couldn't get any increases in pay unless we earned or unless the wage stabilization board permitted them to do so."

Sometime during the course of the discussion Reynolds referred to a strike that had occurred at one of the Respondent's stores in New York City as a result of demands that Reynolds said the Respondent could not meet, and thereupon started to move its merchandise out of the store. He related that a few days later the Union watered down its demands which were accepted by the Respondent and the employees returned to work.⁵

³ The dates set forth in this paragraph bear on an issue later to be discussed, that the Respondent during April and May granted an unprecedented number of wage increases.

⁴ The Grant Store Manual is a book of detailed instructions or rules to guide each manager of the Respondent's numerous stores in the operation of the store he manages. For example, the chapter on "Compensation" under the subheading "Wage Standards" advises the manager as to the extent of his authority to fix wages, and makes references to a "Wage Administration Manual" for further details. To illustrate further, under the heading "Wage Standards" appears in part the following: "The minimum salary for the store is approved by the Store Manager after a check of competitive wages . . . The minimum salary should be at least equal to the minimum salary paid by competitor and wage surveys should be made frequently enough to keep the minimum salary at a competitive level."

⁵ This testimony was elicited from Evelyn Daniels on cross-examination. On direct, Daniels testified that Reynolds had referred to the Respondent's closing of the New York store as a result of the strike with the added remark that the same thing could happen to the Elkins store. I am unable to make such a finding however, because when Daniels was asked on cross-examination: "But as a matter of fact, nothing was said about the store being closed, was there?" she answered, "I just don't remember. I am all mixed up in that."

The election took place on May 23 as scheduled but the votes were never opened or tabulated because the Union filed a request to withdraw its representation petition, a request subsequently approved by the Board

Two or three weeks after the election, employee Mary McCord engaged in a "friendly" discussion with Manager Barr about unions "We were just discussing it," McCord testified, "and I must have asked him what would happen if there would be a strike, and he said, 'Well, that they would probably just lock the door and if it continued too long, they would just move the Grant Company away; that they had around five hundred stores and that store would not be missed.'"⁶

B. Concluding findings

Based upon the above findings of fact and the entire record in the case, I cannot find that everything the Respondent said at the dinner meeting on May 22 was protected by Section 8 (c) of the Act and the first amendment to the Constitution.⁷ In the context of what was said there about the manual, the effect of what the Respondent told its employees was that collective bargaining would be futile, that regardless of what the Union requested the terms and conditions of employment at the store would still continue to be governed by the manual. This was not an expression of opinion but an expression of what the Respondent would do. It is immaterial that the manual, properly interpreted, might not have precluded an increase in wages or better working conditions based on collective bargaining with a union, since the very opposite of that possibility was conveyed to the employees. They were led to believe that the manual made provision for fixing their terms and conditions of employment, terms unilaterally fixed by the Respondent, and terms that no union could change and therefore the Union could not possibly benefit them.

In the light of the remarks about the manual, Reynold's reference to the strike at the New York store must have had a coercive effect on the employees who, it must be remembered, were not versed in labor law no less than in the subtleties of respective rights in the collective-bargaining process. The effect of the example was to pinpoint that what had happened in New York might happen in Elkins even though not expressed in so many words, that if the Union made what the Respondent considered to be excessive demands it might shut down the Elkins store. And excessive demands could be anything that might go beyond what the employees were led to believe was limited by the manual. Similarly, Manager Barr's later remark to McCord carried out the same idea and constituted, in the light of this record, a threat to close the Elkins store in the event of a "long" strike.

I find that by Donaldson's interrogation of Newlon about attending a union meeting, the remarks about the manual and the strike at the New York store made at the dinner meeting, and the threat made to McCord, the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby violating Section 8 (a) (1)

I do not find, as alleged in the complaint, that the holding of the dinner on May 22 on the eve of the election constituted a *per se* violation of the Act; in view of the finding made above it would appear to be unnecessary to rule on the allegation. However, it will be remembered that the Respondent set this meeting on May 13, and the evidence shows that it was not until after the dinner meeting was scheduled that the Union decided to hold a meeting the same evening, but following the dinner. As it turned out the union meeting did not take place because the Respondent's dinner meeting lasted so late in the evening. But there was no evidence that the Respondent was aware that a union meeting was to follow the dinner or if it was, the Respondent caused the dinner meeting to be prolonged for this reason. The evidence shows that the employees were free to leave the restaurant immediately following the meal and in fact four employees left early. Nor did the complaint allege, in line with the doctrine established by the Board in *The Hills Brothers Company*, 100 NLRB 964, that the timing of the dinner and speeches on the eve of the election denied a substantially equal opportunity for presentation of the Union's views and was tantamount to a refusal to consider a request by the Union to reply. To the contrary, as indicated above, the Union became aware of the timing of the dinner at least several days before the event and never requested an opportunity to reply to the Respondent's views but instead scheduled its own meeting to follow that of the Respondent's

⁶On cross-examination, McCord was asked, "And wasn't there, Mrs. McCord, in that conversation, also the element--" and if the Grant Company cannot reach an agreement with the Union"? to which McCord answered, "I would say it was, most likely."

⁷See *N.L.R.B. v. Kropp Forge Co.*, 178 F. 2d 822 (C. A. 7) and cases cited therein.

C. The wage increases

The complaint alleged that the Respondent granted an unprecedented number of wage increases and promotions between April 9 and May 23, 1952, for the purpose of inducing its employees to refrain from union affiliation. It will be remembered that the hearing in the representation case was held on April 9 and that on May 6 the Board directed that an election be held.

The evidence shows that the Respondent did grant an unprecedented number of wage increases during this period, a total of 17 individual increases out of a unit of about 22 employees. The Respondent has a twofold explanation for the granting of these wage increases. It claims first, that no increases were granted in the month of March 1952, because Barr did not become manager of the Elkins store until February 26 of that year⁸ and because it would take at least "several months" before a new manager could properly assess the performance ratings of his employees. It is the policy of the Respondent to give a performance rating at least once a year to each employee. This is usually given by each manager during the slack time of the year which is during the summer months. If an employee receives a rating of excellent, good, or average, she will normally receive a wage increase shortly following such rating. However, of the 17 employees who received wage increases between April 9 and May 23, the date of the election, all were rated on May 23, and only 1 of the 17 received an increase as of that date, whereas 9 received an increase during April and the remaining 7 between May 2 and May 16.

It is obvious therefore that 16 of the employees received wage increases without the benefit of a rating. Of this number, Barr explained that 2 increases were given to employees who had been promoted to departments with greater responsibilities, which appears to be borne out by the record. Of the 14 remaining increases in question, Barr gave an explanation about 7 which we will come to in a moment but attempted no explanation for the remaining 7 except that they were given at his discretion.

We now come to the explanation made by the Respondent which affects the 7 remaining increases. According to Barr, sometime about April 15 he happened to engage in a conversation with Richard Paul, the manager of one of the Murphy chain of stores, a competitor of the Respondent located directly across the street. Paul informed Barr that the "Murphy Company was going" to give a salary increase of 2 dollars "across the board" to all of its Elkins' employees. As a result of this information and in order to effectuate the Respondent's policy of meeting competitive wages in the same locality, Barr studied the wage structure of his employees and decided that 7 of them would be under the Murphy scale and decided to grant them increases, 5 of which, according to Barr, were given in April and 2 in May.

Barr was unable to state when the Murphy increases were actually given and testified that he made no effort to ascertain when they were to be granted, that the only information upon which he acted was that Murphy's "was going" to grant an increase to their employees. In view of the speed in which Barr acted on this information in granting 7 increases and his failure to adequately explain the basis for granting the 7 other increases, discussed above, in the light of the May 23 ratings, I am unable, in view of the General Counsel's prima facie showing on this issue, to credit the Respondent's defense that the wage increases it granted during April and May had no connection with the pending election. Under all these circumstances, I find that the granting of the wage increases as found above was calculated to affect the employees' decision on the issue of union representation by emphasizing that there was no need for a collective-bargaining representative and was therefore violative of Section 8 (a) (1) of the Act.⁹

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

Having found that the Respondent has engaged in certain 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.

⁸Four increases were granted during the month of February.

⁹Paramount Textile Machinery Co., 97 NLRB 691.

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. Retail Clerks International Association, A. F. L., is a labor organization within the meaning of Section 2 (5) of the Act.
- 2. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
- 3. The aforesaid 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 grant wage increases to our employees during the pendency of a representation petition for the purpose of causing our employees to vote against Retail Clerks International Association, A. F. L.

WE WILL NOT interrogate our employees about attendance at a union meeting.

WE WILL NOT advise our employees that collective bargaining with a labor organization would be futile.

WE WILL NOT threaten to close our Elkins, West Virginia, store in the event of excessive demands or a strike by a labor organization.

WE WILL NOT in any like or related 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 Retail Clerks International Association, A. F. L., or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or 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 Act.

W. T. GRANT COMPANY

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.

LIMA ELECTRIC PRODUCTS, INC. and METAL AND MACHINERY WORKERS OF AMERICA, IND. Case No. 8-CA-573. April 24, 1953

DECISION AND ORDER

On September 24, 1952, Trial Examiner Henry J. Kent issued his Intermediate Report in the above-entitled proceeding, finding that the Lima Electric Products Shop Branch of the Union was a noncomplying labor organization and