

WE WILL offer Keith Weekley immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay suffered as a result of the discrimination against him.

All our employees are free to become, remain, or refrain from becoming or remaining members of any labor organization.

THE HALSEY W. TAYLOR COMPANY,  
Employer.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

NOTE.—We will notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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

Employees may communicate directly with the Board's Regional Office, 720 Bulkley Building, 1501 Euclid Avenue, Cleveland, Ohio, Telephone No. Main 1-4465, if they have any question concerning this notice or compliance with its provisions.

**Top Notch Manufacturing Company, Inc. and Guillermo Aguirre.**  
*Case No. 28-CA-924.<sup>1</sup> December 13, 1963*

### DECISION AND ORDER

On August 16, 1963, Trial Examiner William E. Spencer 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 attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Brown].

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 Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>2</sup>

<sup>1</sup> Reference to Case No. 28-CB-253 against United Garment Workers of America, Local 284, and United Garment Workers of America, AFL-CIO, as it appears in the Intermediate Report, is deleted from the case caption, inasmuch as the Trial Examiner granted, without objection, the General Counsel's motion to sever that case and to adjourn the hearing herein pending the effectuation of a settlement agreement.

<sup>2</sup> We hereby modify the backpay remedy recommended by the Trial Examiner to include payment of interest at the rate of 6 percent, as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716.

## ORDER

The Board adopts as its Order the Recommended Order<sup>3</sup> of the Trial Examiner.<sup>4</sup>

<sup>3</sup> The Recommended Order is hereby amended by substituting for the first paragraph therein, the following paragraph:

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 Respondent, its officers, agents, successors, and assigns, shall:

<sup>4</sup> Paragraph 1(b) of the Trial Examiner's Recommended Order is amended to read as follows:

In any like or related manner interfering with, restraining, or coercing its employees in the right to self-organization, to form labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

The second indented paragraph of the notice attached to the Intermediate Report is amended to read as follows:

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any or all such activities

## INTERMEDIATE REPORT AND RECOMMENDED ORDER

## STATEMENT OF THE CASE

On a charge and amended charge in Case No. 28-CB-253, filed respectively on March 4 and 22, 1963, against United Garment Workers of America, Local 284, United Garment Workers of America, AFL-CIO, herein called the Union, and a charge in Case No. 28-CA-924 filed on March 4, 1963, against the Respondent, Top Notch Manufacturing Company, herein called the Company, all charges duly filed by Guillermo Aguirre, an individual, the General Counsel of the National Labor Relations Board, the latter herein called the Board, by the Regional Director for the Twenty-eighth Region, on an order consolidating the two cases, issued a complaint dated April 16, 1963, alleging in Case No. 28-CB-253 that the Respondent Union engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the National Labor Relations Act, as amended, and in Case No. 28-CA-924 that the Respondent Company engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act, in that the Respondent Company discharged Aguirre because of his concerted and union activities. The hearing upon the consolidated complaint, conducted by Trial Examiner William E. Spencer at El Paso, Texas, on June 19 and 20, 1963, was participated in by all parties. At the outset of the hearing, the General Counsel moved to sever the two cases and to adjourn indefinitely, pending the effectuation of a settlement agreement, the hearing against the Respondent Union in Case No. 28-CB-253. The motion was granted without objection and there will be no further reference to this case in the report that follows. Briefs have been filed by the General Counsel and the Respondent Company.

Upon consideration of 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 COMPANY

Respondent, a Texas corporation, with its principal office, plant, and place of business in El Paso, Texas, is and at all times material herein has been engaged at the said plant in the manufacture, sale, and distribution of work clothes and related products. During the 12-month period preceding issuance of the complaint herein, in the course and conduct of its business, it manufactured, sold, and distributed at its El Paso plant products valued in excess of \$50,000, of which products valued in excess of \$50,000 were shipped from the said plant directly to States other than Texas.

## II. THE LABOR ORGANIZATION INVOLVED

United Garment Workers of America, Local 284; United Garment Workers of America, AFL-CIO, are labor organizations within the meaning of the Act.

## III. THE UNFAIR LABOR PRACTICES

A. *The material facts*

Most of the basic and determinative facts here are undisputed. For some 16 years the Respondent has had bargaining relations with the Union. At a meeting of the Local about September 1962, Marina Bernal, president of the Local, announced that the Company would reduce production in what was known as its "blue" department, while increasing production in its "white" department. One of the employees present asked Bernal if there would be the same guarantee in their wages as they then had in the blue department, and she replied that there was no guarantee and that for anyone who did not want to work in that department under the changed conditions, the doors of Top Notch were open and they could leave. Presumably, this statement by the Local's president gave rise to dissatisfaction among some of the employees represented by the Local, and when an election of officers was held in November, the dissident group nominated and elected their own slate of officers over the slate proposed by the incumbent group. Guillermo Aguirre, upon whose undisputed testimony these findings on the Local are made, was active in the dissident group. On some technicality, this election was voided by Emily Jordan, a representative of the Local's International, who was in El Paso in late November. She scheduled new nominations and a new election for a date in December. The December election was conducted under the supervision of the International's representative. Again, the dissident group was successful in electing its own slate of officers over the incumbent group. At an executive board meeting of the newly elected officers of the Local, Aguirre was designated chairman of the Local's shop steward committee. A letter notifying Respondent of Aguirre's designation was delivered to Respondent's manager of operations, Maury Cohen, about January 14, 1963.

At a meeting of the Local on about January 8, again on Aguirre's undisputed testimony, Emily Jordan entered the union hall accompanied by two policemen, and read, in English, a letter which she said was from the International. Asked to translate the letter into Spanish she replied that she did not know Spanish. Thereupon she left the hall. The newly elected executive committee of the Local requested the International to replace Jordan with some "neutral" person, but apparently received no response from the International. On January 29, Aguirre's attention was called to a letter on the Company's bulletin board which stated, in effect, that Jordan was announcing that the newly elected officers of the Local were disqualified "because they did not attend two meetings that she had called." According to Aguirre this announcement caused anger among a group of employees, and as he was returning to his work at the end of the lunch period some employees told him that they did not wish to continue to pay "quotas" to the International. Aguirre advised referring the matter to their business agent, but some of the employees suggested a meeting with Cohen, Respondent's president, and Aguirre volunteered to speak to Cohen. During the afternoon break Aguirre, accompanied by some of the newly elected officers of the Local and others, spoke to Joe Ramos, plant superintendent, and asked him to arrange a meeting with Cohen, as the employees wanted to see if Cohen "would help to withhold the dues that they have to pay to the International, until the officers were recognized." Ramos refused to arrange the meeting, saying that he did not think anyone could do anything about the matter because there was a signed contract with the International. Aguirre said there was a group of employees willing to walk out unless such a meeting could be arranged, or words to that effect. Ramos told him to return to his job and he did so.

Ramos reported to Reuben Cohen that Aguirre had requested a meeting with Cohen, had purported to represent a number of employees, and wanted to discuss some "dissatisfactions and grievances." He also informed Cohen what Aguirre had said about some of the employees being willing to walk out unless a conference was granted. Cohen thereupon had Aguirre summoned to his office, and in the presence of Ramos and Maury Cohen, asked him if he had credentials from the Union authorizing him to "represent the people." According to the Cohens, Aguirre replied that he did not have such credentials. Aguirre testified that he referred to the letter of January 14 advising the Company of his appointment or election as a shop steward, but while not denying receipt of the letter, Respondent's witnesses

denied that Aguirre made reference to it at this meeting. Reuben Cohen reminded Aguirre of the Company's contract with the Union, told him to go to the union hall and get the proper credentials and he would be glad to talk with him on any grievances he had, but otherwise could not talk to him because under the union contract he must talk to the ones who were authorized by the Union. According to the Cohens and Ramos, Aguirre said that he knew what his rights were in the matter and at the next meeting with Company officials he would be accompanied by three lawyers. Aguirre denied that he made reference to his lawyers at this meeting. Admittedly, when Cohen instructed him to return to his job and not "cause any more trouble," he complied and worked until quitting time.

After Aguirre had left Cohen's office the two Cohens and Ramos conferred, and it was decided that Aguirre would be discharged. After the decision had been tentatively agreed upon but before Aguirre was informed of it, Cohen got in touch with Emily Jordan by long distance telephone, inquired concerning Aguirre's status, and received a negative reply followed by a telegram from Jordan advising him that Aguirre had no representative status with the Union. Aguirre was then called to Reuben Cohen's office and discharged. Admittedly, on refusing to accept his final check, Aguirre told the Cohens that he would have his lawyer pick it up. Reuben Cohen, apparently regarding this as an insult or threat, ordered Aguirre off company property and told him he never wanted to see him there again.

### B. Concluding findings

The reasons advanced by the Respondent for Aguirre's discharge, as recited in Respondent's brief, were that he was insubordinate and was disturbing employee-management relations. Insubordinate, as construed by the Respondent, embraced Aguirre's alleged threat to confront the Respondent with three lawyers; his threat, or implied threat, that a group of employees might walk off the job if he was not granted an appointment with Cohen; and, apparently, almost any conduct that was associated with his activities in concert with and on behalf of the group of employees who were attempting to bring about a change in the management of the Local. Respondent's refusal to discuss grievances with Aguirre unless he produced credentials from the Union, made without any inquiry concerning or reference to the nature of the grievances Aguirre wished to present, was a denial of employee rights to present grievances not in conflict with terms of an existing bargaining agreement, through someone other than their bargaining representative. See proviso to Section 9(a) of the Act. Also *Douds v. Local 1250, Retail Wholesale Department Store Union of America (Oppenheim Collins & Co.)*, 173 F. 2d 764 (C.A. 2). Any discharge predicated in whole or in part on the effort of an employee, representing himself and one or more other employees, to present such grievances, absent unusual circumstances not present here, would be a discharge for protected union and concerted activities and therefore a violation of the Act. The merit or lack of merit in the grievance that would be presented, if permitted, is immaterial. *Mushroom Transportation Co., Inc.*, 142 NLRB 1150. *Salt River Valley Water Users' Association v. N.L.R.B.*, 206 F. 2d 325, 328-329 (C.A. 9). Since work stoppages were prohibited under Respondent's contract with the Union, a walkout or threat of walkout might well be regarded as unprotected activity, but aside from the fact that there is no evidence that Aguirre promoted or in any way agitated for a walkout and that at most he used the willingness of certain employees to walk out as a lever for getting a conference with Reuben Cohen, after the request for such a conference had been refused by the plant superintendent, the discharge admittedly was not predicated upon this threat or alleged threat alone. Obviously, the chief overall factor in the effectuation of the discharge was Aguirre's efforts, in concert with others, to bring about a change in the management of the Local, activity which the Respondent not unreasonably regarded as a threat to its continued honeymoon with the Union which over some 16 years had not been marred by a single dispute.<sup>1</sup> A

<sup>1</sup> Reuben Cohen: "Since Aguirre threatened me and I was told that he did not represent the workers of Top Notch Manufacturing Company, I discharged him on the grounds that he was disturbing employee-management relations, as he did not represent the organized workers of Top Notch Manufacturing Company, Inc. . . . The said Aguirre has used his best efforts to prevent the United Garment Workers of America from representing the employees of Top Notch Manufacturing Company, Inc., and he has upset the employees of Top Notch Manufacturing Company, Inc., and has caused confusion and turmoil in said plant, and that was one of the main reasons why Top Notch Manufacturing Company discharged the said Guillermo Aguirre." There is no evidence that any of Aguirre's activity on behalf of the dissident group occurred on company time, or that he incited or was associated with any interruption in production or breach of company discipline.

remarkable record, though not unique, certainly not in the case of company-dominated unions or when "sweetheart" contracts prevail. Naturally, the Respondent would desire the continuance of such a harmonious relationship and would be disturbed by anything that threatened to disrupt it. But as much as the Act is designed to promote economic stability, it does not contemplate that such stability be achieved and maintained at the cost of rendering employees helpless in their efforts to bring about a change in the status or direction of their representation, or subjecting them to discrimination for such efforts.

I find that Aguirre was discharged because of his concerted and union activities, and by the said discharge that the Respondent violated Section 8(a)(3) of the Act and interfered with, restrained, and coerced its employees 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 discharged Guillermo Aguirre because of his union<sup>2</sup> and concerted activities, it will be recommended that the Respondent offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay suffered because of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have been paid in Respondent's employ from the date of the discharge to the date of Respondent's offer of reinstatement, less his net earnings, if any, during said period. Loss of pay shall be computed upon a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

The circumstances in this case are such that in my opinion no broad cease-and-desist order is required.

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

#### CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of its employee, Guillermo Aguirre, thereby encouraging continued membership in the Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. By the said discharge the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

#### RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is recommended that the Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging membership in a labor organization of its employees, by discharging its employees or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of employment.

<sup>2</sup> Aguirre's efforts in concert with other employees to take over management of the Local by electing an independent slate of officers appears to me to be properly characterized as union as well as concerted activity, but if it be regarded as concerted activity alone, the remedy is the same.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the right to self-organization, to form labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized in Section 8(a) (3) of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Guillermo Aguirre immediate and full reinstatement to the position he held at the time he was discharged, or an equivalent position, without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay he may have suffered as a result of the discrimination against him in the manner set forth above in the section entitled "The Remedy."

(b) Upon request make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back pay due under the terms of this Recommended Order.

(c) Post at its plant in El Paso, Texas, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of said notice, to be furnished by the Regional Director for the Twenty-eighth Region, Albuquerque, New Mexico, shall, after being duly signed by a representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Twenty-eighth Region, in writing, within 20 days from the date of the receipt of this Intermediate Report and Recommended Order, what steps the Respondent has taken to comply herewith.<sup>4</sup>

<sup>3</sup>In the event that this Recommended Order be adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "A Decision and Order"

<sup>4</sup>In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith"

## APPENDIX

### NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order 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** discourage or encourage affiliation with any labor organization, by discharging our employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist a labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as authorized by the National Labor Relations Act.

**WE WILL** offer Guillermo Aguirre immediate and full reinstatement to the position he formerly held, or its equivalent, without prejudice to seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered as a result of the discrimination against him.

TOP NOTCH MANUFACTURING COMPANY, INC.,  
Employer.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

NOTE.—We will notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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

Employees may communicate directly with the Board's Regional Office, 1015 Tijeras Avenue NW., Albuquerque, New Mexico, Telephone No. 243-3536, if they have any question concerning this notice or compliance with its provisions.

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**Samuel Levine, doing business as Hock and Mandel Jewelers and Local No. 1, Amalgamated Jewelry, Diamond and Watchcase Workers Union, AFL-CIO.** *Case No. 2-CA-9010. December 16, 1963*

### DECISION AND ORDER

On June 20, 1963, Trial Examiner Sidney D. Goldberg 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 attached Intermediate Report. He also found that the Respondent had not engaged in certain other unfair labor practices as alleged in the complaint, and recommended dismissal of the complaint as to them. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

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 Leedom, Fanning, and Brown].

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 and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications noted below.<sup>1</sup>

Based upon his resolutions of credibility and the inferences drawn from the record facts, the Trial Examiner found that Respondent had made an unconditional offer of reinstatement to Juan Garcia which Garcia refused unless Respondent first agreed to recognize the Union as the employees' bargaining representative. The Trial Examiner therefore concluded that Respondent's backpay liability ceased when

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<sup>1</sup>Contrary to the Trial Examiner, we find that Respondent's interrogation of its employees as to whether they had joined the Union was coercive and violated Section 8(a) (1) of the Act. In this connection, we note that Respondent had indicated to the employees that it was opposed to the Union and had discriminatorily discharged Garcia. We shall therefore modify the Trial Examiner's Recommended Order to provide that Respondent cease and desist from engaging in this type of conduct.