

IT IS FURTHER RECOMMENDED that the complaint be dismissed in all other respects.

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, as amended, we hereby notify our employees that:

WE WILL NOT coercively question our employees about their union activities, threaten them with reprisals for engaging in such activities, hold out any benefits to employees in order to dissuade them from union activity, direct supervisors to treat prounion employees as "outsiders," engage in surveillance or give the impression of surveillance of union activity, or in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under the National Labor Relations Act

WE WILL NOT discourage membership in, or activities on behalf of, Local Union No. 149, Mail Order Retail Department Store and Warehouse Employees, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by discriminating against employees with regard to their hire or tenure of employment or any term or condition of employment.

WE WILL offer Alver Bratsch immediate and full reinstatement to his former or substantially equivalent position, and make him whole for any loss of pay he may have suffered by reason of the discrimination against him.

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

All automobile service station employees of our Southtown store at Bloomington, Minnesota (excluding salesmen, shipping and receiving employees, parts department employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act).

All our employees are free to become, remain, or refrain from becoming or remaining, members of Local Union No. 149, Mail Order Retail Department Store and Warehouse Employees, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

MONTGOMERY WARD & CO., INCORPORATED (WARDS
SOUTHTOWN RETAIL STORE),

Employer.

Dated----- By-----
(Representative) (Title)

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.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 316 Federal Building, 110 South Fourth Street, Minneapolis, Minnesota 55401, Telephone 334-2618.

Collins & Aikman Corporation and Textile Workers Union of America, AFL-CIO, CLC. Case 31-CA-390. October 10, 1966

DECISION AND ORDER

Upon a charge filed by Textile Workers Union of America, AFL-CIO, CLC, the General Counsel for the National Labor Relations Board, by the Regional Director for Region 31, issued a complaint 160 NLRB No. 135.

dated May 23, 1966, against Collins & Aikman Corporation, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served on the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleges, in substance, that on or about January 24, 1966, the Union was duly certified by the Board¹ as the exclusive bargaining representative of Respondent's employees in the unit found appropriate by the Board and that, since on or about February 3, 1966, and more particularly on April 20, 1966, Respondent has refused to recognize or bargain with the Union as such exclusive bargaining representative, although the Union has requested it to do so.

On or about July 12, 1966, the General Counsel filed with the Board a motion for summary judgment requesting, in view of the admissions contained in the Respondent's answer, that the allegations of the complaint be found to be true and that the Board make findings of fact and conclusions of law in conformity with the allegations of the complaint. On July 15, 1966, the Board issued an order transferring proceeding to the Board and a notice to show cause. On July 26, 1966, Respondent filed a response to the notice to show cause and an amended answer to the complaint in which it denied the allegations of the complaint pertaining to the Union's status as exclusive representative of the employees in the unit.

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 Fanning, Brown, and Zagoria].

Upon the entire record in this case, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its response to the notice to show cause, Respondent contends that it is entitled to a hearing to insure full litigation of the facts. This contention is without merit. The Respondent's answer and amended answer to the complaint and its response to the notice to show cause establish that the Respondent is seeking to relitigate matters decided by the Board in the prior representation proceeding.

The record before us establishes that on June 4, 1965, a consent election was conducted by the Regional Director for Region 31 among employees in an appropriate unit. Upon notification of the results of

¹ Decision and certification of representative in Case 31-RC-16 (formerly 21-RC-9573) (not published in NLRB volumes).

that election, the Respondent filed objections,² and the Regional Director conducted an investigation culminating in a report in which he recommended that the objections be overruled. The Respondent filed exceptions to the Regional Director's report, and on August 19, 1965, the Board issued an order directing a hearing. Upon completion of the hearing, the Hearing Officer issued his report recommending that the objections be overruled. Adopting the Hearing Officer's report, the Board certified the Union. Thereafter, the Respondent filed a motion for reconsideration which the Board dismissed as lacking in merit.

Respondent admits that it received letters dated April 6 and 20, 1966, signed on behalf of the Union and requesting Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. Respondent further admits that in a letter dated April 20, 1966, it replied that it would not engage in collective bargaining with the Union in order to obtain judicial review of the Board's decision overruling the Respondent's objections to the election and certifying the Union.

In the absence of newly discovered or previously unavailable evidence, issues which were or could have been raised in a related representation proceeding may not be relitigated in an unfair labor practice proceeding.³ Admittedly, the issues which Respondent seeks to raise in the instant proceeding relate to the correctness of the Board's disposition of Respondent's objections to the election. There is no allegation that special circumstances exist herein which require the Board to reexamine the determination which it made in the representation proceeding. Inasmuch as the Respondent has already litigated these issues, it has not raised any issue which is properly triable in the instant unfair labor practice proceeding.

All material issues thus having been decided by the Board or admitted in the answer to the complaint, there are no matters requiring a hearing before a Trial Examiner. Accordingly, the General Counsel's motion for summary judgment is granted. On the basis of the record before it, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a corporation duly organized and existing by virtue of the laws of the State of

² In its objections Respondent alleged that the Union made material misrepresentations concerning its contracts with other employers; improperly promised to waive initiation fees; improperly induced an employee to act as its election observer; and improperly promised immediate and substantial wage increases.

³ *Pittsburgh Plate Glass Company v. N.L.R.B.*, 313 U.S. 146; *United States Rubber Company*, 155 NLRB 1298.

Delaware, and is engaged in the manufacture, sale, and distribution of textile products at its plant in Culver City, California. During the past year, which period is representative of all material times herein, Respondent received goods valued in excess of \$50,000 from points outside the State of California.

Respondent admits, and we find, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Textile Workers Union of America, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(6) and (7) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The representation proceeding*

1. The unit

At all times material herein the following employees at the Respondent's Culver City, California, facility, constitute a unit appropriate for collective bargaining within the meaning of the Act:

All production and maintenance employees, including shipping, receiving, and warehouse employees at Respondent's Culver City, California, plant, but excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

2. The certification

On or about June 4, 1965, a majority of the employees of Respondent in said unit, in a secret election conducted under the supervision of the Regional Director for Region 31, designated the Union as their representative for the purpose of collective bargaining with Respondent, and on January 24, 1966, the Board certified the Union as the collective-bargaining representative of the employees in said unit and the Union continues to be such representative.

B. *The request to bargain and the Respondent's refusal*

Commencing on or about February 3, 1966, and continuing to date, and more particularly on April 6 and on April 20, 1966, the Union has requested and is requesting Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about February 3, 1966, and continuing to date, and more particularly on April 20, 1966, Respondent did refuse, and continues to refuse, to bargain collectively with the Union as exclusive collective-bargaining representative of all employees in said unit.

Accordingly, we find that the Union was duly certified by the Board as the collective-bargaining representative of the employees of the Respondent in the appropriate unit described above in the Board's certification, and that the Union at all times since January 24, 1966, has been and now is the exclusive bargaining representative of all the employees in the aforesaid unit, within the meaning of Section 9(a) of the Act. We further find that Respondent has, since April 20, 1966, refused to bargain collectively with the Union as the exclusive bargaining representative of its employees in the appropriate unit, and that, by such refusal, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a) (5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The acts of the Respondent set forth in section III, above, occurring in connection with its operations as 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 unfair labor practices within the meaning of Section 8(a) (5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

CONCLUSIONS OF LAW

1. Collins & Aikman Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Textile Workers Union of America, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.
3. All production and maintenance employees, including shipping, receiving, and warehouse employees at Respondent's Culver City, California, plant, but excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. On January 24, 1966, and at all times thereafter, the above-named labor organization has been and is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about February 3, and more particularly on April 20, 1966, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) (5) and (1) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and has thereby 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.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Collins & Aikman Corporation, Culver City, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning wages, hours, and other terms and conditions of employment, with Textile Workers Union, AFL-CIO, CLC, as the exclusive and duly certified bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees, including shipping, receiving, and warehouse employees at Respondent's Culver City, California, plant, but excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

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

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Culver City, California, plant, copies of the attached notice marked "Appendix."⁴ Copies of said notice, to be

⁴ In the event that this Order is enforced by a decree of a United States Court of Appeals, the words "a Decision and Order," shall be substituted for the words "a Decree of the United States Court of Appeals Enforcing an Order."

furnished by the Regional Director for Region 31, after being duly signed by the Company's representative, shall be posted by the Company immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director for Region 31, in writing, within 10 days from the date of this Decision and Order, what steps have been taken to comply herewith.

APPENDIX

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, as amended, we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with Textile Workers Union, AFL-CIO, CLC, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of all employees in the bargaining unit described below with respect to wages, hours, and other terms and 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, including shipping, receiving, and warehouse employees at Respondent's Culver City, California, plant, but excluding office clerical employees, and supervisors as defined in the Act.

COLLINS & AIKMAN CORPORATION.

Employer.

Dated _____ By _____
(Representative) (Title)

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

Employees may communicate directly with the Board's Regional Office, Tenth Floor, Bartlett Building, 215 West Seventh Street, Los Angeles, California 90014, Telephone 688-5801, if they have any questions concerning this notice or compliance with its provisions.