20th Century Glove Company, Inc. *and* Amalgamated Clothing Workers of America, AFL–CIO. Case 10–CA–6753

June 22, 1967

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND BROWN

On March 27, 1967, Trial Examiner Lloyd Buchanan issued his Decision 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 Trial Examiner's Decision. Thereafter, the General Counsel, Respondent, and Charging Party filed exceptions to the Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

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 Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner and hereby orders that Respondent 20th Century Glove Company, Inc., its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Delete 1(a) and substitute the following:

"(a) Interfering with, restraining, or coercing employees by announcement or grant of benefits prior to the expiration of the time for the Union to file objections to the election."

2. Delete the first indented paragraph of the notice and substitute the following:

> WE WILL NOT interfere with, restrain, or coerce employees by announcement or grant of benefits prior to the expiration of the time for said Union—Amalgamated Clothing Workers of America—to file objections to election.

IT IS FURTHER ORDERED that the complaint be, and is hereby, dismissed insofar as its alleges violations of the Act not herein found.

[1] The Trial Examiner found that the Respondent violated Section 8(a)(1) of the Act when on September 2, 1966, it promised employees benefits if they rejected the Union. The Trial Examiner's finding is predicated on an alleged admission of liability by Respondent's counsel at the time of the hearing We have searched the record carefully for evidence to support a finding of an admission of liability At best, the evidence merely tends to show that Respondent admitted that on September 2, 1966, it informed its employees of the newly amended Fair Labor Standards Act and how it applied to them Neither in its pleading nor in the discussion before the Trial Examiner did Respondent admit that the statement in question amounted to a promise of benefits in violation of Section 8(a)(1) of the Act Even if the information related to the employees could be considered a promise of a wage increase, such promise to pay a wage increase required by a Federal statute is not a promise which interferes with, restrains, or coerces employees in the exercise of their statutory rights in violation of Section 8(a)(1) of the Act *Crown Laundry & Dry Cleaners Inc*, 160 NLRB 746, 755 (TXD) We find, contrary to the Trial Examiner, that the Respondent's conduct in that regard did not violate the Act. The announcement or grant of benefits after the election, which the Trial Examiner also found violative of the Act, stands on a different footing Accordingly, we shall dismiss the complaint insofar as it alleges violations of the Act not herein found

TRIAL EXAMINER'S DECISION

LLOYD BUCHANAN, Trial Examiner: The complaint herein (issued January 10, 1967; charge filed November 14, 1966) alleges that the Company has violated Section 8(a)(1) of the National Labor Relations Act, as amended, 73 Stat. 519, by promising wage increases if the employees rejected the Union in the then scheduled Board election, by promising employees that it would pay them for time lost while they were attending a company-called preelection meeting at that time and at three earlier meetings, and by unilaterally announcing, on the day after the election but before the Union's objections to election thereafter sustained were filed, and granting a piecework increase, a wage increase, and two additional paid holidays; and Section 8(a)(5) of the Act by said acts and by refusing to bargain collectively with the Union as the exclusive bargaining agent of the employees in an appropriate unit. The answer, admitting the appropriateness of the unit, denies the Union's majority, alleges a good-faith doubt and that it communicated that to the Union and, while after further probing[1] at the hearing it admitted as indicated *infra* the facts alleged to show interference and refusal to bargain, denies that any violation of either section of the Act is to be inferred.

A hearing was held before me at Cartersville, Georgia, on February 14, 1967. Briefs have been filed by the General Counsel, the Union, and the Company.

Upon the entire record in the case including stipulations and statements by counsel, no witnesses having been called, I make the following:

[1] What threatened to become a lengthy hearing, as a roomful of witnesses were present and the Company declared its intention to explore fully the circumstances under which virtually each card had been signed, was thus quickly closed on the pleadings and the statements of counsel, and without calling any witnesses.

FINDINGS OF FACTS (WITH REASONS THEREFOR) AND CONCLUSIONS OF LAW

I. THE COMPANY'S BUSINESS AND THE LABOR ORGANIZATION INVOLVED

The facts concerning the Company's status as a Georgia corporation, the nature and extent of its business, and its engagement in commerce within the meaning of the Act are admitted; I find and conclude accordingly. I also find and conclude that, as admitted, the Union is a labor organization within the meaning of the Act.

II. THE UNFAIR LABOR PRACTICES

A. *The Alleged Independent Violation of Section 8(a)(1)*

As submitted at the hearing for decision and on the issue of remedy, it is admitted that on or about September 2, 1966, 4 weeks after the Company refused to bargain with the Union, as noted below, the plant manager promised wage increases to the employees if the Union were rejected at the election scheduled for September 23; at a meeting on or about September 22, without condition or reference to the outcome of the election, he promised the employees in the unit that the Company would credit them for the time lost in attendance at that meeting and also at three earlier meetings called by the Company, and that such credits were thereafter allowed; and on September 26, the day after the election, the Company did unilaterally announce and grant the increases and holidays as alleged although the Union within a few days thereafter timely filed objections to the election which were later sustained by the Regional Director.

Of these acts, I regard as most serious, for its tendency to interfere with the employees' free exercise of their rights under the Act, the September 2 promise of a wage increase. I find and conclude that this promise constituted interference within the meaning of Section 8(a)(1).

The September 22 promise was made some 25 hours before the election, and it is not claimed that it violated the *Peerless Plywood* 24-hour rule. Nor does the General Counsel separately or particularly question the lawfulness of the promise and payment with respect to the September 22 meeting, when the promise was made, as distinguished from the earlier meetings. He does claim that the announcement at that time of payment for earlier meetings was intended to cause the employees to reject the Union. In short, it is not the benefit but its timing that is here attacked. The Company's admission of this promise is coupled with its denial of violative intent or purpose. Both the General Counsel's allegation of intent and the Company's denial thereof are irrelevant, a finding of interference depending on whether the promise tended to interfere, restrain, or coerce within the meaning of the Act and regardless of intent.[2]

The Company's moral obligation, which the Board recognizes, to pay the employees for time lost at the first three meetings was as great as that in connection with the fourth. Although it is recognized that payment for each of the meetings at or about the time when they were held would normally not have been violative, the allegation is that a promise of payment for all made the day before the election was violative. Contrariwise, since the promise of September 22 does not stand alone but is necessarily joined with the absence of earlier payment or promise, it might be argued that withholding payment and a promise thereof on the day before the election tend to antagonize employees toward their employer and are less apt to incline them in its favor than would earlier and prompt payments. The cases cited to me in this connection are inapposite. I see no sufficient basis for finding an unlawful tendency *per se* in the late promise (it may be for the same reason that the General Counsel and the Union have not attempted to make this point) as distinguished from the argument of ulterior purpose in the announcement as an entirety. I find and conclude that there was no violation here.

As for the September 26 announcement and grants, these were not at that time or when they were put into effect required by the Fair Labor Standards Act cited by the Company in justification. Although the Company thus acted after the Union lost the election, objections to the election had not yet been filed; they were thereafter filed and sustained. My own reasoning as set forth in the cited case and the decision of the circuit court of appeals to the contrary notwithstanding, I am constrained by the Board's ruling in *Ambox, Incorporated*[3] "that Respondent, by announcing general benefits while objections to an election were pending, violated Section 8(a)(1) of the Act." No significant distinction is presented by the fact that the Company here acted before the objections were in fact filed.

B. *The Alleged Violation of Section 8(a)(5)*

The issue in this connection can be summarized as follows: The Union having obtained a majority of cards; the Company having in what on its face appeared to be a good-faith reply refused to bargain but suggested and agreed to a consent election; the Union having lost the election by a wide margin and having filed objections which were sustained by the Regional Director; we are to determine whether the Company's refusal to bargain was in bad faith and whether the interference found so affected the free laboratory conditions for an election as to warrant an order that the Company bargain with the Union. I answer both questions in the negative; I cannot answer either in the affirmative.

As with 8(a)(1), the questions raised by the pleadings with respect to Section 8(a)(5) were markedly limited by stipulation and concession at the hearing. There is no issue concerning the sufficiency of the cards as designations of the Union insofar as form is concerned. It now stands admitted that the Union represented a majority of the 88 employees in the unit on or about August 1, when it asked the Company to bargain with it. It is also admitted that the following is an appropriate unit within the meaning of Section 9(b) of the Act:

All production and maintenance employees at the Company's Cartersville, Georgia, plant, but excluding all

[2] I need not cite authority for this proposition but would emphasize it since the language used is sometimes loose and misleading

[3] 146 NLRB 1520, 1521 See also *Northwest Engineering Company*, 148 NLRB 1136, 1145 If the Board, in *Champion Pneumatic Machinery Co.*, 152 NLRB 300, 306, intended a modification, it neither so stated nor indicated a basis therefor To the extent that, as declared in *Ambox*, "earlier unlawful conduct" is to be considered, an earlier promise of benefit was in fact found in *Champion Pneumatic* but declared to be isolated If that was to be overlooked, the Board may do likewise here if it disagrees with my own appraisal of the seriousness of the promise made on September 2

office clerical employees, professional employees, guards, and supervisors as defined in the Act.

On August 1, the Union wrote to the Company and requested that it be recognized and bargained with, and on August 2 it filed a representation petition with the Board.[4] By letter dated August 5 the Company replied that it entertained "serious and well-founded doubts" that the Union represented a majority, declined to recognize the Union, and mentioned the possibility of a consent election. A consent-election agreement was entered into on August 23, and in the election conducted by the Board on September 23 the tally indicated that of 76 eligible voters, 21 voted for the Union and 45 against. The Union filed timely objections on September 30, and the Regional Director sustained the objections and directed a second election, which has not yet been held.

The issue of violative refusal to bargain depends on whether the employer had a good-faith doubt of majority as it claimed. In such a case, the General Counsel undertakes his burden of proving bad faith by demonstrating, as here, that the Company has engaged in other unfair labor practices which tend to dissipate the Union's majority.[5] But the Board has indicated in *Hammond & Irving*[6] that this is no *per se* rule to be applied mechanistically.

We now face the questions whether the election tally and the Union's loss in the face of its admitted card majority are ascribable to the preelection interference found; and whether bad faith in the Company's refusal to bargain can be posited on the pre- and post-election interference, or whether the refusal stemmed from an alleged good-faith doubt at that time.

The first of these questions, in the light of *Hammond & Irving* and considering the limited although serious preelection interference and the wide vote margin against the Union, is to be answered in the negative. As for good faith, *Joy Silk Mills* supports the General Counsel's argument that later interference may reflect earlier bad faith. Nor within that rule is there necessarily a difference whether there has been an intervening election; although within the congeries of circumstances to be considered is the fact that the vote already taken could not be affected by the later interference. Weighing all of the facts including the Company's prompt action in suggesting and agreeing to a consent election, I do not infer earlier bad faith from the Company's announcement of September 26 even if under *Ambox* it is violative of Section 8(a)(1). But a finding to that effect is unnecessary since, having held that the lack of majority in the election was not the result of the earlier interference found, I do find and conclude, giving weight to both the pre- and post-election conduct, that the Company in good faith appraised the situation and in good faith refused to bargain. Speaking of myself alone, it would be imprudent (with or without the "r") for me to deny the employees a full and fair opportunity now to vote freely in a collective-bargaining election.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in the case, I recommend that the Company, 20th Century Glove Company, Inc., Cartersville, Georgia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing employees by promises of benefits if the Union be rejected or by announcement or grant of benefits prior to the expiration of the time for the Union to file objections to election.

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

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its place of business in Cartersville, Georgia, copies of the attached notice marked "Appendix."[7] Copies of said notice, to be furnished by the Regional Director for Region 10, 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 its 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.

(b) Notify the Regional Director for Region 10, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.[8]

I FURTHER RECOMMEND that the complaint be dismissed insofar as it alleges violations of Section 8(a)(5) of the Act.

---

[4] Case 10-RC-6790

[5] *Joy Silk Mills, Inc.*, 85 NLRB 1263, enfd as modified 185 F 2d 732 (C A D C), cert denied 341 U S 914

[6] *Hammond & Irving, Incorporated*, 154 NLRB 1071

[7] In the event that this Recommended Order is 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 is 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."

[8] In the event that this Recommended Order is 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 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, as amended, we hereby notify our employees that:

WE WILL NOT interfere with, restrain, or coerce employees by promises of benefits if they reject Amalgamated Clothing Workers of America, AFL-CIO, or by announcement or grant of benefits prior to the expiration of the time for said Union to file objections to election.

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

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

Amalgamated Clothing Workers of America, AFL-CIO, or any other labor organization.

20TH CENTURY GLOVE COMPANY, INC.
(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, 528 Peachtree-Seventh Building, 50 Seventh Street, N.E., Atlanta, Georgia 30323, Telephone 526-5760.