

Winchester Spinning Corp. and United Textile Workers of America, AFL-CIO. Case 11-CA-3553

May 28, 1968

DECISION AND ORDER

By CHAIRMAN McCULLOCH AND MEMBERS BROWN AND JENKINS

Upon a charge filed by United Textile Workers of America, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 11, issued a complaint dated March 1, 1968, against Winchester Spinning Corp., 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.

With respect to the unfair labor practices, the complaint alleges, in substance, that on January 4, 1968, the Union was duly certified by the Regional Director for Region 11¹ as the exclusive bargaining representative of Respondent's employees in the stipulated unit and that, since January 8, 1968, and continuing at all times thereafter, Respondent has refused and is refusing to recognize or bargain with the Union as such exclusive bargaining representative, although the Union has requested and is requesting it to do so. On March 15, 1968, the Respondent filed its answer, denying the commission of the unfair labor practices alleged.

On March 19, 1968, the General Counsel filed with the Board a Motion for Summary Judgment, asserting, in view of admissions contained in the Respondent's answer and other written admissions annexed as appendixes to the moving papers, that there were no issues of fact or law requiring a hearing, and praying the issuance of a Decision and Order finding the violations as alleged in the complaint. Thereafter, on March 21, 1968, the National Labor Relations Board issued an order transferring proceeding to the Board, and, on the same date, a notice to show cause on or before April 4, 1968, why the General Counsel's Motion for Summary Judgment should not be granted. On April 3, 1968, the Respondent filed an opposition to General Counsel's Motion for Summary Judgment.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Na-

tional Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

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: (1) the Motion for Summary Judgment is inappropriate and inapplicable as substantial issues of fact are outstanding; and (2) the General Counsel's motion is improperly and prematurely brought before the Board contrary to the Board's own Rules and Regulations, and in derogation of the Administrative Procedure Act. These contentions are without merit for the following reasons.

The record establishes that on August 23 and 24, 1966, a consent election was conducted by the Regional Director for Region 11 among employees in the appropriate unit. On August 24, 1966, the Regional Director issued his tally of ballots showing that Petitioner had received 38 votes, 39 votes were cast against Petitioner, and 8 ballots were challenged.

On December 14, 1966, the Regional Director overruled the challenges to two ballots and sustained the challenge to another, and further recommended that ruling on the remaining five challenges be reserved pending the outcome of a combined hearing on objections and unfair labor practices wherein the five individuals whose ballots were challenged were alleged to have been discriminatorily discharged.

Subsequently the Trial Examiner held a consolidated hearing on the objections and unfair labor practice allegations, and on June 2, 1967, he issued his decision finding, *inter alia*, that Respondent had discriminatorily discharged four of the five employees whose ballots were challenged, and recommending that the ballots of the said four employees be opened and counted. On November 27, 1967, the Board affirmed the findings of the Trial Examiner with respect to the four employees above mentioned.²

On December 7, 1967, Respondent filed a motion to defer opening of challenged ballots, in which it submitted that, on December 5, 1967, it had filed in the United States Court of Appeals for the Fourth Circuit a petition to set aside the Board's Order in the above matters. It requested that the Board issue an Order directing the Regional Director to cancel his notice that he

¹ Certification of Representative in Case 11-RC-2395.

² *Winchester Spinning Corp.*, 168 NLRB 411

proposed to open and count the remaining challenged ballots until the matter before the court is decided. On December 18, 1967, the Board denied the motion as lacking in merit.

On December 28, 1967, the Regional Director directed that the challenged ballots be opened, and issued a revised tally of ballots showing that 42 ballots were cast for Petitioner and 41 were cast against Petitioner. On January 4, 1968, the Regional Director duly certified the Union as the exclusive bargaining representative of the employees in the appropriate unit.

In its answer Respondent has admitted as alleged that the Union has requested it to bargain and that it has refused to do so. It "affirmatively alleges that Respondent has refused to bargain with the Union as the collective-bargaining representative of its employees because a question concerning representation still exists until such time as the Fourth Circuit Court of Appeals in Case 11,946 rules on Respondent's Petition to Review and Set Aside the Board's Order in Cases 11-CA-3077, et al."³

In its opposition to the motion Respondent contends that a Motion for Summary Judgment is inappropriate and inapplicable as substantial and material issues of fact are outstanding. However, the Board has already resolved the issue of fact, namely, the discriminatory discharge of certain challenged voters, in the prior proceeding. This determination is final for all Board purposes even though it is appealable.⁴

Respondent also contends in its opposition to the motion that the General Counsel's motion has been improperly and prematurely brought before the Board contrary to the Board's own Rules and Regulations, and in derogation of the Administrative Procedure Act, since the matter has not been heard before a Trial Examiner, and since the motion has been filed directly with the Board, and not with a Trial Examiner. This contention has been specifically discussed and rejected by the Board in other cases and is without merit.⁵

As all material issues have been previously decided by the Board, are admitted by Respondent's answer to the complaint, or stand admitted by the failure of Respondent to controvert the averments of the General Counsel's motion, 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 a Connecticut corporation engaged in the manufacture of yarn at its Asheville, North Carolina, plant, which plant is the only one involved in this proceeding. During the past year, which period is representative of all material times herein, Respondent received at its Asheville plant goods and materials valued in excess of \$50,000 from sources outside the State of North Carolina. During the same period of time, Respondent produced and shipped goods valued in excess of \$50,000, from this plant, to places outside the State.

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

United Textile Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees at the Respondent's Asheville, North Carolina, plant constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees, including the instructor, and overhauler, and statistical control employees employed by Respondent at its Asheville, North Carolina, plant, excluding the maintenance leadman, guards, and supervisors as defined in the Act.

2. The certification

On August 23 and 24, 1966, a majority of the employees of Respondent in said unit, in a secret election conducted under the supervision of the Re-

³ Together with its answer, Respondent also filed a motion to stay the unfair labor practice proceedings. By order dated March 15, 1968, the Regional Director denied Respondent's motion. On March 20, 1968, Respondent filed a request for special permission to appeal the Regional Director's ruling. On March 21, 1968, the Board deferred ruling on said request until after receipt of responses to the notice to show cause. Having received said responses, and having duly considered the matter, Respondent's request is

hereby denied as lacking merit.

⁴ See *Marshall Maintenance Corp.*, 154 NLRB 611, 615. Unless the Board's order was final, Respondent would not be able to seek review thereof. N.L.R.A. Section 10(f).

⁵ *E-Z Davies Chevrolet*, 161 NLRB 1380. See also *Harry T. Campbell Sons' Corporation*, 164 NLRB 247, fn. 9.

gional Director for Region 11, designated the Union as their representative for the purposes of collective bargaining with Respondent. On January 4, 1968, the Regional Director 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 Respondent's Refusal

Commencing on January 8, 1968, and continuing to date, 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. Since January 8, 1968, and continuing to date, 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 Regional Director as the collective-bargaining representative of the employees of the Respondent in the appropriate unit described above, and that the Union at all times since January 4, 1968, 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 January 8, 1968, 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 activities of the Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship 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. Winchester Spinning Corp. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Textile Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, including the instructor, and overhauler, and statistical control employees employed by Respondent at its Asheville, North Carolina, plant, excluding the maintenance leadman, guards, 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. Since January 4, 1968, the above-named labor organization has been the 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 January 8, 1968, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all 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) 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, Winchester Spinning Corp., Asheville, North Carolina, 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 United Textile Workers of America, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees, including instructor, and overhauler, and statistical control employees employed by Respondent at its Asheville, North Carolina, plant, excluding the maintenance leadman, guards, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in 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 Asheville, North Carolina, plant copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 11, after being duly signed by Respondent's representative, shall be posted by Respondent 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 Respondent to insure that said notices are not altered, defaced, or covered by any other material.

[c. Notify the Regional Director for Region 11, in writing, within 10 days from the date of this Order, what steps have been taken to comply herewith.]

⁶ 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 "a Decision and Order" the words "a Decree of the United States Court of Appeals Enforcing an Order."

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 you that:

WE WILL NOT refuse to bargain collectively with United Textile Workers of America, AFL-CIO, 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 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. The bargaining unit is:

All production and maintenance employees, including the instructor, and overhauler, and statistical control employees employed by us at our Asheville, North Carolina, plant, excluding the maintenance leadman, guards, and supervisors as defined in the Act.

WINCHESTER SPINNING
CORP.
(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, 1624 Wachovia Building, 301 North Main Street, Winston-Salem, North Carolina 27101, Telephone 723-2911.