

Wolfson Manufacturing Company and International Ladies' Garment Workers Union, AFL-CIO. Case 9-CA-6388

June 26, 1972

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND PENELLO

On January 18, 1972, Trial Examiner George Turitz issued the attached Decision in this proceeding. Thereafter, the Charging Party filed a motion and limited exceptions to Trial Examiner's Decision.

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

The Board has considered the record and the Trial Examiner's Decision in light of the Charging Party's motion and limited exceptions. For reasons set out below, the Board has decided to grant the Charging Party's Motion in part and to make certain additional factual findings and remedial provisions as below described, but to affirm the Trial Examiner's rulings, findings,¹ and conclusions and to adopt his recommended Order in all other respects.

The Charging Party's motion and limited exceptions to the Trial Examiner's Decision were based on factual allegations that, after the hearing in this case, Respondent had closed its plant and filed a petition under the Bankruptcy Act. Charging Party therefore moved that the Board (1) make findings in addition to those set out in the Trial Examiner's Decision so as to reflect the current status of Respondent's operations, and (2) amend the recommended Order of the Trial Examiner in certain specified respects in light of the circumstances now existing.

On April 21, 1972, the Board issued to the parties an Order To Show Cause in writing on or before May 5, 1972, why the Board should not grant the Charging Party's motion to the extent of accepting the factual statements and, in adopting the Trial Examiner's recommended Order and notice, modify them accordingly to reflect the changed circumstances since the date of the hearing. No answer to the Order To Show Cause was filed by any party within the time provided.

Accordingly, the Board finds that on or about December 29, 1971, Respondent filed a petition under the Bankruptcy Act in the United States District Court for the Southern District of Ohio, Western Division (Case 64468), and has since ceased operations at its plant at Cynthiana, Kentucky. The Board further finds that, the relevant circumstances considered, it will best effectuate the purposes of the

Act to amend the provisions of the recommended Order and notice as indicated below, but to the extent the Charging Party's motion requests additional remedial relief, the motion is denied.

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, as modified below, and hereby orders that Wolfson Manufacturing Company, Cynthiana, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's recommended Order, as herein modified.

1. Substitute the following for paragraph 2(a) of the Order:

"(a) Mail to its former employees in Cynthiana, Kentucky, signed copies of the attached notice marked Appendix, on forms provided by the Regional Director for Region 9."

2. Add the following as the final paragraph of the Order:

"We reserve the right to reconsider and modify the provisions of this Order if made necessary by circumstances not now apparent."

3. Substitute the attached notice for the notice of the Trial Examiner.

¹ No exceptions were filed to the Trial Examiner's findings that the Respondent engaged in certain unfair labor practices in violation of Sec 8(a)(1) of the Act. We therefore adopt, *pro forma*, the Trial Examiner's findings with respect thereto

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

After a trial at which all parties had the opportunity to present their evidence, a decision has been issued finding that we violated the law and ordering us, our officers, agents, successors, or assigns to remedy such violation. We intend to carry out the Order of the Board and abide by the following:

WE WILL NOT question you about your union sympathies or activities under such circumstances, or in such a manner, as to constitute coercion.

WE WILL NOT, by rule or in any other manner, prohibit you during nonworking time from soliciting your fellow employees to join or support International Ladies' Garment Workers Union, AFL-CIO, or any other labor organization.

WE WILL NOT threaten you with loss of jobs

through the closing or moving of our plant, or in any other manner, if the Union becomes your bargaining representative.

WE WILL NOT promise you wage increases or other benefits in order to induce you to abandon your union sympathies or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your right to self-organization, to form, join, or assist a labor organization, and to bargain collectively through representatives of your 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.

WE WILL NOT, if and when we resume operations of our business, engage in any of the acts set forth above.

WOLFSON
MANUFACTURING
COMPANY
(Employer)

Dated _____ By _____ (Title)
(Representative)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Office Building, Room 2407, 550 Main Street, Cincinnati, Ohio 45202, Telephone 513-684-3686.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

GEORGE TURITZ, Trial Examiner: On a charge filed by International Ladies' Garment Workers Union, AFL-CIO ("the Union"), on July 23, 1971, and served on July 28, 1971, upon Wolfson Manufacturing Company ("Respondent"), the General Counsel of the National Labor Relations Board ("the Board"), through the Regional Director for Region 9, on September 23, 1971, issued a complaint and notice of hearing which was duly served on Respondent. Respondent filed its answer in which it denied all allegations of unfair labor practices. A hearing on the complaint was held before me at Cynthiana, Kentucky, on November 30, 1971, at which the General Counsel, Respondent, and the Union were represented by their respective counsel. The General Counsel has submitted a brief.

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

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, Wolfson Manufacturing Company, is an Ohio corporation which is engaged in the manufacture and sale of garments at a plant in Cynthiana, Kentucky. In the course and conduct of its operations Respondent annually sells and ships from the Cynthiana plant directly to its customers located outside the State of Kentucky products valued at in excess of \$50,000, and annually purchases and causes to be transported and delivered to its said plant, directly from States of the United States other than Kentucky, goods valued at in excess of \$50,000. I find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act, as amended ("the Act").

II. THE LABOR ORGANIZATION INVOLVED

International Ladies' Garment Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The principal issues litigated at the hearing were whether Wolfson, Respondent's general manager, and Yarnell, a supervisor, illegally interrogated employees and threatened employees with loss of jobs if they unionized; whether Wolfson promised an employee a wage increase to induce her to abandon the Union; and whether Respondent, through Wolfson, instituted and maintained an illegal no-solicitation rule.

A. Allegedly Coercive Acts by Wolfson

1. Threats of loss of jobs

In April 1971¹ the Union began an organizational campaign among Respondent's employees and union-designation cards were distributed. Several attempts in earlier years to organize the employees had been unsuccessful. Respondent promptly called a meeting of the employees on paid working time and its general manager, Nathan Wolfson, read them the following speech:

It has come to my attention that the Union is once again active in soliciting your support in their efforts to unionize the Wolfson Mfg. Co.

Since this campaign started there has been a noticeable slow down in certain sections of the sewing room.

This is not, by any means a suggestion that all the girls are doing this. We are all well aware that most of the girls working here are loyal to the company. We know if you did not need your jobs you would not be working here.

I want to make one thing very clear for now and for

¹ Unless otherwise stated, all dates mentioned in this Decision were in 1971

the future. Those of you who do not produce will not be working here.

As for the union, I will not let them place this company in the same position as our neighbor next door. I would hate to see all of you added to Cynthia's unemployed. That is what will happen if you vote the Union in.

Too many people in this town are still unemployed and I am sure that some of you number your husbands in this category.

Since June of 1970 we have not been making our own line. All of our work is on contract. We have plenty of work but not enough production to meet our expenses. I for one do not intend to keep on driving 150 miles a day to and from work to just to see all of our efforts go down the drain. Also we will no longer continue to put more and more money into this factory in order to keep it going. From now on it is up to you.

Produce for us and when production has reached the point where we can afford to give you more benefits [we] (and that includes Hannah, Bill and myself) will be more than happy to do so.

We got rid of "Forget Me Not" because you did not like to make their dresses—Our shelves are loaded with other work now and our fabric room is loaded with additional goods to be cut and made. The companies for whom we are doing work now are pressuring us for deliveries. We must have an increase in our daily production to keep them happy. After checking the operations of each person in our plant, if we had piece work prices in effect, some of the earned pay per day would be as low as \$3.00 per day.

We are turning down work from other companies—how can we take additional work unless we can reach a steady output each day to justify taking on additional work. We have letters every week from manufactures asking us if we will produce goods for them.

You do not need a Union to deal with us and I hope that when you think this whole thing over, you will decide not to have the union represent you here.

Last year we spent a small fortune fighting the union. This year I am not going to spend one thin dime. You girls can fight for your jobs merely by voting No when the time come.

Incidentally, I heard the remark made that if you girls walk out on us we are stuck with all the work we have on hand. Don't kid yourselves. Arrangements have already been made for another contractor to handle this for us.

So once again I want to impress you the necessity for getting this work out.

Your jobs Depend on it

Thank you

Concluding findings as to Wolfson's speech

By the references in his speech to unemployment, to the employees' need for their jobs, to loss of jobs by

nonproducers, to the apparently closed factory next door, and to his intention not "to see all of our efforts go down the drain," Wolfson plainly sought to convey emphatically to the employees the idea that they were in danger of losing their jobs. The legality of the speech depends upon whether it indicated to them that such danger lay in economic necessities beyond Respondent's control, i.e., the employees' low production, or lay in Respondent's obvious power to retaliate against them for unionizing in the face of Wolfson's expressed opposition.

Apart from the fact that Respondent made no attempt at the hearing to demonstrate that Wolfson's statements about low production or the consequences thereof were justified and called for, cf. *The Sinclair Company v. N.L.R.B. (Gissel Packing Co.)*, 395 U.S. 575, 618, Wolfson deliberately tied his statements about loss of jobs to the employees' union activities. Thus, by opening the speech with a reference to the union campaign, he made clear to the employees that that was the problem on his mind that brought about the meeting. In the next sentence he referred to a slowdown by some employees since the union campaign had started. He even made several statements to the effect that voting the Union in would result in a shutdown: "That [i.e., adding the employees to the unemployed] is what will happen if you vote the Union in," and:

Last year we spent a small fortune fighting the Union.

This year I am not going to spend one thin dime. You girls can fight for your jobs merely by voting No when the time comes.

I find that by Wolfson's speech Respondent threatened that if the employees voted the Union in, Respondent would retaliate by closing its plant. I find further that Respondent thereby violated Section 8(a)(1) of the Act.

2. The no-solicitation rule; interrogation

On July 2 Georgia Crosthwaite, the chief employee organizer in the union campaign,² was summoned to the office to see Wolfson. He said to her:

Georgia, I understand you are campaigning for the Union. I understand that you told a group of girls in the cafeteria that if they would sign a union card and send it in they wouldn't have to pay the initiation fee. I've got proof of this.

Crosthwaite replied: "You don't have to have proof of it. I don't deny what I do. Yes, I did it"; whereupon Wolfson said, "Well, from here on I don't want you talking union on these premises." Crosthwaite insisted that she did those things only when clocked out or on her lunch hour. Wolfson replied, "Working hours or no working hours, I don't want you to talk union or hand out any more cards on these premises." Asked what to do if an employee requested a card, Wolfson replied, "You still wait until you leave our premises." He specifically ordered her not to mention the Union in the cafeteria or after working hours on the parking lot—in short, not until she had left Respondent's premises.

² Crosthwaite had acted as union observer in a Board election held in 1969 or 1970

a. *Concluding findings as to the no-solicitation rule*

It is by now well established that an employee's right to self-organization includes the right to solicit union membership on the employer's premises during nonworking time; a broad rule banning such activity during nonworking time is presumptively invalid. See *Stoddard Quirk Manufacturing Company* 138 NLRB 615, 617. Respondent has not proved any special circumstances rebutting such presumption.³ I therefore find that the rule laid down by Wolfson curtailed the employees' statutory rights and was violative of Section 8(a)(1) of the Act.

b. *Concluding findings as to Wolfson's interrogation*

As a preliminary to the promulgation of the illegal rule, Wolfson confronted Crosthwaite with the information he had gathered about her union activities, and he told her, "I've got proof of this." Crosthwaite immediately replied, "I don't deny what I do. Yes I did it." While Wolfson did not put a direct question to Crosthwaite, he plainly expected an answer from her, and she obediently complied with her employer's expectation. I find that, by having Crosthwaite summoned to his office and confronting her with the information he had obtained about her union activities, Wolfson interrogated her. As the interrogation took place in the general manager's office and was accompanied by the promulgation of an invalid no-solicitation rule, and as the entire incident constituted an implied reprimand of Crosthwaite for having engaged in activities protected by Section 7 of the Act, it plainly tended to coerce Crosthwaite in the exercise of such activities. Moreover, as other employees would have learned of such an incident in due course, it tended to coerce the employees generally.

These conclusions are in no way affected by the fact that Crosthwaite answered truthfully. Untruthfulness is usually felt to be demeaning; and Crosthwaite indicated that that was how she felt when she explained her admission to Wolfson by saying, "I don't deny what I do." It is, thus, unsound to conclude that an employee's refusal to deny his actions, beliefs, or principles tends, to any degree, to show that the employee did not feel restrained and coerced by the interrogation. But cf. *N.L.R.B. v. Master Touch Dental Laboratories, Inc.*, 405 F.2d 80, 84 (C.A. 2), denying enforcement of 165 NLRB 585. However, it must be emphasized, in addition, that the test as to the coerciveness of a statement or of interrogation does not depend on its actual effect on the listeners or the persons interrogated, but on whether it reasonably tends to have a coercive effect. See *Amalgamated Clothing Workers of America, AFL-CIO, Local 990 (Troy Textiles, Inc.)*, 174 NLRB No. 173, fn. 1, enf'd. 430 F.2d 966 (C.A. 5).

I find that Wolfson's interrogation of Crosthwaite was coercive and violative of Section 8(a)(1) of the Act.

³ On the contrary Respondent admittedly allowed the employees to carry on many forms of solicitation on its premises—selling Avon products and jewelry, collecting for Christmas, funeral, and sickness gifts—even to slight extent on worktime.

⁴ Wolfson and Yarnell testified that Wolfson questioned Yarnell about the Charge before approaching Pickett. They also testified that both were present during the conversation with Pickett, and that when Pickett was confronted with the Charge, she denied that Yarnell had done what was

3. The promise of benefit

On July 28 Respondent received a copy of the charge in this case, which included the following statement:

On or about June 17, 1971, Mrs. Margaret Yarnell, a supervisor, threatened employee Shirley Pickett and other employees and interrogated them with regard to their Union sympathies and a Union meeting. During the latter part of June or early part of July, 1971, Mrs. Margaret Yarnell indicated that the Employer was moving out because of the Union.

Wolfson went out into the plant, showed the Charge to Pickett, who was at work, and asked her whether Yarnell had threatened her job. Pickett said that she had. She went on to tell Wolfson how she felt about a union, and that she had attended union meetings because she needed more money, and that she did more work than other employees and needed a raise. Wolfson promised one a little later but said that he could not grant it right at that time.⁴ Wolfson did not deny that he had promised Pickett a raise later. Yarnell did not deny it either, but she testified that Wolfson instructed her to keep a record of Pickett's production. Pickett did not receive a raise and quit about a month later.

Concluding findings as to the promise of benefits

When Pickett told Wolfson that she attended union meetings because she needed more money, he replied by promising a wage increase, albeit later. The record does not warrant a finding that the promise would have been made in the normal course of business, in the absence of the Union's organizational campaign. On the contrary, the evidence discloses that the promise arose directly out of Wolfson's confronting Pickett with the charge which the Union had filed, apparently with her cooperation. When Pickett told him that her interest in the Union was prompted by a need for more money, his reply, promising a wage increase, tended to cool that interest; and he made no attempt to divorce his promise from Pickett's stated interest in the Union. It must, therefore, be inferred that the promise was calculated to wear Pickett away from the Union.⁵ See *Mid-State Beverages, Inc.*, 153 NLRB 135, 142.

I find that by Wolfson's promise to Pickett of a wage increase Respondent violated Section 8(a)(1) of the Act.

B. *Coercive Act by Yarnell*

1. Threats of loss of jobs

On June 16 the Union held its first general meeting. On June 17 Margaret Yarnell, supervisor of the pressing department, approached Edith Thomas during work and told her that Respondent was loading some material on a truck. When Thomas asked why, Yarnell replied that

alleged denied having brought those allegations to the Union, and stated that some one else was using her name. It is unnecessary to resolve this contradiction; the evidence establishes that Yarnell did threaten that the plant would be closed if the Union were brought in.

⁵ This finding would not be affected by the fact that Wolfson may have conditioned his promise on Pickett's production turning out to be as good as she claimed, as indicated by Yarnell's testimony that he told her to keep a record of Pickett's production.

Respondent thought the Union was coming in and therefore was moving away. In that same conversation Yarnell asked Thomas, who was an older employee, what she would do if the Union came in and Respondent closed the plant, commenting, "You couldn't find a job at your age." Thomas replied, "Well I'll worry about that when the time comes"; she testified that she did not believe Yarnell's statement that the plant would close or move.

On about July 12 Yarnell approached Pickett, one of her employees, while she was at work and told her that if the employees voted for a union, Respondent would move and the employees would be without jobs.

Yarnell denied Crosthwaite's and Pickett's testimony. She stated that she did tell a number of employees, whom she could not identify, that in her own opinion the plant would move if the Union got in; and that she had commented that she, herself, would be too old to get another job if the plant left town. I found Crosthwaite and Pickett convincing and credible witnesses and have credited their testimony over Yarnell's. I find that Yarnell made the statements ascribed to her by those two employees.

I find that Yarnell's statement that materials were being loaded because Respondent feared that the Union was coming to the plant, her statements to Crosthwaite and Pickett that the plant would move if the Union got in, and her statement that Crosthwaite could not get another job if that happened, constituted violations by Respondent of Section 8(a)(1) of the Act. It is not material that Crosthwaite did not believe Yarnell. See *Amalgamated Clothing Workers of America, AFL-CIO, Local 990 (Troy Textiles, Inc.)*, *supra*.

2. Interrogation by Yarnell

On June 16 the Union held its first general meeting. On June 17 Yarnell approached Pickett while she was at work and asked her (a) whether she had gone to the union meeting; (b) how many employees had attended; (c) what had been said; and (d) how the employees felt about a union. Pickett informed her that seven employees had been present and that she, having heard Wolfson's speech in April, wanted to hear more about the Union. Yarnell denied ever asking Pickett questions about the Union. She testified that Pickett had given her information about union meetings but that the information had been volunteered by Pickett.⁶ Pickett impressed me as a credible witness and I find that Yarnell did interrogate her about the union meetings.

An employer's delving into his employees' union activities tends to inhibit such activities. See *Syracuse Color Press, Inc.*, 103 NLRB 377, 380. Respondent has not demonstrated any need for the information sought by Yarnell. Her interrogation of Pickett took place on the day immediately following the Union's first general meeting, a time when employees are especially sensitive to their employer's interference in their union activity. Moreover, Wolfson's speech in April had contained threats of

retaliation against employees for their interest in the Union. No reason appears why the effect of those threats should have worn off. On the contrary, Pickett mentioned the speech to Yarnell on the occasion of the interrogation, and I have found that on the day of the interrogation Yarnell made similar threats to Crosthwaite. Respondent's threat to close the plant was still a current issue. In view of all these circumstances I find that Yarnell's interrogation of Pickett was coercive and violative of Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

I find that the activities of the Respondent set forth above 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

In order to effectuate the policies of the Act, I find that it is necessary that Respondent be ordered to cease and desist from the unfair labor practices found and from like or related invasions of the employees' Section 7 rights and to take certain affirmative action.

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

CONCLUSIONS OF LAW

1. Respondent, Wolfson Manufacturing Company, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is, and at all times material has been, an employer within the meaning of Section 2(2) of the Act.

3. International Ladies' Garment Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

4. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

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

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:⁷

ORDER

Respondent, Wolfson Manufacturing Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Interrogating any employee with respect to any

findings, conclusions and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, automatically become the findings, conclusions, decision, and order of the Board, and all objections thereto shall be deemed waived for all purposes.

⁶ At one point she testified, "I probably have said 'was there a meeting' or 'There would be a union meeting'."

⁷ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the

employee's activity, membership, or interest in any labor organization in a manner, or under circumstances, constituting interference, restraint, or coercion in violation of Section 8(a)(1) of the Act.

(b) Promulgating, maintaining, enforcing, or applying any rule or regulation prohibiting its employees, or in any other manner prohibiting its employees, during nonworking time, from soliciting their fellow employees to join or support International Ladies' Garment Workers Union, AFL-CIO, or any other labor organization.

(c) Threatening employees that the plant would close or move, or threatening them in any other manner with loss of job, if the Union became their bargaining representative.

(d) Promising employees wage increases or other benefits to induce them to abandon their union sympathies or activities.

(e) In any like or related manner interfering with,

⁸ In the event that the Board's Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of a United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action which, it is found, will effectuate the policies of the Act:

(a) Post in its office and plant at Cynthiana, Kentucky, copies of the attached notice marked "Appendix."⁸ Copies of the notice, on forms provided by the Regional Director for Region 9, shall, after being duly signed by a representative of Respondent, be posted 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 to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify said Regional Director for Region 9, in writing, within 20 days from the date of receipt of this Decision what steps Respondent has taken to comply herewith.⁹

⁹ In the event that this recommended Order is adopted by the Board after exceptions have been filed, this provision shall be modified to read "Notify said Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith."