

In the Matter of **GLOBE COTTON MILLS and TEXTILE WORKERS**
ORGANIZING COMMITTEE

Cases Nos. C-386 and R-546.—Decided April 6, 1938

Cotton Textile Industry—Interference, Restraint, or Coercion—Unit Appropriate for Collective Bargaining: production employees; no controversy as to—*Representatives:* no controversy as to—*Collective Bargaining:* meaning of; negotiations in good faith; meeting with representatives but with no bona fide intent to reach an agreement; adherence to existing wage scale and working conditions; counterproposals, failure or refusal to make; evasive tactics with regard to embodying present policy in agreement—*Petition for Certification:* dismissed because of order to respondent to bargain.

Mr. Marion A. Prowell and Mr. Maurice J. Nicolson, for the Board. Lee, Congdon & Fulcher, by Mr. Lansing B. Lee and Mr. William P. Congdon, of Augusta, Ga., for the respondent.

Mr. L. B. Furtick, of Augusta, Ga., for the Union.

Miss Ann Landy, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On May 25, 1937, Textile Workers Organizing Committee, herein called the Union, filed charges, and on October 11, 1937, amended charges with the Regional Director for the Tenth Region (Atlanta, Georgia), alleging that Globe Cotton Mills, Augusta, Georgia, herein called the respondent, had engaged in and was engaging in unfair labor practices within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

On August 12, 1937, the Union filed a petition with the Regional Director for the Tenth Region alleging that a question affecting commerce had arisen concerning the representation of the respondent's employees, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act.

On October 18, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Sections 3 and 10 (c) (2), and Article II, Section 37 (b), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered a con-

solidation of these cases and ordered an investigation of representatives, authorizing the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On November 9, 1937, the Regional Director for the Tenth Region issued a complaint and notice of hearing, copies of which were duly served upon the respondent and the Union. The complaint alleged in substance that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act, in that the respondent had refused to bargain collectively in good faith with the Union. The respondent filed its answer on November 13, 1937, denying the essential allegations of the complaint.

Pursuant to notice, a hearing was held on the consolidated cases in Augusta, Georgia, on November 22, 1937, before William R. Ringer, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel, and the Union by a representative. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties. We have reviewed the rulings of the Trial Examiner on motions and objections to the admission of evidence and find that no prejudicial errors were committed. The rulings are hereby affirmed.

On January 24, 1938, the Trial Examiner filed his Intermediate Report in which he found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act. On February 3, 1938, the respondent filed its Exceptions to the Intermediate Report, excepting to certain findings of fact made by the Trial Examiner, and to his conclusions. A brief in support of the exceptions was subsequently filed with the Board by counsel for the respondent. We have fully considered the exceptions to the Intermediate Report and find them without merit.

Upon the entire record in both cases, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, Globe Cotton Mills, is a Georgia corporation, with its principal office and place of business in Augusta, Georgia. The respondent is engaged in the manufacture and production of cotton goods. The number of its employees varies between 125 and 225. Cotton is the principal raw material, approximately 15 per cent of which is derived from outside of the State of Georgia. Approximately 90 per cent of the finished products are shipped and sold outside the State of Georgia.

It was stipulated that the respondent, during the past 3 years, has done an average annual business of between \$400,000 and \$500,000, and of this amount approximately 90 per cent is realized in commerce among the various States of the United States.

II. THE ORGANIZATION INVOLVED

Textile Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all production employees of the respondent exclusive of supervisory and clerical employees.

III. THE UNFAIR LABOR PRACTICES

A. *The appropriate unit*

It was stipulated by the parties that for the purpose of this proceeding the employees of the respondent, exclusive of supervisors and clerical employees, composing what is known as the "production employees", constitute an appropriate unit for collective bargaining within the meaning of Section 9 (b) of the Act. We see no reason to alter the agreed unit.

We find that the production employees of the Company, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

B. *Representation by the Union of a majority in the appropriate unit*

It was further stipulated by the parties that the Textile Workers Organizing Committee was the representative selected by a majority of the production employees of the respondent for collective bargaining purposes, and was so recognized on July 27, 1937, and at all times thereafter.

We find that on July 27, 1937, the Union had been designated and selected by a majority of the employees in the appropriate unit as their representative for the purposes of collective bargaining, and that by virtue of Section 9 (a) of the Act, on that date and at all times thereafter, the Union has been the exclusive representative of all employees in the unit for such purposes.

C. *The refusal to bargain*

On May 17, 1937, the Union made its first attempt to enter into negotiation with the respondent at a meeting between L. B. Furtick, local representative of the Union, and J. C. Fargo, president of the

respondent. Furtick informed Fargo that a majority of the respondent's employees had chosen the Union to represent them for purposes of collective bargaining and offered a written proposal for a contract. Fargo refused to accept or to read the proposal and declared that the respondent did not intend to take part in collective bargaining.

Subsequent to the Union's filing charges against the respondent, three conferences were held between representatives of the Union and the respondent, the transcripts of which have been incorporated in the record by the stipulation of the parties.

The first conference was on July 27, 1937. The employees were represented by A. Steve Nance, Southern Director of the Union, L. B. Furtick, and three employees of the respondent. The respondent was represented by J. C. Fargo, H. R. Davis, superintendent of the mill, A. S. Boyce, and L. B. Lee, attorney.

Nance opened the meeting by setting forth the general operation and aim of the Union. Lee reserved his rights to rebut any presumption that the respondent was subject to the Act. Nance then presented the written draft of a tentative proposal, which was read aloud by Lee. The substance of the proposed agreement can be summarized as follows: Introductory clause; seniority in lay-offs and reemployment to be observed; workweek not to exceed 40 hours, consisting of 8 hours per day; wages to be increased 15 per cent; parties to cooperate to secure proper legislation for the benefit of the industry, and children under 16 not to be employed; the respondent to retain right to free choice in the hiring of employees; disputes to be adjusted by a Plant Committee and by arbitration; the Union to cooperate with the management if the employees should take action contrary to the agreement.

A discussion of the respondent's financial condition ensued. Fargo explained the circumstances which the respondent considered made the 10-hour day schedule a necessity and added that the 10-hour day represented the employees' choice in preference to a reduction of wages or the closing down of the mill. Fargo indicated, however, that the hours were to be reduced as soon as goods could be sold for prices based on an 8-hour daily schedule. Nance agreed that Fargo's statements concerning the respondent's financial condition were essentially correct but reiterated the Union's desire to work out the adjustments with the respondent on the basis of collective negotiations. The meeting adjourned and the respondent agreed to consider the proposed contract.

On August 3, 1937, a second conference was held by the two committees. Fargo, on his physician's advice, was not present, but he sent a letter which was read by Lee. In the letter Fargo discussed each section of the submitted contract. The substance of his com-

ments may be summarized as follows: The introductory clause deals with generalities and nothing is to be gained from writing it into a contract; seniority is an established practice of the respondent, and the employees have expressed no complaint in that respect; with regard to hours and wages no action can be taken other than as outlined at the first conference; it is of no interest to either party to contract with reference to future policies; the respondent does not employ child labor, and as such employment is prohibited by State law there is no necessity for a contract in the matter; the employees have the assurance already that respondent will at all times confer with them and there is no reason for an additional contract on this subject; the last section is interpreted as prohibiting the hearing of grievances of employees who are not represented by the Union and is therefore found unacceptable.

In the discussion which followed each clause was separately treated. Lee and Davies further elaborated on Fargo's written answers. Considerable time was spent in debating the seniority provision, Lee maintaining the position that they preferred to handle each case involving seniority as it arose without an agreement on the subject.

On September 28, 1937, the third conference was held with Fargo participating. Furtick requested counterproposals from the management without result. He then presented a new proposal for a contract. This second proposed agreement differed from the first in that it provided for a 25-per cent wage increase, for a closed shop and check-off system. During the discussion, however, after objections by the respondent, Furtick offered to eliminate the new provisions. When Lee reiterated the respondent's policy with regard to child labor and seniority, Gay, a Union representative, asked that the respondent draft their policy as a basis for an agreement. Lee's response was: "We think it would be a useless and unnecessary thing to enter upon a contract that would have nothing in it but the company's policy in regard to child labor and in regard to seniority rights, and that would be all that would be in that contract." Furtick asked for agreement on the 8-hour day which already had been put in effect by the respondent; he was told that it would be continued as long as the respondent was able to do so but that an agreement was not feasible on the subject.

Toward the end of the last meeting the representatives of the Union asked Fargo and Lee repeatedly to write up their present policy in the matters discussed and submit it as a counterproposal. Respondent's officers were unwilling to do that at any point during the negotiations.

In the first proposed agreement, the Union requested a reduction in daily hours from 10 to 8. The request was discussed but the

respondent would make no commitment. During the course of the negotiations, the respondent did reduce its daily hours from 10 to 8 without any reference to the Union's request.

Summarizing the facts we find: The respondent recognized the Union as the chosen representative of its employees for the purposes of collective bargaining; it was ready and willing at all times to meet through its officials with the Union to discuss proposals submitted to it; proposals which would necessitate a change in its present policy were opposed on the ground that the respondent's financial condition did not permit them, and that the present arrangement had always been the most workable one; proposals which in effect embodied the present policy of the respondent were eliminated on the ground that the respondent considered it useless to have an agreement concerning them and, furthermore, in regard to the seniority provision, the respondent maintained a preference for dealing with the individual seniority problems as they arose; the respondent made no counter-proposals at any time during the negotiations.

The respondent has taken the position all through the conferences that the Union should "let things alone and let them stay as they are now." No concessions have been made by its officers and although negotiations were pending the Union was deliberately ignored when the respondent decided to reduce daily hours from 10 to 8. The respondent's president flatly stated that he could see no reason for an agreement with the Union, that a written contract embodying the present practices and policies of the Company would be useless.

From the foregoing recital of the facts, it is apparent that on May 17, 1937, the respondent did not intend under any circumstances to negotiate or enter into any type of collective agreement with the representatives of its employees. Although in subsequent months, the respondent met with the Union representatives, received proposals, accorded such proposals ostensible consideration, and engaged in discussions of them, an analysis of this conduct compels the conclusion that in fact the respondent did not recede from or alter in any material particular its position of May 17. Throughout the conferences, the respondent not only systematically rejected each and every Union proposal, including those which were admittedly unobjectionable, but also persistently declined to make any counterproposals. Counsel for the respondent argues in his brief that since it expressed its views in open conference and since its ideas were not acceptable to the committee, it would have been a vain and foolish thing to submit a formal proposal to the same effect. This argument has a surface plausibility but the difficulty with it lies in the fact that while rejecting the Union's proposals in open discussion the respondent not only did not give but in fact carefully avoided any affirmative indication of pos-

sible terms upon which it would be willing to agree. It is obvious that this technique was calculated to and did make any productive negotiations impossible.

Counsel for the respondent further contends that at the third conference a contract as to seniority and child labor alone was rejected by the Union. The conversation alluded to is evidence to the contrary.¹

The question before us for decision is clear. Did the respondent fulfill its obligation under the Act by meeting and discussing proposals submitted to it by the representatives of its employees in the manner hereinabove described? In our opinion it did not.

In *Matter of St. Joseph Stock Yards Co.*,² we said:

An assertion that collective bargaining constitutes no more than discussion designed to clarify employer policy and does not include negotiations looking toward the adoption of a binding agreement between employer and employees is contrary to any realistic view of labor relations. The development of those relations had progressed too far when the Act was adopted to permit the conclusion that the Congress intended to safeguard only the barren right of discussion.

The term collective bargaining denotes in common usage, as well as in legal terminology, negotiations looking toward a collective agreement. If the employer adheres to a preconceived determination not to enter into any agreement with the representatives of his employees, as we have found here, then his meeting and discussing the issues with them, however frequently, does not fulfill his obligations under the Act.³

The respondent's tactics in readily participating in discussions in which its agents carefully avoided any semblance of agreement to proposed terms and offered no suggestions for changes acceptable to them convince us that the respondent only sought to give the appearance of obedience to the Act without ever entering into genuine collective bargaining.

Accordingly, we find that the respondent at all times since July 27, 1937, has refused to bargain collectively with the Textile Workers Organizing Committee as the exclusive representative of its employees in an appropriate bargaining unit.

¹ Board Exhibit 23, p. 44.

Mr. Lee. Suppose we add to our sixteen years that we would continue to do as to seniority as we have already done, would you be willing to sign that?

Mr. Furtick. With the sixteen year old matter and seniority we will take them as two clauses. We come on down and agree on these two parts and take up another.

Mr. Lee: We have not agreed on them. What else are we going to agree on?

² 2 N. L. R. B. 39.

³ In *Matter of S. L. Allen & Co., Inc.*, 1 N. L. R. B. 714

VI. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the aforesaid activities of the respondent 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.

THE PETITION

In view of the Board's finding in Sections III and IV above, it is not necessary to consider the petition of the Union for certification of representatives. Consequently, the petition for certification will be dismissed.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, the Board makes the following conclusions of law:

1. Textile Workers Organizing Committee is a labor organization within the meaning of Section 2 (5) of the Act.
2. All production employees of the respondent, excluding supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.
3. The Textile Workers Organizing Committee was on July 27, 1937, and at all times thereafter has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.
4. By refusing and continuing to refuse to bargain collectively with the Textile Workers Organizing Committee as the exclusive representative of the employees in the above-stated unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.
5. By refusing and continuing to refuse to bargain collectively with the Textile Workers Organizing Committee, as above-stated, and thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the

Globe Cotton Mills, Augusta, Georgia, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act;

(b) From refusing to bargain collectively with Textile Workers Organizing Committee, as the exclusive representative of all its production employees, except supervisory and clerical employees.

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

(a) Upon request bargain collectively with the Textile Workers Organizing Committee as the exclusive representative of all its production employees, except supervisory and clerical employees, with respect to rates of pay, hours of employment and other conditions of employment, and, if an understanding is reached on any such matters, embody said understanding in an agreement for a definite term, to be agreed upon, if requested to do so by the Union;

(b) Post immediately notices to its employees in conspicuous places within the plant, stating that respondent will cease and desist as aforesaid; and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting;

(c) Notify the Regional Director for the Tenth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

The petition for certification of representatives is hereby dismissed.