

In the Matter of **HERSHEY CHOCOLATE CORPORATION** *and* **UNITED CHOCOLATE WORKERS, LOCAL NO. 2, AFFILIATED WITH THE COMMITTEE FOR INDUSTRIAL ORGANIZATION**

Case No. C-558.—Decided May 5, 1938

Chocolate Products Manufacturing Industry—Settlement: agreement to comply with Act—Order: entered on stipulation.

*Mr. Geoffrey J. Cunniff and Mr. Samuel G. Zack, for the Board.
Mr. William H. Earnest, of Harrisburg, Pa., for the respondent.
Mr. Sydney Handler, of Harrisburg, Pa., for the United.
Mr. Henry W. Lehmann, of counsel to the Board.*

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by John E. Loy, business agent of United Chocolate Workers, Local No. 2, herein called the United, the National Labor Relations Board, herein called the Board, by Stanley W. Root, Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued its complaint dated April 14, 1938, against Hershey Chocolate Corporation, Hershey, Pennsylvania, herein called the respondent, alleging that the respondent in the operation of its plant in Hershey, Pennsylvania, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6), and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect to the unfair labor practices, the complaint in substance alleged that the respondent had dominated and interfered with the formation and administration of Independent Chocolate Workers of Hershey, a labor organization of its employees at its plant in Hershey, Pennsylvania, and had contributed financial and other support thereto; that during March, April, and May, 1937, the respondent by threats, the making of speeches, the sale or distribution of printed propaganda, and by other acts, attempted to discourage its employees from joining the United; and that the respondent termi-

nated the employment of 11 named employees, and has at all times refused to reemploy them, for the reason that said employees joined and assisted the United and engaged in concerted activities with other employees at its plant in Hershey, Pennsylvania, for the purpose of collective bargaining and other mutual aid and protection.

Pursuant to notice, a hearing was held in Philadelphia, Pennsylvania, on April 23, 1938, before James C. Batten, the Trial Examiner duly designated by the Board. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues, was afforded to all parties. Only the Board was represented by counsel at the hearing.

At the commencement of the hearing, a stipulation effecting a settlement of the case was offered in evidence and made a part of the record herein. Thereupon the hearing was closed.

On April 25, 1938, Independent Chocolate Workers of Hershey filed with the Board a petition requesting leave to intervene and a hearing. Inasmuch as the order issued in this proceeding pursuant to the above-mentioned stipulation does not run against the Independent Chocolate Workers of Hershey, the petition is hereby denied.¹

The stipulation signed on behalf of all the parties reads as follows:

It is hereby stipulated by and between Hershey Chocolate Corporation, respondent herein, United Chocolate Workers, Local No. 2, a party herein, and the National Labor Relations Board, that:

I. Upon charges duly filed by the United Chocolate Workers, Local Union No. 2, the National Labor Relations Board by the Regional Director for the Fourth Region, acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act (49 Stat. 449) and its Rules and Regulations, Series 1, as amended, Article 4, Section 1, issued its complaint on the 14th day of April, 1938, against the Hershey Chocolate Corporation, respondent herein.

II. Respondent, Hershey Chocolate Corporation, is and has been since on or about October 24, 1927, a corporation organized and existing by virtue of the laws of the State of Delaware, having its office and place of business in the Town of Hershey, Commonwealth of Pennsylvania, and is now and has continuously been engaged at its place of business in the Town of Hershey, Commonwealth of Pennsylvania, (hereinafter called the Hershey Plant) in the manufacture, sale, and distribution of milk chocolate bars, cocoa, baking chocolate, coatings, cocoa

¹ See *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company*, 303 U. S. 261.

butter, milk chocolate peanut bars, milk chocolate almond bars, cocoa syrup, and milk chocolate kisses.

III. The respondent, Hershey Chocolate Corporation, in the course and conduct of its business at its Hershey Plant uses, among other things, the following materials, supplies, or commodities: Milk, sugar, butter, chocolate, cocoa, almonds, peanuts, and cocoa beans; and acquires about 70 per cent of these materials in States of the United States other than the Commonwealth of Pennsylvania and from foreign countries, and in the course and conduct of its business causes and has continuously caused approximately 70 per cent of its raw materials to be transported in interstate commerce from and through States of the United States other than the Commonwealth of Pennsylvania and from and through foreign countries to its Hershey Plant in the Commonwealth of Pennsylvania and there these raw materials are manufactured by the respondent into the products enumerated in paragraph II above.

IV. The respondent, Hershey Chocolate Corporation, manufactures the products set forth above in paragraph II at its Hershey Plant and causes and has continuously caused approximately 92 per cent of these products produced by it to be sold and transported in interstate commerce from its Hershey Plant to, into and through States of the United States other than the Commonwealth of Pennsylvania, and to foreign countries.

V. Respondent, Hershey Chocolate Corporation, is engaged in interstate commerce within the meaning of the National Labor Relations Act and decisions of the United States Supreme Court thereunder.

VI. The respondent, Hershey Chocolate Corporation, in the course and conduct of its business at its Hershey Plant employs approximately 3141 employees of which approximately 2424 are engaged in production and maintenance, 356 constitute the sales force, 266 are office workers, and 95 are supervisors.

VII. The United Chocolate Workers Local No. 2 is a labor organization affiliated with the Committee for Industrial Organization, admitting to its membership employees of the respondent.

VIII. The Independent Chocolate Workers of Hershey is an unaffiliated labor organization. It admits to its membership employees of the respondent.

IX. On April 6, 1937, during a strike, a group of Hershey employees met in the Hershey Theater. At this meeting, a Loyal Workers Club was organized to secure members loyal to the respondent. At a meeting of the Loyal Workers Club on April 22, 1937, the Independent Chocolate Workers of Hershey came

into being. The officers of the Independent Chocolate Workers of Hershey are the same as the officers of the Loyal Workers Club.

X. The respondent by its supervisory officials through speeches and statements to its employees, encouraged membership in the Independent Chocolate Workers of Hershey; designated individuals to act as the employee representatives within the Independent Chocolate Workers of Hershey; allowed notices relating only to the Independent Chocolate Workers of Hershey to be posted on the bulletin boards; and allowed the collection of dues and the holding of meetings by the Independent Chocolate Workers on company time without loss of pay.

XI. Respondent through its supervisory employees has cooperated in the distribution of printed matter among its employees and others containing statements adverse to labor organizations.

XII. The actions of the respondent as set forth in paragraphs IX, X, and XI hereof occurring in connection with the operations of the respondent described herein have a close, intimate and substantial relation to trade, traffic, and commerce among the several States.

XIII. This stipulation, together with the charge, complaint, notice of hearing, and Rules and Regulations of the National Labor Relations Board, may be introduced as evidence by filing them with the Chief Trial Examiner of the National Labor Relations Board at Washington, D. C.

XIV. Upon this stipulation, if approved by the National Labor Relations Board, an order may forthwith be entered by said Board and by the appropriate Circuit Court of Appeals, providing as follows:

1. Respondent, Hershey Chocolate Corporation, will cease and desist:

(a) Interfering with, restraining or coercing its employees in the exercise of their rights of self-organization, to form, join, or assist the United Chocolate Workers Local No. 2 or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed under Section 7 of the Act;

(b) Discouraging membership in the United Chocolate Workers, Local No. 2, or any other labor organization of its employees; by in any manner discriminating against any of its employees in regard to hire or tenure of employment or any term or conditions of employment;

(c) Dominating or interfering with the formation or administration of the Independent Chocolate Workers of Hershey, or any other labor organization and shall cease and desist contributing financial or other support to said Independent Chocolate Workers of Hershey or any other labor organization, except that respondent may permit employees to confer with it during working hours without loss of time or pay.

2. Respondent, Hershey Chocolate Corporation, shall take the following affirmative action to effectuate the policies of the National Labor Relations Act:

(a) Withdraw recognition from and disestablish as an agency of collective bargaining the Independent Chocolate Workers of Hershey;

(b) Post and keep visible in a prominent place in each department of the respondent's Hershey Plant for a period of thirty (30) days after receipt copies of the order to be entered by the National Labor Relations Board;

3. The order shall further provide that the allegations of the complaint with respect to discharges shall be dismissed without prejudice.

ORDER

On the basis of the above stipulation, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Hershey Chocolate Company and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of their rights of organization, to form, join, or assist United Chocolate Workers, Local No. 2, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed under Section 7 of the Act;

(b) Discouraging membership in United Chocolate Workers, Local No. 2, or any other labor organization of its employees by in any manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment;

(c) Dominating or interfering with the formation or administration of Independent Chocolate Workers of Hershey, or any other labor organization, and shall cease and desist from contributing financial or other support to said Independent Chocolate Workers of Hershey or any other labor organization, except that Hershey

Chocolate Corporation may permit employees to confer with it during working hours without loss of time or pay.

2. Take the following affirmative action to effectuate the policies of the National Labor Relations Act:

(a) Withdraw recognition from and disestablish as an agency of collective bargaining the Independent Chocolate Workers of Hershey;

(b) Post and keep visible in a prominent place in each department of the respondent's Hershey Plant for a period of thirty (30) days after receipt of the order in this proceeding copies of such order.

And it is further ordered that the complaint be, and it is hereby, dismissed without prejudice in so far as it alleges that the respondent, by its officers, agents, and employees, has discriminatorily terminated the employment of any of its employees for the reason that such employees have joined and assisted United Chocolate Workers, Local No. 2, or have engaged in concerted activities with other employees at the respondent's plant in Hershey, Pennsylvania, for the purpose of collective bargaining or other mutual aid and protection.