

In the Matter of FALLS CITY TOBACCO COMPANY and TOBACCO WORKERS
INTERNATIONAL UNION

Case No. C-692.—Decided August 16, 1938

Tobacco Industry—Settlement: stipulation providing for withdrawal of recognition of company-dominated union, and invalidation of closed-shop contract entered therewith—*Order:* entered on stipulation.

Mrs. Mary Iliff and *Mr. Robert E. Greene*, for the Board.

Woodward, Dawson & Hobson, of Louisville, Ky., for the respondent.

Mr. Samuel L. Evans, of Louisville, Ky., for the Union.

Mr. Joseph B. Robison, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Tobacco Workers International Union, herein called the Union, by Samuel L. Evans, the National Labor Relations Board, herein called the Board, by the Regional Director for the Ninth Region (Cincinnati, Ohio), issued its complaint, dated June 7, 1938, against Falls City Tobacco Company, Louisville, Kentucky, herein called the respondent, alleging that the respondent 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 alleged in substance (1) that the respondent formed and gave support to a labor organization known as the Falls City Tobacco Employees Union and that it dominated and interfered with the administration thereof; and (2) that the respondent did at all times since 1937 require of all of its employees to join the Falls City Tobacco Employees Union as a necessary condition to their continued employment and did employ only persons who were members of that organization. Copies of the complaint and notice of hearing were duly served upon the respondent and the Union.

On June 8, 1938, prior to the hearing, scheduled for June 13, 1938, the respondent, the Union, and representatives of the Board entered into a stipulation settling the case. The stipulation is as follows:

I

It is hereby stipulated and agreed by and between the respondent, Falls City Tobacco Company, by its attorneys, and Tobacco Workers International Union, by its duly accredited representative, and the attorneys for the National Labor Relations Board, Ninth Region, as follows:

1. Upon charges duly filed by the Tobacco Workers International Union through Samuel L. Evans, duly accredited representative for this purpose, Philip G. Phillips, agent of the National Labor Relations Board, acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, approved July 5, 1935, and acting pursuant to its Rules and Regulations, Series 1, as amended, Article IV, Section 1, issued its Complaint and Notice of Hearing on the 7th day of June, 1938, against Falls City Tobacco Company, respondent herein.

2. The Amended Charge, Complaint and Notice of Hearing thereon, as well as a copy of the Rules and Regulations, Series 1, as amended April 18, 1936, were duly served upon the respondent and upon Tobacco Workers International Union on June 8, 1938, in accordance with said Rules and Regulations, Series 1, as amended, Article V, Section 1, which hearing was to begin at 9:30 A. M., on June 13, 1938, in the United States Post Office, City of Louisville, County of Jefferson, State of Kentucky, thus allowing an intervening period of five (5) days between the service of said Amended Charge, Complaint, Notice of Hearing and copy of Rules and Regulations.

3. Respondent, Falls City Tobacco Company, is and has been at all times hereinafter mentioned a corporation organized and existing under and by virtue of the laws of the State of Kentucky, having its principal office and place of business in the City of Louisville, County of Jefferson, State of Kentucky, and is now and has continuously at all times hereinafter mentioned been engaged at a place of business in the City of Louisville, County of Jefferson, State of Kentucky, hereinafter called the Louisville Plant, in the processing, sale and distribution of tobacco.

4. Tobacco Workers International Union is a labor organization within the meaning of the National Labor Relations Act.

5. Respondent, Falls City Tobacco Company, is engaged in interstate commerce within the meaning of the National Labor Relations Act.

6. The principal raw materials used by the respondent at the Louisville Plant are tobacco, hoops and hooks.

7. During the period of January 1, 1937 to December 31, 1937, the respondent purchased as raw materials for use in the Louisville Plant tobacco in the amount of approximately 8,000,000 pounds, and hooks and hoops to the value of approximately \$16,000.00. 40% of this tobacco used by the respondent at the Louisville Plant was purchased in states of the United States other than the State of Kentucky, principally from the States of North Carolina, South Carolina, Georgia, and Tennessee. 100% of the hoops and hooks used by the respondent at the Louisville Plant was purchased in states of the United States other than the State of Kentucky, namely, in the State of Ohio.

8. Raw materials are shipped to the Louisville Plant by rail, motor truck, and other carriers.

9. During the period from January 1, 1937 to January 1, 1938, the gross sales and/or shipments of the respondent from the Louisville Plant were approximately 8,000,000 pounds. 3% of these sales and/or shipments was made to customers without the State of Kentucky.

10. Respondent, Falls City Tobacco Company, waives its right to file an answer to the Complaint of the National Relations Board, and its right to hearing on said Complaint as set forth in Section 10 (b) and 10 (c) of the National Labor Relations Act, and admits the sufficiency of the Notice of Hearing described above, and waives its right to any further notice of hearing.

II

It is further stipulated and agreed by and between the respective parties hereto that the National Labor Relations Board may forthwith enter an order in the above entitled case to the following effect:

Respondent, Falls City Tobacco Company, shall:

1. Cease and desist from the date hereof:

(a) 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 purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act;

(b) From discouraging membership in Tobacco Workers International Union, or any other labor organization of its em-

ployees, or encouraging membership in Falls City Tobacco Employees Union, or any other labor organization of its employees, by discriminating against employees in regard to hire, tenure of employment or any term or condition of employment:

(c) From dominating or interfering with the administration of Falls City Tobacco Employees Union or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to the Falls City Tobacco Employees Union, or any other labor organization of its employees (except that nothing in this paragraph shall prevent the respondent from permitting its employees to confer with it during working hours without the loss of time or pay); from recognizing Falls City Tobacco Employees Union as the exclusive bargaining agency for all of its employees, and from allowing the said Falls City Tobacco Employees Union the right to check-off, or from in any other manner effectuating the provisions of the contract entered into between the respondent and the Falls City Tobacco Employees Union on August 9, 1937, or any other contract entered into between respondent and said Falls City Tobacco Employees Union.

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

(a) Withdraw all recognition from the Falls City Tobacco Employees Union as the representative of its employees for the purpose of dealing with the respondent concerning grievances, wages, rates of pay, hours of employment, or other conditions of employment;

(b) Disestablish the Falls City Tobacco Employees Union as the representative of the respondent's employees for the purposes of collective bargaining;

(c) Notify said Falls City Tobacco Employees Union that the respondent will no longer be bound by nor will longer abide by any contract or contracts entered into between it and the Falls City Tobacco Employees Union;

(d) Post notices within five days of the receipt of this stipulation in conspicuous places throughout the said Louisville Plant stating:

(1) That Falls City Tobacco Employees Union is disestablished as the representative of the respondent's employees for the purposes of collective bargaining, and that the respondent will refrain from any recognition thereof;

(2) That it will cease and desist in the manner aforesaid in Section 1, subdivision (c) hereof;

(3) That such notices will remain posted for a period of at least thirty consecutive days from the date of posting and from the date on which the Louisville Plant resumes normal production;

(4) Notify the Regional Director of the National Labor Relations Board for the Ninth Region, within a period of fifteen (15) days after the entry of the order, what steps have been taken to comply with the said order.

III

It is further stipulated and agreed by and between the respective parties hereto that in the event an order of the Board is entered herein and it becomes necessary, in order to enforce its terms and provisions, to file a petition for enforcement of the same in the appropriate circuit court of the United States Circuit Court of Appeals by the National Labor Relations Board, the respondent, Falls City Tobaccó Company, consents and agrees that a decree of the said court to the same effect be entered upon said order without notice of the application thereof.

IV

All stipulations herein made and terms and provisions thereof are made subject to the approval of the National Labor Relations Board.

On June 15, 1938, the Board issued an order approving the above stipulation and making it a part of the record in this proceeding, and ordering further, in accordance with Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, that the proceeding be transferred to and continued before it.

Upon the basis of the above stipulation and the entire record in the case the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Falls City Tobacco Company is a Kentucky corporation having its principal office and place of business in Louisville, Kentucky. It is engaged in the processing, sale, and distribution of tobacco. The principal raw materials used by the respondent are tobacco, hoops, and hooks. During the year 1937 the respondent purchased 8,000,000 pounds of tobacco, and hoops and hooks to the value of approximately \$16,000.00. Forty per cent of the tobacco and all of the hooks

and hoops used by the respondent during that year were purchased outside of the State of Kentucky. During the same year the respondent sold approximately 8,000,000 pounds of tobacco, 3 per cent of these sales being made to customers outside of Kentucky.

As noted above, the respondent has stipulated that it "is engaged in interstate commerce within the meaning of the National Labor Relations Act."

The aforesaid operations of the respondent constitute trade, traffic, and commerce between the several States of the United States.

II. THE ORGANIZATION INVOLVED

Tobacco Workers International Union is a labor organization.

ORDER

On the basis of the above findings of fact and on the above stipulation, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Falls City Tobacco Company, Louisville, Kentucky, 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 or protection as guaranteed in Section 7 of the Act;

(b) From discouraging membership in Tobacco Workers International Union, or any other labor organization of its employees, or encouraging membership in Falls City Tobacco Employees Union, or any other labor organization of its employees, by discriminating against employees in regard to hire, tenure of employment or any term or condition of employment;

(c) From dominating or interfering with the administration of Falls City Tobacco Employees Union or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to the Falls City Tobacco Employees Union, or any other labor organization of its employees (except that nothing in this paragraph shall prevent the respondent from permitting its employees to confer with it during working hours without the loss of time or pay); from recognizing Falls City Tobacco Employees Union as the exclusive bargaining agency for all of its employees, and from allowing the said Falls City Tobacco Employees Union the right of check-off, or from in

any other manner effectuating the provisions of the contract entered into between the respondent and the Falls City Tobacco Employees Union on August 9, 1937, or any other contract entered into between respondent and said Falls City Tobacco Employees Union.

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

(a) Withdraw all recognition from the Falls City Tobacco Employees Union as the representative of its employees for the purpose of dealing with the respondent concerning grievances, wages, rates of pay, hours of employment, or other conditions of employment;

(b) Disestablish the Falls City Tobacco Employees Union as the representative of the respondent's employees for the purposes of collective bargaining;

(c) Notify said Falls City Tobacco Employees Union that the respondent will no longer be bound by nor will longer abide by any contract or contracts entered into between it and the Falls City Tobacco Employees Union;

(d) Post notices within five (5) days of date of this order in conspicuous places throughout the said Louisville Plant stating:

(1) That Falls City Tobacco Employees Union is disestablished as the representative of the respondent's employees for the purposes of collective bargaining, and that the respondent will refrain from any recognition thereof;

(2) That it will cease and desist in the manner aforesaid in Section 1, subdivision (c) hereof;

(3) That such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting and from the date on which the Louisville Plant resumes normal production;

(4) Notify the Regional Director of the National Labor Relations Board for the Ninth Region, within a period of fifteen (15) days from the date of this order, what steps have been taken to comply with the said order.