IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

DONNELLY GARMENT COMPANY, a corporation, and Donnelly Garment Sales Company, a corporation,

Plaintiffs,

-vs-

INTERNATIONAL LADIES GARMENT WORKERS UNION, an unincorporated association, et al., Defendants.

DONNELLY GARMENT WORKERS UNION, an unincorporated association, et al., Interveners.

In Equity No. 2924

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. FINDINGS OF FACT

1. That plaintiff, Donnelly Garment Company, a corporation organized under the laws of the State of Missouri, is engaged in the manufacture and sale of ladies' house dresses and wash frocks under the trade name "Nelly Don".

That plaintiff, Donnelly Garment Sales Company, a corporation organized under the laws of the State of Missouri, is engaged exclusively in the sale and distribution of ladies' house dresses and wash frocks manufactured by the Donnelly Garment Company under its trade name "Nelly Don."

That plaintiffs are and were, during the times complained of, engaged in interstate trade and commerce, bringing raw materials from outside the State of Missouri and manufacturing the same in the State of Missouri, and selling over eighty per cent of the finished product outside the State of Missouri.

2. That the defendant International Ladies Garment Workers Union (hereinafter referred to as "International") is an unincorporated association, composed of members, many of whom reside in the Western Division of the Western District of Missouri; that the individual defendants are officers, members of the executive board, members, agents or servants of said International.

3. That the intervener Donnelly Garment Workers Union is an unincorporated association, formed and administered by all of the employes of plaintiffs, exclusive of officers, executives and persons with authority to employ or discharge; that individual interveners are the members of the executive committee of the said Donnelly Garment Workers Union.

4. That all of the employes of plaintiffs, shortly after the Supreme Court of the United States sustained the validity of the National Labor Relations Act, voluntarily formed the Donnelly Garment Workers Union and unanimously designated and selected the members of the executive committee of the Donnelly Garment Workers Union, interveners herein, as their sole bargaining agent in respect to all matters pertaining to wages, rates of pay, hours of labor, conditions of employment and all other matters for their mutual aid and protection. That the said employes have at all times freely administered and maintained the said union. That at said time of formation and at all times since, none of said employes have been members of defendant International.

5. That plaintiffs did not dominate or interfere in any manner with the formation or administration by their employes of the Donnelly Garment Workers Union, and did not contribute financial or other support thereto.

6. That the said Donnelly Garment Workers Union is a bona fide labor organization and the said executive committee is the freely designated and selected exclusive representative of all said employes for the purpose of collective bargaining in regard to wages, rates of pay, hours of employment and other conditions of employment.

7. That said executive committee and plaintiffs, after negotiations, entered into one certain contract dated May 27,
1937, and one certain supplemental contract dated June 22, 1937, providing for wages, rates of pay, hours of employment, conditions of employment, and the recognition of the executive committee of the Donnelly Garment Workers Union as the sole bargaining agent for all employes; that said contracts were made in good faith and are satisfactory to all parties thereto and are being complied with in every respect.

8. That at all times since the contracts were made between plaintiffs and the executive committee of the Donnelly Garment Workers Union, and up to the time the suit

was filed, and ever since, complete harmony has prevailed between plaintiffs and their employes, and all parties to the contracts were and are satis fied therewith, and the terms and conditions of the same are more favorable to said employes than the terms and conditions contained in any contracts between defendant Union and "house dress and wash frock" manufacturers introduced in evidence in this case.

9. That plaintiff Donnelly Garment Company is and has been continuously since its incorporation a manufacturer of "house dress and wash frocks" (so-called "cotton garments") and is classified in the industry as such, and is not classified as a "ready-to-wear" manufacturer (so-called "silk dress" manufacturer) .

That according to the established custom in the industry, the rates of pay of piece work operators in the "ready-to-wear" industry (so-called "silk dress" industry) do not apply to the rates of pay of piece work operators in the "house dress and wash frock" industry (so-called "cotton garment" industry).

10. That notwithstanding the entirely harmonious relations between plaintiffs and their employes the International, its officers, the general executive board, and Meyer Perlstein, long prior to the institution of this suit commenced a conspiracy for the sole and only purpose of compelling plaintiffs' employes to join the International and accept the International as their exclusive bargaining agent for the purpose of collective bargaining.

11. That pursuant to said conspiracy and in carrying forward the same the International, its officers, general executive board, members, and agents, have threatened to and have in fact published and circulated among plaintiffs' customers and the consuming public false statements regarding wages, rates of pay, hours of labor, and working conditions in plaintiffs' plant and attempted to induce said customers and the consuming public to boycott plaintiffs' goods, and threatened plaintiffs' customers with a secondary boycott of their places of business and the picketing of the same upon refusal by such customers to boycott plaintiffs' merchandise.

12. That pursuant to said conspiracy and in carrying forward the same the International, its officers, general executive board, members, and agents, have threatened or caused to be threatened the use of physical violence against plaintiffs' employes for the purpose of intimidation of plaintiffs and their employes.

13. The International's chief officers and general executive board authorized, ratified, confirmed and approved the use of assaults, physical violence and publication of false statements as a means of destroying the business of garment manufacturers unless they recognized the International as the exclusive bargaining agent for all their employes and compelled their employes to join the International.

14. The acts and threats of defendants, by this Court found to have been established by the evidence, and by this Court found to be unlawful, were acts and threats in pursuance of a combination and conspiracy on the part of the International, its chief executive officers, its general executive board, its Southwest Regional Director (Meyer Perlstein), its Kansas City Manager (Wave Tobin), and its agents, Jane Palmer, Esther Smith, Grace Bullard, Mary Jane Miller and others, the object and purpose of which combination and conspiracy was to injure and destroy plaintiffs' business (and thereby to restrain, burden, obstruct, interrupt and destroy plaintiffs' interstate trade and commerce), as a means of coercing plaintiffs to require their employes to join the International and accept the International as their sole bargaining representative in respect to rates of pay, wages, hours of employment and other conditions of employment.

15. That plaintiffs did not at any time discriminate against their employes on account of affiliations with defendant International, and said employes unanimously were protesting against any interference in their affairs by the International, and the International was not the representative of any of said employes for purposes of collective bargaining or otherwise.

16. No bona fide demand concerning "terms and conditions of employment" or concerning "the association or representation
of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment," was being made by any of defendants upon plaintiff s at the time this suit was filed.

17. The statements of fact in the letter written by the International through its agents, Meyer Perlstein and Wave Tobin, to Donnelly Garment Company on March 9, 1937, upon which the alleged "grievances" in said letter were based, were false and fraudulent

statements, purporting to relate to rates of pay, wages, hours of employment or other conditions of employment in plaintiffs' plant, and were known by the writers of the letter to be false when the letter was written; and the purported "grievances" therein were not made in good faith, but were made fraudulently for the purpose of attempting to make it ostensibly appear to plaintiffs' customers, the consuming public and the courts that there was a "labor dispute" between plaintiffs and the International, when none in fact existed.

18. The letter of March 9, 1937, did not represent a bona fide attempt by the International or its agents to negotiate a "labor dispute", but was merely part of a scheme by the International, its officials and agents to organize the plaintiffs' employes as members of the International.

19. The acts and threats of defendants, which are found by this court to have been established by the evidence, and which are by this court declared to be unlawful, will, unless enjoined, materially burden, obstruct, interrupt and destroy plaintiffs' interstate trade and commerce.

20. Immediate and irreparable loss and damage (far in excess of $3000) will result to the plaintiffs unless the preliminary injunction prayed by plaintiffs is granted.

II. CONCLUSIONS OF LAW

1. This court has Jurisdiction of this suit because it is a suit of a civil nature in equity wherein the matter in controversy exceeds, exclusive of interest and costs, the sum and value of $3000, and which arises under laws of the United States known as the Sherman Act and Clayton Act (15 U. S. Code, Secs. 1,26).

2. The venue of this suit is properly laid in the Western Division of the Western District of Missouri, and this court has Jurisdiction of the persons of the parties, and of the subject matter of the suit.

3. Defendant International Ladies' Garment Workers* Union is a suable entity, and has properly been served with process in this suit.

4. The International's publication and circulation of false statements of fact regarding plaintiffs' treatment of their employees, for the purpose of injuring plaintiffs' business, was unlawful, and constituted a fraud upon plaintiffs.

5. The International's threat to cause secondary boycott of plaintiffs' customers and to

picket such customers' places of business, unless such customers would cease buying plaintiffs' products, was unlawful.

6. The International's threat to use physical violence and acts of terrorism and intimidation against plaintiffs' employes, as a means of coercing plaintiffs to require their employes to join the International and accept the International as the representative of such employees for purposes of collective bargaining, was unlawful.

7. The wrongful acts and threats of the defendants, found to have been established by the evidence, constitute a restraint of plaintiffs' interstate trade and commerce in violation of the Antitrust Laws (29 U. S. Code, Sec. 1).

8. The Norris-LaGuardia Act (29 U. S. Code, Secs. 101- 115) does not preclude the granting of a preliminary injunction in this suit because this suit does not involve or grow out of a "labor dispute."

9. At the date this suit was filed there was no "labor dispute", within the meaning of the Norris-LaGuardia Act, between plaintiffs and defendants or any of them.

10. At the date this suit was filed there was no "labor dispute", within the meaning of the Norris-LaGuardia Act, between plaintiffs' employees and defendants.

11. At the date this suit was filed there was no "labor dispute", within the meaning of the Norris-LaGuardia Act, between plaintiffs and any of plaintiffs' employees.

12. The question whether this suit involves or grows out of a "labor dispute" must be determined as of the date this suit was filed.

13. By Section 102 of the Norris-LaGuardia Act the right of employes of plaintiffs to be free to decline to associate with the International Union, and their right to have full freedom of self-organization and designation of representatives of their own choosing to negotiate the terms and conditions of employment, and their right to be free from the interference, restraint or coercion of their employers in the designation of such representatives or in self-organization, are declared;
and in construing the Norris-LaGuardia Act it is made the duty of this Court to preserve those rights to the employes.

14. By Sections 158 and 159 of the National Labor Relations Act, the rights of the employees of the plaintiffs declared in Section 102 of the Norris-LaGuardia Act are

further recognized, and the plaintiffs were by law compelled to bargain exclusively with the representatives designated by the employees in respect to rates of pay, wages, hours of employment and other conditions of employment.

15. The provisions of Section 102 of the Norris-LaGuardia Act, and the later provisions of 158 and 159 of the National Labor Relations Act cannot be rendered nugatory by any general provision of the Norris-LaGuardia Act.

16. The Court having found from the evidence that at the time this suit was filed and during several months prior thereto one hundred per cent of plaintiffs' employees had exercised their right to have full freedom of self-organization and designation of representatives of their own choosing, and had organized the Donnelly Garment Workers' Union, and had designated the executive committee of the Donnelly Garment "Workers' Union as their representatives for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, said executive committee of the Donnelly Garment Workers' Union was the exclusive representative of all of said employees for said purposes of collective bargaining, and the plantiffs were compelled to bargain with such representatives, and were legally prohibited from bargaining with anyone else, and were prohibited from coercing or intimidating their employees to select the International as their representative, and were prohibited from coercing or intimidating their employees to join the International; and the International had no legal right or capacity to represent, and by law was prohibited from representing any of plaintiffs' employees in any negotiations concerning terms and conditions of employment in plaintiffs' plant.

17. The Court having found from the evidence that the only demand by the International upon plaintiffs at the date this suit was filed was that plaintiffs require their employees to join the International and accept the International as their representative for purposes of collective bargaining, then the refusal by plaintiffs to accede to this demand did not constitute a ''labor dispute" within the meaning of the Norris-LaGuardia Act.

18. At the date this suit was filed, the executive committee of the Donnelly Garment Workers* Union were by law the exclusive bargaining agents and representatives of all

the plaintiffs' employees concerning rates of pay, wages, hours of employment and other conditions of employment.

19. The Donnelly Garment Workers' Union was organized and the contracts between it and the plaintiffs were made in
full compliance with the provisions of the National Labor Relations Act and are valid and subsisting, and bound the plaintiffs and all of plaintiffs' employees by their terms and provisions.

20. At the date this suit was filed the plaintiffs, having bargained collectively with the exclusive representatives of all their employees, were precluded from bargaining with the International regarding rates of pay, wages, hours of employment or other conditions of employment in plaintiffs' plant.

21. The International's purported demands, embraced in the letter written by Meyer Perlstein and Wave Tobin to Donnelly Garment Company dated March 9, 1937, cannot be treated as a demand by the International at the date this suit was filed.

22. None of the alleged controversies or demands on the part of the International in the years 1933, 1934, and 1935, constitute a "labor dispute" under the Norris-LaGuardia Act, as of the date this suit was filed.

23. The Court having found from the evidence that the statements of fact, upon which the alleged "grievances" in the letter of March 9, 1937 were based, were false and fraudulent statements, known by the writers of the letter to be false; and that said purported demands were not made in good faith but were fraudulently made for the purpose of attempting to make it ostensibly appear that there was a "labor dispute" when none in fact existed, said letter does not evidence or create a "labor dispute" within the meaning of the Norris-LaGuardia Act.

24. A fraudulent demand upon plaintiffs by the International, founded upon intentionally false statements of fact, cannot serve as a basis of a "labor dispute" within the meaning of the Norris-LaGuardia Act.

25. The alleged fraud in the International's demand can be established by circumstantial evidence and legitimate interferences arising therefrom.

26. Even if a labor dispute under the Norris-LaGuardia let had existed, arising out of

the letter of March 9, 1937, or some prior letter, such dispute became moot upon the formation of the Donnelly Garment Workers' Union and the making of the contracts between plaintiffs and the representatives of the Donnelly Garment Workers' Union.

27. Plaintiffs have no adequate remedy at law, and are entitled to a preliminary injunction restraining the further carrying into effect of defendants* conspiracy to injure plaintiffs' business by unlawful acts.

28. The motion to dismiss filed by certain of the defendants should be overruled, and a preliminary injunction should be granted as prayed in the amended bill of complaint.

29. The three judge court was properly convened to hear this cause, in accordance with the requirements of the Act of August 24, 1937 (28 U. S. C. A. Sec. 380a).

ORDER

The findings of fact and conclusions of law hereinabove set out, being those of a majority of the Court, are announced as the Court's findings of fact and conclusions of law.

To each conclusion of law each defendant is allowed an exception.

Counsel for plaintiffs will prepare and submit to the Court a form of decree granting to plaintiffs and to interveners a temporary injunction as prayed.

IT IS SO ORDERED.

Arba S. Van Valkenburgh
United States Circuit Judge
Albert S. Reeves
United States District Judge
Merrill E. Otis
United States District Judge
FILED
DEC 31 1937
A. L. Arnold, Clerk
E. O. Keefe, Deputy