

In the Matter of MARLBORO COTTON MILLS and UNITED TEXTILE WORKERS OF AMERICA, LOCAL NO. 1912

Case No. 10-C-1391.—Decided November 30, 1943

DECISION

AND

ORDER

On September 22, 1943, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report annexed hereto. The respondent thereafter filed exceptions to the Intermediate Report and a brief in support of its exceptions. The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Upon request of the respondent, and pursuant to notice, a hearing was held before the Board in Washington, D. C., on November 2, 1943, for the purpose of oral argument. The respondent and the Union appeared and were represented by counsel at the hearing.

The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations made by the Trial Examiner, with the following additions and modifications.

The Trial Examiner has found, and we agree, that Tom C. Sweatt was discharged because, as president of the Union, he refused on June 14, 1943, to sign a written notice prepared by the respondent urging the striking employees to return to work. The contract in effect between the parties at the time of Sweatt's discharge provided that there should be no strikes, and that the respondent could discharge "any employee who, it is proved, has advocated the violation of this contract or in any way encouraged or shielded or effected its violation." The respondent contends that Sweatt was discharged because he refused to carry out the terms of the contract. Contrary to the findings of the Trial Examiner, it is in our opinion material to

determine whether or not Sweatt refused to cooperate in any manner with the respondent to end the strike. However, it is clear that, although Sweatt, who did not participate in the strike himself, refused to sign the respondent's notice, he agreed to request the strikers to return to work. He cannot be said to have refused to cooperate with the respondent in terminating the strike or to have encouraged or shielded the strikers. His conduct did not constitute a breach of the contract which would justify his discharge under its terms.

The respondent contends, however, that even if it was mistaken as to its right to discharge Sweatt pursuant to the contract, its action was merely ill-advised and due to a misconception of its rights, and that Sweatt's discharge therefore cannot be regarded as discriminatory within the meaning of the Act. We do not agree. In attempting to terminate the strike, Sweatt was acting in his capacity of union president. The respondent discharged him because he chose to perform his duties as union president in his own way rather than in the way the respondent thought better. By thus discharging Sweatt, the respondent engaged in essentially the same kind of interference with internal affairs of the Union and discouragement of union activity and membership as it had when its president, Carroll, shortly after Sweatt's election as union president, threatened to discharge the latter if he did not resign his union office, and when Carroll at about the same time insisted on attending a union meeting despite Sweatt's opposition to it and repeated refusal to permit it. We find, as did the Trial Examiner, that Sweatt was discharged in violation of Section 8 (3) of the Act.

The respondent also contends that Sweatt was obligated, under the contract between the respondent and the Union, to arbitrate any question as to his discharge, and that his failure to do so constituted a violation of the contract justifying the respondent's refusal to reinstate him. It is now well established that parties may not, by agreement, oust the Board of jurisdiction over alleged unfair labor practices, although the Board may in a proper case refuse to exercise its jurisdiction until the parties to a contract have attempted to settle their dispute through the agreed procedure; similarly, parties may not agree to make loss of employment the penalty for an employee's recourse to the Board's administrative processes. In the present case, the record shows that the Union attempted to invoke the contract's arbitration procedure, by appointing an arbiter,—an attempt in which the respondent did not join. The respondent claimed that the Union's designee was not "disinterested," as required by the contract, but it apparently made no effort to have the Union designate someone else and it made no appointment of an arbiter to act for it. Moreover, so far as the record shows, the respondent did nothing to exercise its right under the contract to invoke the "statutory provision for arbitration in

South Carolina" in the event "any legal complication" arose regarding the arbitration provision of the contract. Under the circumstances the parties' failure to resort to arbitration does not affect our disposition of the case.¹

ORDER

Upon the basis of the above findings of fact and the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Marlboro Cotton Mills, Bennettsville, South Carolina, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Textile Workers of America, Local No. 1912, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right 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.

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

(a) Offer Tom C. Sweatt immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges;

(b) Make whole Tom C. Sweatt for any loss of pay he has suffered by reason of the respondent's discrimination against him by payment to him of a sum of money equal to the amount which he would normally have earned as wages during the period from the date of his discriminatory discharge to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(c) Immediately post in conspicuous places throughout its plant at Bennettsville, South Carolina, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its

¹ On October 18, 1942, following the issuance of the Intermediate Report herein, trial counsel for the Board filed a motion to admit in evidence certain correspondence tending to show that the Conciliation Service of the Department of Labor would not have appointed a representative to act for the Union in any arbitration proceeding under the contract, and that the Union was therefore unable to comply with the provision of the contract that in any such arbitration proceeding it would "select a representative of the U. S. Department of Labor if available." Since the respondent has filed no opposition to the motion, and since the documents thus sought to be included are relevant, the motion is hereby granted and the documents in question are hereby ordered made a part of the record. It should be noted, however, that the availability of "a representative of the U. S. Department of Labor" was not a condition precedent to the parties' contractual obligation to arbitrate.

employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that the respondent's employees are free to become and remain members of United Textile Workers of America, Local No. 1912, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

(d) 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.

INTERMEDIATE REPORT

Mr. Dan M. Byrd, Jr., for the Board.

Mr. David D. Carroll, of Bennettsville, S. C., for the respondent.

Mr. George W. Freeman, Jr., and *Mr. Nelson W. Edens*, of Bennettsville, S. C., for the Union.

STATEMENT OF THE CASE

Upon an amended charge duly filed on August 18, 1943, by United Textile Workers of America, Local No. 1912, herein called the Union, the National Labor Relations Board, herein called the Board, by its Acting Regional Director for the Tenth Region (Atlanta, Georgia), issued its complaint dated August 19, 1943, against Marlboro Cotton Mills, 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) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that the respondent on or about June 14, 1943, discharged Tom C. Sweatt, and thereafter refused to reinstate him, because he joined and assisted the Union, or engaged in concerted activities with other employees for the purpose of collective bargaining or other mutual aid or protection, and because of his activities as president of the Union.

Pursuant to notice, a hearing was held at Bennettsville, South Carolina, on September 9, 1943, before the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented by counsel. All of the parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the start of the hearing, the respondent moved to dismiss the complaint on the ground that the Board did not have jurisdiction of the dispute since the respondent had a contract with the Union which contained a clause providing for arbitration as the exclusive remedy of aggrieved parties. The motion was denied. The Board then moved for a decision on the pleadings because of the failure of the respondent to file an answer. This motion was denied and the respondent was directed to file an answer to the complaint. The respondent objected to this directive. The objection having been overruled and after an adjournment of a reasonable length of time for the purpose of preparing an answer, counsel for the respondent read an oral answer into the record.

In substance, the answer admitted the allegations of the complaint as to the nature of the respondent's business and that the discharge had occurred, but denied that the respondent had committed any unfair labor practices. The answer further moved for the dismissal of the complaint upon the ground that the party who signed the amended charge in the name of the Union did not have the requisite authority. The motion was denied.

At the close of the Board's case, counsel for the Board moved to conform the pleadings to the proof as to names and dates. The motion was granted without objection. At the close of its case, the respondent renewed the motions for the dismissal of the complaint as made at the commencement of the hearing. The motions were denied.

Counsel for the Board and the respondent argued orally before the undersigned. Pursuant to permission granted at the hearing, the respondent filed a brief.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following :

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent is a corporation organized under and existing by virtue of the laws of the State of South Carolina, having its principal office and place of business at Bennettsville, South Carolina. The respondent is and at all times material herein has been engaged in the manufacture, sale and distribution of cotton yarn, cord, and related products. The principal raw material used by the respondent in manufacturing its finished products is cotton, approximately 50 percent of which the respondent purchases or causes to be purchased in states other than the State of South Carolina. The respondent's cotton purchases amount to approximately \$25,000 per week. The total value of the respondent's finished products amounts to approximately \$35,000 to \$40,000 per week, 50 percent of which is transported in interstate commerce to and through states of the United States other than the State of South Carolina.

II. THE LABOR ORGANIZATION INVOLVED

United Textile Workers of America, Local No. 1912, affiliated with the American Federation of Labor, is a labor organization which admits to membership employees of the respondent.

III. THE UNFAIR LABOR PRACTICES

A. Background

The employees of the respondent first organized the Union in 1932 and the local was then affiliated with the American Federation of Labor. In 1937 the Union changed its affiliation to the Textile Workers Organizing Committee of the C. I. O., but about May 1938 it again became affiliated with the American Federation of Labor.

About May 20, 1939, an election was held by the Board in which 266 employees voted for and 5 employees voted against the Union. At sometime thereafter, but not later than 1940, the respondent entered into a contract with the Union. At the time of the hearing, no contract between the respondent and the Union was in existence, as the last contract, entered into on August 13, 1942, for one year, had expired.

B. Interference, restraint, and coercion in connection with the discharge of Sweatt

Tom C. Sweatt worked for the respondent for about 25 or 26 years prior to his discharge. For about the last 18 years he was employed as a warp tender. About August 1941, Sweatt was elected president of the Union.

Some few months after Sweatt was elected president, Sweatt and some other members of a union committee had a conference with David D. Carroll, president and treasurer of the respondent. During this conference and after Sweatt had "stuck up for the Union" in talking about "work load," Carroll said to Sweatt, "Tom, if you don't resign your office [president of the Union], I am going to fire you." Sweatt replied, "You will have it to do because the people elected me by a majority of votes and I am going to serve my time out the best I can until the members become dissatisfied and throw me out themselves."¹

For a number of years prior to Sweatt's becoming president, Carroll had attended meetings of the Union. About October 1941, Carroll asked Sweatt for permission to attend a meeting of the Union. Sweatt told Carroll that he could not permit Carroll to attend as it would be "against the Union rules."² The meeting in question was held about the second Sunday of October 1941 for the purpose of having the union members consider a raise of \$1 per week offered by the respondent. Before the meeting started, Carroll sent a messenger to the union hall to ask if he could attend the meeting and talk to the members. Sweatt sent a reply by the same messenger denying Carroll's request to attend the meeting and advising him that the union committee would give him a report the next day as to the action taken at the meeting on the proposed increase. Shortly thereafter, Carroll appeared at the union hall in his automobile and, through a representative of the Union, again requested Sweatt for permission to attend the meeting. Sweatt also denied this request and then called the meeting to order. About 300 to 350 members of the Union were present. During the course of the meeting, Carroll knocked on the door and requested permission to enter the hall. Sweatt went to the door and told Carroll he could have 2 minutes to talk to the members. It is Sweatt's uncontradicted testimony and the undersigned finds that the following then took place:

I turned the meeting over to Mr. Carroll and he gets up and asked the people to take the boxing gloves and teach the young people boxing, he turned it over to Mr. Roscoe, and then he takes up the Mother Goose records and the Mormon preachers—they were to take the young girls over to the hall and teach them Mother Goose—well, he got about through and he made a remark to the people that the raise was negotiated and talked over but the committee and the President didn't have very much to do with it, with the raise. Well, he got through and he says—

Q. [By Mr. BYRD.] How long did he talk?

A. I don't reckon he talked over two minutes, so I says, "Wait a minute, Mr. Carroll, I have got a word or two to say." I got up there by the side of him and asked the members, I says, "Now, members, you all elected me your President, to take up your grievances." I says, "Now, if you want me to represent you as as your President, you vote for me. If you want Mr. Carroll to represent you, you vote for him." I says, "Now, then, you want

¹ Tom Sweatt testified to the above facts and conversation without contradiction. Carroll, counsel for the respondent at the hearing, did not appear as a witness. Henry Sweatt, still employed by the respondent at the time of the hearing, corroborated Tom Sweatt's testimony as to this conversation.

² Tom Sweatt testified to the above conversation with Carroll and other witnesses for the Board corroborated his testimony in this respect.

to vote whichever way you want to," so they voted 100 per cent for me to do their representing as President. When they got through Mr. Carroll says, "From now on we will take it around the conference table at the office."

Q. Did he leave then?

A. Yes, sir.

Henry N. Sweatt who was elected vice president of the Union in August 1942 testified without contradiction and the undersigned finds that Carroll, sometime during Sweatt's term of office, told Sweatt that the Union should not obtain advice from an attorney or "outsiders."

The undersigned finds that the respondent, through Carroll, by threatening to discharge Sweatt under the circumstances outlined above, by his attendance at the union meeting after his repeated requests to attend were refused by Sweatt, by his remarks at the meeting concerning the proposed increase in wages, and by his remarks to Henry Sweatt concerning "outsiders," interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

C. *The discharge of Tom C. Sweatt*

On or about June 7, 1943, representatives of the Union and the respondent conferred concerning the negotiation of a new contract since the old contract was due to expire on August 13, 1943. The respondent submitted a proposed contract which contained a provision among others that management would be permitted to attend meetings of the Union. The Union refused to accept the proposed contract for various reasons, and it appears that the negotiations were indefinitely discontinued.⁴

On June 14, 1943, a work stoppage in the "card room" of the respondent's plant occurred in protest over the respondent's action in decreasing the work week from 6 to 5 days for "the card hands, the sewing hands" Sweatt, upon learning of the work stoppage, went to the card room and told the employees that they should not have stopped work. The employees then went back to work after the respondent's agreement to arbitrate the dispute. Sweatt, however, continued working until the end of his shift and then went home. At about 5:30 p. m. on the same day, Sweatt learned that the "spinners had quit work." He returned to the plant and was told by some of the employees that Mr. Odum, the "spinner room boss," had sent all the employees home when the spinners had stopped work. Sweatt then scheduled a meeting of the Union for 7:30 p. m. that night.

On the way from his home to the Union hall that night, Sweatt passed by the office of the respondent. Odum stopped Sweatt and told him that Carroll wanted to talk to him. Sweatt entered the office as requested. Carroll, Odum, J. A. Baugh, Jr., vice president and general manager of the respondent, and Robert Carter, overseer of the "twisting, winding and warping" department, were present. Carroll asked Sweatt if the employees were on strike. Sweatt replied, "Not as I know of . . . I have called a meeting to find out what it is all about." Carroll then said to Sweatt, "I have a paper here for you to sign, if you don't sign it, it looks too bad for you." Carroll, however, did not show Sweatt the paper to which he had reference. Sweatt refused to sign any paper but said he would go to the union meeting and ask the employees to

³ It should be noted that Carroll as well as being an official of the respondent was an attorney-at-law and represented the respondent at the hearing.

⁴ J. B. Mason, an organizer for the United Textile workers of America, testified to the above facts without contradiction. The undersigned credits his testimony in this respect.

return to work. Carroll replied to Sweatt's offer by saying, "No, you must sign a paper." When Sweatt again refused to sign, Carroll said, "I am out of it, . . . Mr. Baugh wants to see you." Baugh then discharged Sweatt without giving him any reason.⁵

The Union meeting was held as scheduled. At the meeting Sweatt told the employees that he had been discharged and they then voted not to return to work until his reinstatement.

The above mentioned contract between the Union and the respondent was in existence at the time of Sweatt's discharge. This contract contained an arbitration clause. In accordance with this clause, the Union appointed an arbiter and proposed to the respondent that Sweatt's discharge be submitted to arbitration. Carroll, however, objected to the arbiter selected by the Union on the ground that the arbiter had been a "representative" of the Union.⁶ It does not appear from the record that the respondent at any time appointed an arbiter.

A meeting was held on June 22, 1943, at which representatives of the Union and the respondent and a Mr. Sam Douglass, a representative of the War Production Board, were present. At this meeting, Douglass asked Baugh, "Mr. Baugh, didn't you tell me Saturday that you fired Tom [Sweatt] for not signing a paper?" Baugh replied, "Well, I did, I fired Tom because he wouldn't sign the paper." Carroll then asked Baugh if he had said that and Baugh replied, "Yes, I am afraid I did."⁷

⁵ Tom Sweatt testified to the above conversation and the undersigned credits his testimony. Carroll, Odum, and Baugh did not appear as witnesses. Carter was called as a witness by the respondent, and on direct examination the substance of his testimony as to the above conversation was to the effect that Sweatt refused to cooperate in any manner with the respondent in an attempt to get the employees to return to work. In this connection, Carter testified that Carroll asked Sweatt "if he would cooperate with the Company in asking the people to return to their jobs" to which Sweatt replied, "No"; that Carroll asked Sweatt if he would join him [Carroll] "in a notice asking the people to return to work" to which Sweatt also replied, "No"; that Carroll asked Sweatt "if he would use his influence with his committee in getting the people back to work," to which Sweatt again replied "No"; that Baugh then asked Sweatt "if he would cooperate with the Company in getting the people to go back to the job" to which Sweatt "still said no" and that Baugh then said, "Well, Tom, that being the case, we will have to dispense with your services."

On cross-examination, however, when Carter was asked if Sweatt had said that he would go to the union meeting and urge the employees to return to work, Carter replied, "I don't recall just what he said, he probably said that the people could use their own judgment, or something like that" In this connection, Carter further testified as follows:

Q. [By Mr. BYRD] Did he say he would take the matter up with the people?

A. I am afraid I don't recall.

Q. You remember Tom [Sweatt] using the expression "By oral word of mouth", you remember that?

A. He said something about the word of mouth, but I don't know just what it was.

Q. But he did say "By word of mouth" on one occasion?

A. Well, yes, but I don't recall just what that was.

Q. Could it have been this, "No, Mr. Carroll, but I will cooperate by going to the Union hall and tell them by word of mouth to return to their jobs"?

A. I don't recall.

In observing Carter as a witness at the hearing, it was clearly apparent to the undersigned that Carter was evasive in his answers on cross-examination. His evasiveness and faulty recollection are apparent from the above quoted questions and answers. Accordingly, and particularly in view of the fact that the respondent did not see fit to call either Carroll, Odum or Baugh as witnesses in this connection, the undersigned does not credit Carter's testimony as to this conversation.

⁶ Tom Sweatt testified without contradiction to the above facts concerning the proposal to arbitrate. The contract provided for the selection of "disinterested" arbiters.

⁷ Tom Sweatt testified to the above conversation without contradiction. Several other witnesses for the Board corroborated Sweatt's testimony in this respect.

D. Conclusions

Counsel for the respondent, when asked by the undersigned to state for the record the respondent's reasons for Sweatt's discharge, made the following statements:

Mr. CARROLL. The reason for the discharge was the refusal of Mr. Sweatt to comply with his obligation under our Union contract, and likewise his unwillingness to cooperate in a program which he had previously agreed would be carried out for the benefit of the Company employees, as we had both previously signed it.

Trial Examiner EADIE. Was that program in connection with the Union—an agreement in connection with the Union?

Mr. CARROLL. In connection with work stoppages

TRIAL EXAMINER. And the agreement he had made was on behalf of the Union with the Company?

Mr. CARROLL. Yes, sir, but we had frankly—we could have construed it as a Union agreement, but actually it was only a personal relationship that we had expected him to follow, and he was further discharged for that his services were completely unsatisfactory.

Trial Examiner EADIE. That is in connection with his work in the plant?

Mr. CARROLL. Yes, sir, and then a prior discharge would have resulted in work stoppages which had already taken place at the time of his discharge, and were no longer to be feared.

With respect to the above statement of counsel that Sweatt's work was unsatisfactory, the respondent adduced some evidence to the effect that Sweatt at times was absent from his machine during working hours. In this connection Carter, Sweatt's overseer, testified that Sweatt's ". . . Work as warper tender is satisfactory, other than his absences from his machine." He further testified that on some of these occasions when Sweatt was absent from his machine, he (Carter) knew that Baugh or Carroll "would send for" Sweatt. The evidence conclusively shows that Sweatt was seldom absent from his machines, except on union business with management or with employees, and that the respondent knew of and permitted Sweatt's absences for union business. The undersigned does not find any merit in the respondent's contention of unsatisfactory work as a cause for Sweatt's discharge.

From the undisputed evidence in the case and from the above statements of the respondent's counsel, it is clear that Sweatt was discharged because of his actions as president of the Union in not cooperating in an attempt to end the work stoppage or strike in the manner requested by the respondent. In itself, this shows that Sweatt was discharged because of his activities on behalf of the Union. The question of whether or not Sweatt refused to cooperate in any manner with the respondent to end the strike is, in the undersigned's opinion, immaterial. However, it is to be noted that the undersigned has found that Sweatt, at the time of discharge, stated that he would go to the union meeting and ask the employees to return to work but that he would not sign a "paper."

The undisputed evidence further shows that Carroll, shortly after Sweatt's election as president of the Union, told him that he would be discharged unless he resigned his office. Thereafter, Carroll requested permission to attend a union meeting but his requests were refused by Sweatt. Sweatt's predecessors in office had permitted Carroll to attend union meetings and the record conclusively shows that Carroll resented his exclusion. This is apparent by Carroll's attendance at the meeting after Sweatt's repeated refusals to permit him

to attend and by the provision in the proposed contract permitting management's attendance at union meetings and which had been rejected by the Union on or about one week prior to the discharge.

As for the respondent's claim that the contract contained an arbitration clause, the undisputed evidence shows that the Union appointed an arbiter and advised the respondent of its willingness to submit Sweatt's discharge to arbitration. The respondent rejected the arbiter selected by the Union. It does not appear that the respondent selected its arbiter or made any further attempt to arbitrate the dispute. From the above, it is apparent that a dispute arose between the Union and the respondent as to the selection of a "disinterested" arbiter. The undersigned does not believe it to be within his province to resolve this dispute or to interpret the arbitration clause in the contract. However, the undersigned does find that the respondent's contention that the Board lacks jurisdiction for the reason that the respondent's collective bargaining contract with the Union contained an arbitration clause, is without merit.⁸

Accordingly, the undersigned finds that the respondent discharged Sweatt on June 14, 1943, because of his concerted activities with other employees for the purpose of collective bargaining or other mutual aid or protection and because of his activities as president of the Union.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, 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.

V. THE REMEDY

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act.

The undersigned has found that the respondent discriminated in regard to the hire and tenure of employment of Tom C. Sweatt. The undersigned will recommend therefor that the respondent offer immediate and full reinstatement to Sweatt to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and that the respondent make him whole for any loss of pay he has suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of such discrimination to the date of the offer of reinstatement, less his net earnings⁹ during said period. As stated above, the date of said discrimination was June 14, 1943.

⁸ *National Labor Relations Board v. Newark Morning Ledger Company*, 120 F. (2d) 266 (C. C. A. 3); certiorari denied 314 U. S. 693

⁹ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for the respondent's discrimination against him and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.* 311 U. S. 7.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. United Textile Workers of America, Local No. 1912, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Tom C. Sweatt, and thereby discouraging membership in a labor organization, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By 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.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Marlboro Cotton Mills, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in United Textile Workers of America, Local No. 1912, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right 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.

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

(a) Offer to Tom C. Sweatt immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights or privileges;

(b) Make whole Tom C. Sweatt for any loss of pay he has suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from the date of the discrimination to the date of the respondent's offer of reinstatement, less his net earnings³⁰ during said period;

(c) Immediately post in conspicuous places in and about its plant at Bennettsville, South Carolina, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations; (2) that the respondent will take the affirmative action set forth

³⁰ See footnote 9, *supra*.

In paragraph 2 (a) and (b) of these recommendations; and (3) that the respondent's employees are free to become or remain members of United Textile Workers of America, Local No. 1912, and that the respondent will not discriminate against any employee because of membership or activities in that organization;

(d) File with the Regional Director for the Tenth Region on or before ten (10) days from the receipt of this Intermediate Report a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended, effective October 28, 1942—any party may within fifteen (15) days from the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of an order transferring the case to the Board.

JOHN H. EADIE,
Trial Examiner.

Dated September 22, 1943