

In the Matter of THE J. & H. CLAGENS COMPANY and TEXTILE WORKERS  
UNION OF AMERICA, CIO

Case No. 9-C-1925.—Decided May 25, 1944

DECISION

AND

ORDER

On January 28, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce 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. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. The Board has considered the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The Trial Examiner's rulings are hereby affirmed. No request for oral argument was made by any party.

The Board has considered the Intermediate Report, the exceptions and brief filed by the respondent, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as modified below:

The Trial Examiner has found that, by depriving strikers Otis Hamilton, George Kelch, and other strikers not reinstated upon abandonment of the strike of their status as laid-off employees and, by depriving all strikers of their seniority standing because they had engaged in a strike, the respondent discriminated against all said employees, within the meaning of Section 8 (3) of the Act. He has recommended, *inter alia*, that the respondent be required to restore seniority rights to all said employees and to place them on a preferential hiring list. We agree that the respondent unlawfully discriminated in the manner set forth above against all the strikers. However, since only two strikers, Hamilton and Kelch, are named in the complaint as having been discriminated against, our finding of discrimination and our remedy shall be limited to them. We shall therefore order the respondent to restore the pre-strike seniority status of Hamilton and Kelch, to place their names on a preferential hiring list, and

thereafter offer them employment to their former or substantially equivalent positions as such work becomes available, without discrimination against them because of their concerted activity or union membership, and before new persons are hired for such work, following the system of seniority heretofore applied in the conduct of the respondent's business. If, since the hearing, the respondent has hired any new employee, or has reinstated any employee with less seniority than Hamilton and Kelch, to fill jobs formerly held by Hamilton or Kelch, or for substantially equivalent jobs to which Hamilton or Kelch would be entitled under said system of seniority, said new employee or reinstated employee, as the case may be, shall, if necessary to provide employment for Hamilton or Kelch, be dismissed.

### ORDER

Upon 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, J. & H. Clasgens Company, New Richmond, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Textile Workers Union of America or any other labor organization of its employees, by discriminating in regard to the hire or tenure of employment of any of its employees, or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their 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 purposes of collective bargaining or other mutual aid and 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) Restore Otis Hamilton and George Kelch to the seniority status they would now have if it were not for the respondent's discrimination against them;

(b) Place the names of Otis Hamilton and George Kelch upon a preferential list and thereafter offer them employment as it becomes available, in the manner hereinabove set forth; and immediately reinstate said employees in the event any person has been employed since the hearing herein to fill the jobs formerly held by Otis Hamilton and George Kelch, or jobs substantially equivalent thereto, in the manner hereinabove set forth;

(c) Post immediately in conspicuous places throughout its plants at New Richmond, Ohio, and maintain for at least sixty (60) consecu-

five 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 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 remain and become members of Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, and that the respondent will not discriminate against any employee because of his membership in or activity on behalf of that organization, or because of any similar concerted activity;

(d) Notify the Regional Director for the Ninth Region, in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Order.

#### INTERMEDIATE REPORT

*Mr. John W. Coddair, Jr.*, for the Board.

*Mr. Raymond J. Kunkel*, of Cincinnati, Ohio, for the Respondent.

*Mr. Russel Quackenbush*, of Cincinnati, Ohio, for the Union.

#### STATEMENT OF THE CASE

Upon a second amended charge duly filed on November 5, 1943, by Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, herein called the Union, the National Labor Relations Board, herein called the Board, by its Acting Regional Director for the Ninth Region (Cincinnati, Ohio), issued its complaint on November 16, 1943, against The J & H Clagsens Company, New Richmond, Ohio, 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 the second amended charge, with notice of hearing thereon, 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 August 3, 1943, discharged Otis Hamilton and George Kelch<sup>1</sup> and thereafter refused to reinstate them because they, and each of them, had joined and assisted the Union and had engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid or protection. During the hearing, the respondent filed its answer denying that it had engaged in the alleged unfair labor practices.

Pursuant to notice, a hearing was held at New Richmond, Ohio, on November 29, 1943, and at Cincinnati, Ohio, on November 30, 1943, before Howard Myers, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by a representative. All parties participated in the hearing and full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence

<sup>1</sup> Referred to in the second amended charge and in the complaint as Bud Kelch.

bearing upon the issues was afforded them. At the end of the Board's case, counsel for the respondent moved to dismiss the complaint for lack of proof. The motion was denied. At the conclusion of the hearing, Board's counsel moved to conform the complaint to the proof and respondent's counsel moved to conform the answer to the proof. Both motions were granted without objections. Respondent's counsel then renewed the motion made at the close of the Board's case to dismiss the complaint for lack of proof. Decision thereon was reserved. The motion is hereby denied. Oral argument, in which all parties participated, was heard at the conclusion of the taking of evidence and is incorporated in the record. The parties were granted leave to file briefs with the undersigned on or before December 11, 1943. A brief has been received from counsel for the respondent.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT<sup>2</sup>

The J. & H. Clagens Company, an Ohio corporation, owns and operates two plants<sup>3</sup> at New Richmond, Ohio, where it is engaged in the manufacture, sale, and distribution of woolen yarn. The respondent's annual gross sales exceed one hundred thousand dollars, of which more than 75 percent in value are shipped to points outside the State of Ohio. Approximately 50 percent in value of the respondent's annual purchases are shipped to its New Richmond, Ohio, plants from points outside the State of Ohio.

The respondent conceded at the hearing that it is engaged in commerce within the meaning of the Act.

##### II. THE ORGANIZATION INVOLVED

Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the respondent.

##### III THE UNFAIR LABOR PRACTICES

###### A. *Sequence of Events*

There is no evidence in the record of any concerted or union activity among the respondent's employees prior to July 1943. During that month several of the production employees of the River plant applied to the management for wage increases. The requests were refused. On July 27, because of the respondent's refusal to grant the requested wage increases, about 25 or 30 of the then approximately 116 production employees went out on strike.<sup>4</sup> Otis Hamilton, a carder in the River plant, and George Kelch, a spinner in that plant, were among the strikers.

Shortly after the strikers had left the plant, Joseph Clagens, the respondent's president, met Hamilton on one of the streets of New Richmond and inquired

<sup>2</sup> The findings in this section are based upon a stipulation entered into by the parties at the hearing.

<sup>3</sup> One plant is known as the River plant and the other as the Hill plant. Most of the respondent's work is performed at the River plant where most of the employees work.

<sup>4</sup> At the hearing, Board's counsel stated that this was an economic strike and that it was not the Board's contention that the strike was due to any unfair labor practices of the respondent.

of him why the men had struck.<sup>5</sup> Hamilton replied that the men wanted their wages increased 7½ cents per hour. Clasgens said that the respondent could not afford to grant the demanded increase and that, even if it could, the respondent could not do so without first securing the approval of the National War Labor Board. Before departing, Clasgens asked Hamilton to return to work and also requested him to persuade the other strikers to do likewise. Hamilton replied that neither he nor the other strikers would return until their demands had been met. On the following day, Clasgens again asked Hamilton to return to work and to use his influence with his co-strikers so that work at the plant could return to normalcy. Hamilton again stated that none of the strikers would return to work until their demands were met. During this latter conversation, Clasgens, after concluding that Hamilton was adamant in his refusal to return to work until the demanded wage increases were granted, stated that if Hamilton did not want to return to the plant, he would help him obtain employment elsewhere and would give him the necessary certificate of availability. Hamilton replied that he did not care to seek employment elsewhere and that he would return to the plant as soon as the respondent granted the demanded wage increases.

On July 29, the strikers returned to the plant to obtain the wages due them.<sup>6</sup> After receiving their pay, Clasgens offered to increase their wages 3½ cents per hour if the strikers would return to work. This offer the men refused, stating that they would not return to work until the respondent agreed to pay the increases demanded. The men then left the plant. On the following day, Clasgens, at the request of a striker, met with the strikers and again agreed to increase the wages 3½ cents per hour if the strike was terminated. Again the proposed increases were declined.

Pursuant to a telephone call made by Hamilton on July 29, to the Union's Cincinnati headquarters,<sup>7</sup> Carl Johnson, a representative of the Union, met with the strikers in New Richmond on July 30. This meeting was attended by practically all the strikers. After all those present had signed membership application cards and had explained to Johnson the reason for the strike, Johnson informed the strikers that even if the respondent granted them an increase in wages it would have to be approved by the National War Labor Board and suggested that they attempt to sign up a majority of the employees and distributed membership application cards for this purpose. Johnson then said that if the majority of the employees were signed up upon his return to New Richmond the following Monday that he "would contact the Company and notify them that we represent a majority of the workers, and call the strike off, and also negotiate for an agreement."

On July 31, while Clasgens was conferring with the plant's superintendent and two foremen regarding certain plant problems, one of the respondent's largest customers called Clasgens on the telephone and requested him to cancel a large order which this customer had placed with the respondent on June 17, 1943. This request was agreed to by Clasgens for, as he testified, business reasons. Because of this cancellation, the recent collapse of Italy,<sup>8</sup> and the unsatisfactory financial condition of the account of another large customer,<sup>9</sup> Clasgens and his

<sup>5</sup> Evidently Clasgens was under the impression that Hamilton was the one who induced the men to leave the plant. The record does not support this impression. After the strike, however, Hamilton did become the leader of the strikers.

<sup>6</sup> Thursday is the respondent's pay day.

<sup>7</sup> New Richmond is a town of approximately 1700 people and is located about 25 miles from Cincinnati.

<sup>8</sup> The respondent was engaged then in the manufacture of woolen yarns which it sold almost exclusively to firms working on government contracts.

conferees decided to retrench and cut down the work week at the River plant from 80 hours to its pre-war schedule of 56 $\frac{3}{4}$  hours. This step necessitated the elimination of the second shift<sup>10</sup> Later that morning a notice reading as follows was posted on the bulletin boards:

Due to uncertainty of additional future orders we are discontinuing at noon today our 80 hour working schedule

Beginning Monday morning, August 2nd, working hours will be:

7 A. M. to 12 Noon. 12:45 P. M. to 6 P. M.

Saturday 6:30 A. M. to 12 Noon<sup>11</sup>

Those for whom we do not have employment can secure their availability slip at the office.

On Monday, August 2, a letter reading as follows was sent to the strikers:

On Saturday, July 31st, at 11:00 A. M. we posted a notice on the clock stating that we were discontinuing at noon of that day our 80 hour weekly schedule and were returning to a 56 $\frac{3}{4}$  hour weekly schedule which means a smaller working force.

We regret that this decision was necessary because of the uncertainty of the outlook for new business brought about by the recent conversations with our customers and the collapse of Italy.

The notice also advised employees to call at the office for availability slip so that they could seek employment elsewhere if they desired. Since after Saturday, July 31st, we would not have and will not have any work for them in the future

Those employees given availability slips received them because they were the last employed by us and we believe it fair that they should be the first to leave. Since you did not call for your slip it was mailed to you this morning.

On the morning of August 2, Johnson and Russel Quackenbush, an international representative of the Union, met with the strikers. Quackenbush "recommended" that the strike be called off and stated that the Union "would represent them and take their case to the War Labor Board and see what could be done." By noon that day, Quackenbush reported to the strikers that a majority of the employees of the 2 plants had signed application cards for membership in the Union. It was then agreed that Quackenbush and Johnson should notify the respondent that the strike was terminated and that the men were ready to return to work.

Shortly thereafter, Quackenbush and Johnson met with Clasgens. Quackenbush informed Clasgens that the Union represented a majority of the employees, that the strike was officially called off, and that the men "were willing and ready to go back to work at once."<sup>12</sup> With respect to his discussion with Quacken-

<sup>9</sup> This particular customer was then indebted to the respondent in the sum of approximately \$20,000 and Clasgens decided at that conference that the respondent would not continue to manufacture any more merchandise for this firm until satisfactory financial arrangements could be made. As was summed up by Clasgens: "The stock market had started down . . . and to me it looked like the early end of the war and was the signal for us to pull in our horns"

<sup>10</sup> Since the war the River and the Hill plants had been working on a 2 shift basis. About September 1, 1943, the Hill plant was also placed on a 56 $\frac{3}{4}$  hour basis and its second shift eliminated

<sup>11</sup> Prior to the new schedule the plant operated from 7 a. m. to 10 p. m. The first shift worked from 7 a. m. to 6 p. m. and the second shift from 11 a. m. to 10 p. m. The employees alternated weekly from the first to the second shift and vice versa.

<sup>12</sup> Quackenbush also requested Clasgens to enter into negotiations for a collective bargaining contract, but Clasgens stated that the respondent was unwilling to recognize the Union as the exclusive representative of the employees absent a certification from the Board.

bush regarding the taking back of the strikers, Clasgens testified that "Quack-enbush again said that the strike was off and wanted to know if we would take all of the men back and I said, 'No', and he said, 'Shall I call this a lock-out?' I says, 'No', and he says, 'What do you wanna call it?' and I says, 'Call [it] anything you like. We are going to take back some—those we can use.' So, with that, I think he left."

On the evening of August 2, after learning that the strike had been terminated, John R. Erdman, the foreman of the carding room, notified several of the striking carding room employees to return to work. Hamilton was not so notified. The evidence indicates that prior to the strike about 9 employees worked in Erdman's department at the River plant.<sup>23</sup> About 6 of the employees were card operators and the balance were strippers. All of these employees, with one exception, had gone on strike. With the shortening of the work-week, the respondent apparently had need for only 4 card operators and 2 strippers. Of the card operators all 4 recalled had more seniority than Hamilton. Of the strippers recalled one had more seniority than Hamilton and the other less seniority. Hamilton was the oldest in seniority of the card room employees not recalled.

Early in September, William Davis, a River plant carder, quit his employment to return to school. At about the same time, the respondent reduced its work-week at the Hill plant to conform to the work-week at the River plant and also eliminated the second shift there. At the Hill plant the respondent employed 2 carders, one on each shift, and since one shift was being eliminated the job of Clifford Merckle, the younger in seniority of the 2 carders, was being eliminated. Merckle had been hired by the respondent about 3½ weeks after Hamilton and after learning at the River plant how to operate a carding machine was transferred to the Hill plant. Since Davis was leaving his position as carder in the River plant and Merckle's job was being eliminated, the respondent transferred Merckle to Davis' job.

Clasgens testified that he suggested to both Erdman and Harold R. Vicroy, the foreman of the River plant spinning department, that they recall such strikers as they needed in the order of seniority. The record shows that Erdman did so with respect to the carders. Vicroy testified that he just took back all those striking spinners who reported for work after the strike was called off. The evidence indicates that about 20 spinners worked under Vicroy's jurisdiction in the River plant and that about 8 of them went on strike, including Kelch. Vicroy testified that he reinstated from 3 to 5 strikers who reported for work after the strike and that Kelch was not among those. Kelch's seniority dated from May 4, 1943, thus giving him comparatively little seniority. The record is not entirely clear as to whether the 3 to 5 reinstated spinners had more seniority than Kelch although it appears that they did. There is no affirmative showing by the Board however, that any of these reinstated spinners had less seniority than Kelch. The record, however, is clear that on September 29, the respondent took on an employee, Ethelyn Jefferson, who had been on leave of absence, as an apprentice spinner; that on October 4, it hired Dorothy Johnson as an apprentice spinner who had never previously worked for the respondent; that on the same day, it rehired Marilyn Ireton as a finished spinner, but who had evidently been on leave of absence and whose seniority dated from June 3, 1942; and that on October 22, it rehired Donald Cornell, who had been on strike and whose seniority prior to the strike predated that of Kelch.

<sup>23</sup> Erdman was also the foreman of the Hill plant carding room

*B. Concluding findings*

The complaint alleges that Hamilton and Kelch were discharged and thereafter refused reinstatement because they engaged in concerted activities with their fellow employees. At the hearing, Board's counsel contended that the respondent was motivated by its anti-union animus in refusing to recall or give work to Hamilton and Kelch after the strike. In support of this contention he argued that (1) in putting some of the strikers back to work after the strike the respondent deviated from its past policy with respect to recalling employees after a layoff, for it had always been the respondent's policy to rehire laid off employees in accordance with their seniority, (2) that it transferred Merckle from the Hill plant to the River plant and placed him in Davis' job without considering Hamilton for that job, despite the fact that Hamilton had more seniority than Merckle, and (3) instead of recalling Kelch, the respondent hired several new apprentices. The credible evidence shows that the respondent's policy with respect to layoffs due to lack of work was to retain those with the most seniority and its policy with respect to rehiring after a layoff was to rehire those persons who had been in its employ the longest<sup>14</sup>. Thus, it is clear that when Erdman recalled the striking carders he followed the respondent's rehiring policy, explicitly and therefore Hamilton was not discriminated against then. With respect to the strippers, Erdman did not follow the rehiring policy for he reinstated one striking stripper who had less seniority than Hamilton. Since Hamilton, who had more seniority than the rehired stripper in question, was not a stripper and the record does not disclose whether Hamilton could perform that task, or whether he would have accepted the job if it were offered to him, it can not be said that he was thus discriminated against. The Board claimed discrimination against Hamilton in that he was not given Davis' job when Davis left the respondent's employ early in September. Merckle, who had about 3½ weeks less seniority than Hamilton, was transferred from the Hill plant to the River plant and placed in Davis' job. Erdman testified, and the undersigned finds, that after Merckle had completed his training period at the River plant he was transferred to the Hill plant, that there Merckle performed his work without the necessity of Erdman being there to aid or supervise him; that the carding machines at the Hill plant are more difficult to operate; and that Erdman wanted to retain Merckle so that in case the remaining Hill plant carder was absent or quit, Erdman could send Merckle to the Hill plant to perform that man's job. On the other hand there is no evidence that Hamilton could operate the Hill plant carding machines.

With respect to Kelch, there is no evidence that any striking spinner with less seniority than he was reinstated by the respondent after the strike. Therefore it can not be said that Kelch was discriminated against when the respondent reinstated the 3 to 5 striking spinners. Nor was Kelch discriminated against when the respondent hired Jefferson and Johnson as apprentice spinners and Cornell and Ireton as finished spinners. The respondent always had in its employ a certain number of apprentice spinners and when vacancies occurred they were replaced by apprentices. There was no showing that Kelch's position was equivalent to that of an apprentice spinner. In regard to Ireton it appears that she had been on leave of absence and that her seniority was greater than that of Kelch. Likewise, Cornell, a striking spinner, had more seniority than Kelch.

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<sup>14</sup> Clasgens testified that the respondent's rehiring policy after a layoff is to rehire "the oldest (in seniority) and the ablest" employees first. He further testified that more weight is given to seniority than to ability.

There is no doubt that Hamilton and Kelch were the most active union men among the strikers. Hamilton was considered the spokesman of the strikers prior to the advent of the Union and was responsible for the Union's representatives coming to New Richmond. Kelch was responsible for signing up more union members than any other individual. Furthermore, Hamilton and Kelch were members of the Union's negotiating committee and this fact was communicated to Clasgens by Quackenbush and Johnson at the August 2 meeting at the plant.

At the hearing, Clasgens consistently took the position that the strikers had quit their employment and by striking had lost their seniority and the right to be considered as employees. Section 2 subdivision (3) of the Act provides: "The term 'employee' . . . shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute . . ." Thus, notwithstanding the respondent's position, Hamilton and Kelch remained employees of the respondent despite their participation in an economic strike. Section 7 of the Act protects employees in their right "to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection." Thus, since the strikers had called off the strike and unconditionally offered to return to work they remained employees for the purpose of future reinstatement rights, without loss of their seniority or other rights or privileges, and were and are entitled to the normal reinstatement rights of any laid off employee in accordance with the respondent's usual seniority practices.

It seems fairly clear from the entire record that the respondent failed to consider Hamilton as a laid off employee at the time it placed Merckle in Davis' job because Hamilton had participated in a strike. This constituted, under the circumstances described above, an act of discrimination. However, although the respondent failed to consider Hamilton at this time, it would be pure speculation and conjecture whether if it had considered Hamilton, the respondent would have given him Davis' job instead of Merckle. This is true because Merckle had unusual qualifications for the job although slightly less seniority than Hamilton.

It appears from the entire record that purely as a result of fortuitous circumstances, neither Hamilton nor Kelch were in fact discriminated against in regard to actual vacancies which occurred subsequent to the strike and up to the time of the hearing. Therefore, the undersigned will not recommend immediate reinstatement. However, it is clear that the respondent does not consider either Hamilton, Kelch, or the other non-reinstated strikers as laid off employees and has deprived them of all rights in this respect because of their concerted or Union activities. This is clearly borne out by the case of Donald Cornell, a striking spinner, who was reemployed by the respondent as of October 22, 1943. Cornell's seniority at the time of the strike dated back to August 19, 1942. Yet, at the hearing Clasgens admitted that the respondent now lists Cornell as having seniority from the date he was reemployed on October 22. Asked the reason for this Clasgens testified that Cornell "quit when he went out on strike and he came back and that is his seniority." By so doing the respondent has discriminated against Hamilton and Kelch in regard to their hire and tenure of employment and the terms and conditions of employment, thereby discouraging membership in the Union, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III A, above occurring in connection with the operation 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

Having found that the respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action which the undersigned finds will effectuate the policies of the Act.

It has been found that the respondent, by depriving the strikers of their status of employees discriminated in regard to their hire and tenure of employment. Since it has been found that the respondent has not discriminated against Hamilton and Kelch so far as available positions were concerned prior to the hearing, it will not be recommended that they be given immediate reinstatement. However, since it has been found that Hamilton and Kelch and the other striking employees not yet reinstated are still employees of the respondent and that they are entitled to reinstatement as soon as jobs for them become available, it will be recommended that their names be placed upon a preferential list and offered employment to their former or substantially equivalent positions as such employment becomes available and before other persons are hired for such work, in order of their respective seniority prior to the strike. If the respondent since the hearing has hired any new employees, or has reinstated any employees with less seniority than Hamilton and Kelch or other striking employees, not yet reinstated to fill the jobs that such striking employees held, or substantially equivalent jobs, such employees shall, if necessary to provide employment for the said striking employees, be dismissed.

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. Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, 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 or the terms and conditions of employment of Otis Hamilton and George Kelch and thereby discouraging membership in Textile Workers Union of America, 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 foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, J & H. Clasgens Company of New Richmond, Ohio, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Textile Workers Union of America or any other labor organization of its employees, by discriminating in regard to the hire or tenure of employment, or the terms or conditions of employment, of any of its employees;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or

assist labor organizations, to bargain collectively through representatives of their choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and 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) Restore Otis Hamilton and George Kelch and all the other employees who participated in the strike of July 27, 1943, to the seniority status which they would now have if it were not for the respondent's discrimination against them;

(b) Place the names of Otis Hamilton, George Kelch, and the other participants in the strike of July 27, 1943, who have not thus far been reinstated upon a preferential list and thereafter offer them employment as it becomes available, in the manner set forth in the section entitled "The Remedy", and immediately reinstate said employees in the event new employees have been hired since the hearing herein to fill the jobs formerly held by the said employees, or jobs substantially equivalent thereto, in the manner set forth in said section;

(c) Post immediately in conspicuous places throughout its New Richmond, Ohio, plants, and maintain for 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 in paragraph 2 (a) and (b) of these recommendations; and (3) that its employees are free to remain or become members of Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, and that the respondent will not discriminate against any employee because of membership or activities in that organization;

(d) Notify the Regional Director for the Ninth Region, in writing within ten (10) days from the receipt of this Intermediate Report what steps the respondent has taken to comply therewith;

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 has complied 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 3, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of 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 of 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. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. 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 the order transferring the case to the Board.

HOWARD MYERS,

*Trial Examiner.*

Dated January 28, 1944.