

In the Matter of MOORE GROCERY COMPANY, DOING BUSINESS UNDER THE STYLE AND TRADE NAME OF SLEDGE MANUFACTURING COMPANY and UNITED GARMENT WORKERS OF AMERICA

*Case No. 16-C-983.—Decided October 23, 1944*

*Mr. Robert F. Proctor*, for the Board.  
*Mr. Sidney L. Samuels*, of Fort Worth, Tex., and *Mr. Roy Butler*, of Tyler, Tex., for the respondent.  
*Mrs. Irene Greathouse*, of Dallas, Tex., for the Union.  
*Mr. Frederic B. Parkes, 2nd*, of counsel to the Board.

## DECISION

AND

## ORDER

### STATEMENT OF THE CASE

Upon a charge duly filed by United Garment Workers of America, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint dated February 12, 1944, against Moore Grocery Company, doing business under the style and trade name of Sledge Manufacturing Company, Tyler, Texas, 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, accompanied by Notice of Hearing, were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance: (1) that from on or about June 1, 1943, to the date of the complaint, the respondent, through certain named officers, agents, and employees, disparaged and expressed disapproval of the Union, and urged, persuaded, threatened, and warned its employees to refrain from assisting the Union and from becoming or remaining members of the Union; (2) that on or about July 31, 1943, the respondent discharged Corea Webster and since that date has continuously failed

and refused to reinstate her for the reason that she joined or assisted the Union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection; and (3) that, by the above-stated acts, the respondent discriminated with respect to the hire and tenure of employment and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent filed an answer, dated March 6, 1944, admitting some jurisdictional allegations of the complaint, but denying that it had engaged in the alleged unfair labor practices, and alleging affirmatively that Webster was discharged for the reason that she engaged in boisterous talk during working hours about matters unrelated to her work and that, when reprimanded by her supervisor, she failed to comply with the directions of the supervisor and offended the supervisor with a facial grimace and the use of obscene language.

Pursuant to notice, a hearing was held at Tyler, Texas, on March 6 and 13, 1944, before William F. Guffey, Jr., the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by its representative. All 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 conclusion of all testimony, the Trial Examiner granted, without objection, motions by the Board and the respondent to conform the pleadings to the proof. During the course of the hearing, the Trial Examiner made rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner made during the course of the hearing and finds that no prejudicial error was committed. The Trial Examiner's rulings made at the hearing are hereby affirmed.

On June 1, 1944, the Trial Examiner issued his Intermediate Report, copies of which were duly served upon the respondent and the Union. He found that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act, and recommended that the respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. On June 19 and July 4, 1944, respectively, the respondent filed with the Board its exceptions to the Intermediate Report and a brief. On July 6, 1944, the Union filed a brief with the Board. A request for oral argument before the Board was withdrawn and no oral argument was held.

The Board has considered the respondent's exceptions to the Intermediate Report and the briefs, and the entire record in the case, and, only insofar as the exceptions are consistent with the findings, conclusions, and order set forth below, finds them to have merit.

Upon the entire record in the case, the Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

Moore Grocery Company, doing business under the style and trade name of Sledge Manufacturing Company, is a Texas corporation having its principal office and place of business at Tyler, Texas, where it is engaged in the manufacture and sale of men's and boys' clothing and in the manufacture of men's work clothing under contracts with the United States Government. The materials used by the respondent consist mainly of drills, jeans, denims, twills, thread, buttons, and other related articles. During the 6-month period ending September 1943, the respondent purchased, in States other than the State of Texas, for use at its Tyler Plant, materials valued at approximately \$422,286. During the same period, the respondent shipped to points outside the State of Texas finished products for civilian use valued at approximately \$234,955, amounting to approximately 27.6 percent of the total finished products for that period. In addition, the respondent, during the same period, produced finished products under its contracts with the United States Government valued at about \$90,730.

#### II. THE ORGANIZATION INVOLVED

United Garment Workers of America is a labor organization, affiliated with the American Federation of Labor, admitting to membership employees of the respondent.

#### III. THE UNFAIR LABOR PRACTICES

##### *A. Background*

Peritus Rollins, a former employee, testified that in 1940, at a time when the respondent was enlarging its plant and had advertised for new employees, she went to the office of R. W. Honea, the respondent's manager, and spoke to Honea about employment for a friend. According to Rollins' uncontradicted testimony, Honea asked Rollins if her friend had worked at a plant in which there was a union and said, "We will not work anybody that has affiliated with or participated in any Union work anywhere at any time." We find, as did the Trial Examiner, that Honea made the statement as related by Rollins.

Dorothy Goff, a former employee, testified, without contradiction, that about April 1943, she talked to several of the respondent's officials and supervisory employees, including Howard Lancaster, a foreman, about getting wage increases and that on one such occasion she told

Lancaster that, if A. F. Sledge, the respondent's president, would not talk to the employees about wage increases, the Union would. According to Goff, Lancaster replied that Sledge "would close the factory up before he would let organized labor take over." Like the Trial Examiner, we credit Goff's uncontradicted testimony and find that Foreman Lancaster made the statement attributed to him by Goff.

The complaint alleges no unfair labor practices prior to June 1, 1943. We, therefore, do not find that the two foregoing statements constitute unfair labor practices. They are set forth merely as background against which the alleged unfair labor practices are evaluated.

### B. *Interference, restraint, and coercion*

#### 1. Sequence of events

The Union began organizing the respondent's employees in the latter part of May 1943. At about that time Irene Greathouse, an international representative of the Union, discussed the organization of a local of the Union with several of the respondent's employees and planned with them to distribute union membership cards and union leaflets among the respondent's employees. Greathouse remained in Tyler about a week during May, assisting the employees in their organizational activities. During this period, several employees signed applications for membership in the Union.

Susanna Holder, a forelady employed by the respondent, testified that, about the time the Union commenced its organizational activity among the respondent's employees, a group of about three employees inquired of Holder concerning her opinion of the Union and that she replied, "Everybody can join the Union that wants to, and here is one that isn't paying out any more money to them . . . the garment workers give us a dirty deal when we had a local . . ." We find, as did the Trial Examiner, that Holder made the above statement as related by her.

On June 2, 1943, the respondent posted in its plant a large notice, about 14 inches by 22 inches in size, printed in large letters and in red ink, reading as follows:

#### NOTICE!

The Handling or Passing Out of Any

HANDBILLS OR CARDS

Is Positively Prohibited On

These Premises Without

Written Consent of Management

A. F. Sledge, President

Rollins also testified that she attended a union meeting in July 1943, at a downtown meeting hall and that, while the employees were gathering for the meeting about 5 o'clock in the afternoon, she saw Foreman Lancaster standing in a bowling alley, which was located across the street from the meeting hall, and looking through the window of the bowling alley toward the stairway used by the employees to enter the meeting hall. According to Rollins, Lancaster was supposed to be on duty at the plant until 5:30. Lancaster did not appear as a witness at the hearing and Rollins' testimony with regard to his presence near the meeting hall is uncontradicted.

On August 7, the Union held a meeting at a hall in downtown Tyler. Nell Jay, an employee, testified that, as she and several other employees left the meeting, she saw Manager Honea standing in the driveway of an automobile service station which was located one block from the place where the union meeting was held. Jay further testified that, shortly after leaving the union meeting, she telephoned Jewel Gregory, a line supervisor in the plant, and told Gregory that she, Jay, had observed Honea standing near the union meeting hall and apparently watching the employees who attended the meeting. Jay testified that Gregory replied, "I am sorry you went, all that had anything to do with it are going to get fired." According to Jay, Gregory also stated that, earlier the same day, Honea had asked Gregory if his information that Jay had signed a union membership card was true and that Gregory had replied that, in her opinion, Jay had probably not signed the union card because Gregory "had been too good" to Jay and; accordingly, Gregory did not believe that Jay "would do that." Honea testified that the service station to which Jay referred was the station at which he usually had his car serviced but that he did not recall being there on the occasion in question. Gregory denied having any conversation with Jay in regard to Honea's watching the union meeting. She also denied that she told Jay of Honea's inquiry with regard to Jay's signing a union membership card. The Trial Examiner, who observed the demeanor of the witnesses at the hearing, credited Jay's testimony and did not credit the denials of Gregory. We agree with the Trial Examiner's resolution of this conflicting testimony.

## 2. Conclusions

The Trial Examiner found, and we agree, that the promulgation of the rule prohibiting the distribution of handbills or cards on the respondent's property was an unwarranted interference with the rights guaranteed the employees in Section 7 of the Act, in that the rule prohibited, on company property, concerted or union activities of employees on their free time, as distinguished from working time.

It is to be noted that the rule was not phrased in general terms prohibiting the distribution of all literature on company property but:

rather forbade specifically only the "handling or passing out of any handbills or cards" on the respondent's property. The rule is accordingly clearly distinguishable from those general rules which we have held to be within the province of an employer to promulgate in the interest of keeping his plant clean and orderly.<sup>1</sup> Moreover, no reason was advanced by the respondent, in the instant proceeding, for promulgating the rule. In view of the language of the rule and of the fact that the rule was promulgated within 2 months after the anti-union statement of Foreman Lancaster and within a few days after the commencement of the Union's intensive organizational campaign in which handbills and cards were distributed and memberships in the Union were obtained, and shortly after Forelady Holder's anti-union remark, we find, as did the Trial Examiner, that the rule was promulgated for the purpose of interfering with the Union's campaign to organize the employees and for the purpose of discouraging the employees from joining the Union.<sup>2</sup>

The Trial Examiner also found that Lancaster had engaged in surveillance of a union meeting but that Honea had not engaged in such activity. Although the circumstances with regard to these activities of Lancaster and Honea are somewhat suspicious, we nevertheless are of the opinion and find that the evidence is insufficient to support a finding that either Lancaster or Honea was spying upon the meeting of the Union.

We find, as did the Trial Examiner, that Forelady Holder and Line Supervisor Gregory were supervisory employees for whose conduct the respondent is responsible<sup>3</sup> and that, by the anti-union statements of Holder and Gregory and by the posting of the notice set forth above, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

<sup>1</sup> See *Matter of Tabin-Picker & Co.*, 50 N. L. R. B. 928; *Matter of North American Aviation, Inc.*, 56 N. L. R. B. 959, *Matter of The Goodyear Aircraft Corporation*, 57 N. L. R. B. 502

<sup>2</sup> Cf. *Matter of American Pearl Button Company*, 56 N. L. R. B. 613.

<sup>3</sup> Line Supervisor Gregory had charge of a pants line at which 25 or 30 employees work. Her duties required her to keep work moving on her line, to help operators who fell behind in their work, and occasionally to substitute for any operator necessarily absent from her machine for a short period of time. When the employees working on Gregory's line desired permission to leave the plant before the end of working time, they made such a request to Gregory who could "intervene" on behalf of the employees in such matters. Gregory had authority to reprimand employees on her line for talking or engaging in other activity which, in Gregory's opinion, interfered with proper production. According to Gregory's testimony, she promoted, demoted, and transferred employees on her line as circumstances required, placed employees on jobs that they could do best, and told the employees on her line what work to do. Forelady Holder had supervision over four production lines. She supervised Gregory and employees who occupied positions on other lines comparable to that of Gregory. Holder could transfer employees from one line to another at her discretion. Upon these facts, it is clear that Gregory and Holder were supervisory employees and that the ordinary employees reasonably identified Gregory and Holder with management. Cf. *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, 79-80, *H. J. Heinz v. N. L. R. B.*, 311 U. S. 514, 518-20.

C. *The alleged discriminatory discharge of Corea Webster*

The complaint alleges that Corea Webster was discharged because of her membership in and activity on behalf of the Union and because of her concerted activity with other employees for their mutual aid and protection. On July 28, 1943, Webster signed an application for membership in the Union and submitted it to the Union. On the morning of July 31, 1943, the day on which she was discharged, Webster engaged in a conversation with Vera May Holly, another employee, concerning the Union. According to Webster's undisputed testimony, Holly said during this conversation, among other things, that she "was not going to work if she had to work under a Union," that she "would eat bread and water before she would work under a Union," that she would not work at the same place where there was a union, and that she thought all those who joined the Union were "dumb." Webster, according to her own undisputed testimony, told Holly that there was "no use to gripe about it, it might help our grandchildren; just forget it," and that "it was everybody's business if they wanted to join" the Union. Holly testified that Webster also stated that Holly would lose her job if the employees became organized and she failed to join the Union. The Trial Examiner credited Webster's and Holly's testimony and found that the substance of the conversation between Webster and Holly was as related by them. We agree with the Trial Examiner's evaluation of this testimony and with his finding as to this conversation.

The respondent asserts that Webster was discharged (1) because she refused to cease talking and return to work when she was directed to do so by Gregory, her supervisor; (2) because she engaged, during working hours, in loud and boisterous conversation which disrupted her work as well as that of other employees; and (3) because she was insubordinate, having made a facial grimace and used obscene language when Gregory directed Webster to resume work.

Line Supervisor Gregory testified that, when she told Webster to cease talking and resume work, Webster stuck out her tongue and told Gregory in obscene language, to "kiss her" backside. Gregory's testimony in this regard is corroborated by that of Holly, who was working near Webster at the time in question. Gregory's testimony is also supported by the testimony of Forelady Holder that Gregory immediately reported to her that Webster had made the remark set forth above and had stuck out her tongue at Gregory. Manager Honea testified that, after Webster's discharge, she admitted to him that she had told Gregory "to kiss my so-and-so." Sally King, an employee, testified that a few hours after the discharge, she was told by Webster that she had made the remark to Gregory. Webster testified that

she stuck out her tongue at Gregory in jest, but denied that she made the obscene remark to Gregory.

Upon the entire record and from his observation of the witnesses, the Trial Examiner found, and we concur in his finding, that Webster, on the morning of her discharge, made a facial grimace to Line Supervisor Gregory and made the obscene remark which Gregory and the other witnesses attributed to Webster.

Five or ten minutes after the above-related conversation between Webster and Holly, Gregory informed Forelady Holder that Webster and Holly were engaged in argument, that Webster was blocking production, and that Webster had made the facial grimace and the obscene remark as found above. Holder called Webster aside from the other employees and told her that she was discharged for the reasons that she was holding up production, had refused to resume work upon the instruction of her supervisor, and had used obscene language in speaking to her supervisor. Webster immediately appealed to Manager Honea, who ratified Holder's discharge of Webster after talking to Holder and Gregory about it in Webster's presence.

Although the record indicates that the language used by Webster on the occasion immediately preceding her discharge may have been neither uncommon nor shocking to her fellow employees, including her supervisors, and although Webster was discharged 3 days after she had joined the Union and immediately after she had indicated her approval of the Union to employee Holly, we do not agree with the Trial Examiner's conclusion that Webster's discharge was discriminatory. In our opinion, the respondent regarded Webster's obscene remark and facial grimace as insubordination and discharged her because of such conduct. The fact that Holly was not disciplined for engaging in argument with Webster and thus blocking production is not controlling since Holly did not engage in conduct comparable to that of Webster. We therefore find that the respondent, by discharging Webster, did not discriminate in regard to her hire or tenure of employment within the meaning of the Act.

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

We find that 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

Having found that the respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

We have found that by promulgating and posting the rule prohibiting the "handling or passing out of any handbills or cards" on the respondent's property, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. The deterrent influence of the promulgation and posting of the rule can be removed only by a statement by the respondent, properly publicized, to the effect that its employees are free to exercise the rights guaranteed them by the Act without risk of discrimination. We shall accordingly order that the respondent post such a notice.

Since we have found that the respondent did not discriminate with regard to the hire or tenure of employment of Corea Webster, within the meaning of the Act, we shall order that the complaint be dismissed as to her.

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

## CONCLUSIONS OF LAW

1. United Garment Workers of America, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. 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.

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

4. The respondent has not discriminated with respect to the hire or tenure of employment of Corea Webster, within the meaning of the Act.

## ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respond-

ent, Moore Grocery Company, doing business under the style and trade name of Sledge Manufacturing Company, Tyler, Texas, its officers, agents, successors, and assigns shall:

1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Garment Workers of America, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Rescind immediately its rule prohibiting the distribution of handbills and cards insofar as such rule prohibits union activity on company property during the employees' own time;

(b) Immediately post in conspicuous places in and about its plant at Tyler, Texas, 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 ordered to cease and desist in paragraph 1 of this Order; and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

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

AND IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondent has discriminated in regard to the hire or tenure of employment of Corea Webster.