

In the Matter of MT. VERNON-WOODBERRY MILLS, INC.¹ and TEXTILE
WORKERS UNION OF AMERICA, CIO

Case No. 10-U-1554.—Decided October 18, 1945.

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

Messrs. John Wesley Weekes and Murphy Candler, Jr., of Decatur, Ga., Mr. William Carvell Woodall, of Tallassee, Ala., and Mr. R. T. Milner, of Wetumpka, Ala., for the respondent.

Mr. Houston Troupe, of Huntsville, Ala., for the Union.

Mr. Ben Grodsky, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a first amended charge duly filed on November 10, 1944, by Textile Workers Union of America, CIO, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Tenth Region (Atlanta, Georgia), issued its complaint dated November 10, 1944, against Mt. Vernon-Woodberry Mills, Inc., herein called the respondent, alleging 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 National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by 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: (1) that on or about April 17, 1944, the respondent discharged Allen J. Manning and Herbert French, on or about April 20, 1944, discharged W. R. Mathis, and thereafter refused to reinstate Manning and Mathis, because of their union activity; (2) that on or about April 20, 1944, the respondent reemployed French and again discharged him on or about June 3, 1944, because of his union activity; and (3) that since about April 1, 1944, the respondent vilified, dis-

¹ The spelling of the respondent's name in the complaint was corrected by motion made at the hearing

paraged, expressed disapproval of the Union, interrogated its employees concerning their union affiliations, urged, persuaded, threatened, and warned its employees to refrain from assisting, becoming members of or remaining members of the Union, and kept under surveillance the activities of the Union or the concerted activities of its employees for the purpose of self-organization or improvement of working conditions.

On November 21, 1944, the respondent filed an answer, admitting the discharges alleged but denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on December 7, 8, and 9, 1944, at Jordanville,² Alabama, before J. R. Hemingway, 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. Full opportunity was afforded all parties to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the opening of the hearing, the respondent moved to dismiss the complaint on the ground that the charge was not signed by a properly designated official of the Union and that the Union itself was not a proper party to the proceedings. The motion was denied. At the conclusion of the hearing, counsel for the Board moved to amend the pleadings to conform to the proof as to formal matters, and the respondent's counsel moved to amend the answer to conform to the proof regarding the discharges, concerning which there was some testimony that certain alleged dischargees had quit rather than had been discharged. These motions were granted. During the course of the hearing, the Trial Examiner made rulings on other motions and on objections to the admissibility of evidence. The Board has reviewed the rulings and finds that no prejudicial error was committed. The Trial Examiner's rulings, insofar as they are not inconsistent with our findings and order below, are hereby affirmed.

On March 7, 1945, 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 certain 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 to effectuate the policies of the Act and that the complaint be dismissed as to the remaining allegations. Thereafter,

² The notice of hearing stated that the hearing would be held in the Circuit Court Room at Tallassee, Alabama. The correct name of the room where the hearing was held is Inferior and Mayors Court which is in Jordanville, a community adjoining Tallassee. All parties were represented throughout the hearing and no question was raised as to the sufficiency of the notice.

the respondent filed exceptions to the Intermediate Report and a supporting brief.

On July 26, 1945, the Board heard oral argument at Washington, D. C. The respondent appeared and participated in the argument; the Union appeared but did not participate.

The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby sustains the exceptions insofar as they are consistent with the findings of fact, conclusions of law, and order set forth below.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, a Maryland corporation, has its principal office and place of business at Tallassee, Alabama, where it is engaged in the manufacture, sale, and distribution of duck, canvas, cloth, cordage, and other cotton goods. Its annual purchases of raw cotton exceed \$7,000,000, of which 75 percent is received from points outside the State of Alabama. Its annual sales of finished products exceed \$18,000,000, of which more than 75 percent is shipped to points outside the State of Alabama.³

We find that the respondent is engaged in commerce, within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

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

III. THE ALLEGED UNFAIR LABOR PRACTICES

In March and April 1944, the Union was engaged in an organizational campaign at the respondent's mill. Employee Allen J. Manning signed an application for membership on March 23, 1944; employee Herbert French, on April 12, 1944; and employee Wilmer R. Mathis, on April 10, 1944. All three were active thereafter in soliciting memberships for the Union at the respondent's plant during working hours and, according to their testimony, they, as well as other union proponents, were closely watched during working hours by Andrew Golden, a second hand.⁴ The Trial Examiner found that Golden's

³ The respondent either admitted in its answer to the Board's complaint or stipulated to the foregoing facts.

⁴ A second hand is equivalent to a shift foreman. Golden was a second hand in weave room number 2 where Herbert French and Allen Manning were employed.

close observation of these employees constituted surveillance, within the meaning of Section 8 (1) of the Act. We do not agree. All of Golden's activities in this respect were confined to working time and were necessary and proper incidents of his supervisory position. Moreover, there is no basis in the record for inferring that such conduct was motivated by anti-union considerations or was designed to discourage self-organization among the employees.⁵

On April 17, 1944, the respondent discharged Manning and French and on April 20, discharged Mathis and reemployed French as a new employee to work in a department other than the one in which he formerly worked. On June 3, 1944, the respondent again discharged French. The complaint alleges that these discharges were violative of the Act.

The respondent asserts that Manning, a loom fixer, was discharged because he did not pay attention to his work. Golden testified that on the day of Manning's discharge he noticed that Manning was off the floor for 40 minutes and that Manning had only fixed one of the many looms he had been instructed to repair. At the hearing before the Trial Examiner, Manning admitted that he had gone to the refreshment stand in the basement and that, after returning to the floor for a few minutes, he went to the dressing room for a smoke, but claimed that at the times in question there was no emergency repair work to be performed.⁶

The respondent asserts that French, a warpman, was discharged on April 17,⁷ because he used a small drag roller on a loom designed for a larger roller, leaving one of the looms requiring the shorter roller without such roller. French did not deny using the short roller but explained that the short roller was on the loom at the time he changed the warp. With respect to his second discharge, the respondent asserts that it was due to French's failure to keep up with the work. French admitted that the work was piling up but explained that it was due to the fact that the respondent ceased to supply him with assistance, as it had previously done.

The respondent maintains that Mathis, a loom fixer, was also discharged for cause. It appears from the record that on the day before his discharge, Mathis was ordered to check a number of looms making

⁵ The Trial Examiner found no evidence to support the other 8 (1) allegations of the complaint and recommended that the complaint be dismissed as to them.

⁶ Golden claimed that there were several "flags" up indicating need for immediate repairs on looms. The Trial Examiner found that Golden's testimony was exaggerated and not inconsistent with Manning's because employee Sargent testified that he had "flagged" a loom but then fixed it himself and removed the "flag". Manning had a check list of looms requiring attention, but this was not urgent work except insofar as the looms would produce "seconds," which in this case they did not.

⁷ At the hearing, before the Trial Examiner the respondent also took the position that French quit on April 17. However, we agree with the Trial Examiner that French was then discharged.

seconds and, sometime later in the day, his immediate supervisor, Peoples, in checking on Mathis' work, found that one of the looms which Mathis was supposed to have fixed was making imperfect cloth because a Stafford feeler knife was out of adjustment.⁸ The following day, after inspecting the seconds produced by Mathis' looms, Peoples remonstrated with Mathis concerning his failure to fix the looms. According to Peoples, Mathis replied that he "couldn't get to the looms [yesterday] and I can't get to them today either" and used a vulgar expression toward Peoples. Thereupon, Peoples discharged him.

The Trial Examiner concluded from the above circumstances and other evidence, not herein detailed, which tends to cast doubt upon the respondent's asserted good faith, that these employees were not discharged for the reasons assigned by the respondent but rather because of their union activities. While the respondent's summary and harsh treatment of these employees, who as skilled and competent workmen had been in its employ for a number of years,⁹ raises a strong suspicion of discrimination, we are unable to find on the record as a whole that their discharge was due to their union activities. In reaching this conclusion we are persuaded in part by the fact that there is no substantial evidence of anti-union animus by the respondent and that French was reemployed at a time when his union activity was known to the respondent.

Upon the basis of the entire record, we find, contrary to the Trial Examiner, that the respondent has not engaged in unfair labor practices, within the meaning of Section 8 (1) and (3) of the Act. We shall accordingly, dismiss the complaint in its entirety.

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. The operations of the respondent, Mt. Vernon-Woodberry Mills, Inc., constitute commerce and affect commerce, within the meaning of Section 2 (6) and (7) of the Act.
2. Textile Workers Union of America, C. I. O., is a labor organization, within the meaning of Section 2 (5) of the Act.
3. The respondent has not engaged in unfair labor practices as alleged in the complaint, within the meaning of Section 8 (1) and (3) of the Act.

⁸ The record indicates, as found by the Trial Examiner, that the knife slipped out of adjustment only several minutes before it was discovered by Peoples.

⁹ Manning worked for the respondent for 11 years; French, for over 7 years; and Mathis, for over 14 years.

ORDER

Upon the basis of the foregoing 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 complaint against Mt. Vernon-Woodberry Mills, Inc., Tallassee, Alabama, be, and it hereby is, dismissed.