

suasive reason for denying the Employer the right to test in a secret election the Union's asserted majority status where, as here, it appears that the Employer has performed its obligation under the settlement agreement and whatever loss of majority subsequently suffered by the Union is attributable solely to its own conduct in striking and the lawful action of the Employer in permanently replacing the strikers.⁵

Accordingly, we find, contrary to the Union's contentions, that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act. We shall therefore deny the Union's motion to dismiss.

4. In accordance with the stipulation of the parties, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Employer's St. Louis, Missouri, plant, excluding general office, clerical, and professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication in this volume.]

⁵ We leave open the question of whether the petition would be timely, if the bargaining, pursuant to the settlement agreement had not progressed to a good faith impasse.

DISMUKE TIRE AND RUBBER COMPANY, INC. *and* UNITED RUBBER CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, CIO. *Case No. 32-CA-104. February 28, 1951*

Decision and Order

On October 27, 1950, Trial Examiner Allen MacCullen 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 attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board¹ has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].

adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications:

1. We agree with the Trial Examiner that the Respondent violated Section 8 (a) (5) and (1) of the Act.

On December 29, 1949, as found by the Trial Examiner, the Union had been designated by the majority of the employees in the appropriate unit as their bargaining representative, and it so advised the Respondent by a letter, which the Respondent received on January 7, 1950, but failed to answer. In this letter the Union also requested recognition and a collective bargaining meeting. The Respondent for the first time asserts in its brief that it withheld action on the Union's request for recognition because it did not know whether the Union was in fact the representative of the majority of its employees. While an employer who has a bona fide doubt as to a union's majority status may refuse to bargain with the union until its majority status is established, he may not withhold recognition because of a rejection of the collective bargaining principle or in order to gain time in which to undermine the union's status.² The record is clear in this case that the Respondent did not entertain any bona fide doubt as to the truth of the Union's representation claim, and that its failure to reply to the Union's letter of December 29 was motivated by a rejection of the collective bargaining principle and by a desire to gain time in which to dissipate the Union's strength. There is no evidence that the Respondent at any time expressed any doubt as to the Union's majority status. On the contrary, Dismuke, the Respondent's president, testified that he "felt" or "assumed" from the fact that the Union had written the letter of December 29, that the Union did, in fact represent the majority of the employees. The record shows further, as found by the Trial Examiner, that immediately upon receipt of the Union's letter, Respondent's management embarked on a campaign of interrogation and threats of reprisal for union activity. It is true that the Respondent on January 18, after the conclusion of its antiunion campaign, consented to an election upon the Union's petition. Under different circumstances, such consent might have indicated acceptance of the principle of collective bargaining. We cannot, however, so construe a consent to an election which is given, as in this case, against a background of antiunion conduct, including the discriminatory discharge of Roebuck, as found by the Trial Examiner. It is more plausible to view the consent in this case as reflecting the Respondent's belief that its antiunion campaign had already precluded any likelihood that the Union would win the election.³

² See *The Cuffman Lumber Company, Inc.*, 82 NLRB 296; *Artercraft Hosiery Company*, 78 NLRB 333

³ *Everett Van Kleeck & Company, Inc.*, 88 NLRB 785.

Accordingly, we find, upon the entire record, like the Trial Examiner, that the Respondent's failure to reply to the Union's request of December 29, 1949, for bargaining violated Sections 8 (a) (5) and (1) of the Act.⁴

2. For the reasons stated by the Trial Examiner, we also find that the Respondent independently violated Section 2 (a) (1) by the conduct detailed in the Intermediate Report, and discriminated against employee Roebuck in violation of Section 8 (a) (3) and (1) of the Act.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Dismuke Tire and Rubber Company, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, or any other labor organization of its employees, or in any other manner discriminating in regard to their hire, tenure of employment, or other conditions of employment.

(b) Refusing to bargain collectively with United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, as the exclusive representative of all its employees in the appropriate unit with respect to rates of pay, wages, hours of work, and other conditions of employment.

(c) In any other manner interfering with, restraining, and coercing its employees in the exercise of their right to self-organization, to form, join, or assist United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act, as guaranteed in Section 7 thereof.

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

⁴The Trial Examiner found that the Union *after* January 18, received information of the Respondent's unfair labor practices, and thereupon withdrew its petition for an election. Presumably, however, some of this information had come to the Union's attention *before* January 18, as the original charge in this case was filed on January 10. At any rate this inaccuracy in the Trial Examiner's findings does not affect our conclusions herein.

(a) Bargain collectively with United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, as the exclusive representative of the employees in the following bargaining unit: All production and maintenance employees at the Respondent's Clarksdale, Mississippi, plant, excluding office and clerical employees, watchmen, guards, and supervisors.

(b) Make whole James Benton Roebuck in the manner set forth in the section of the Intermediate Report entitled "The Remedy".

(c) Upon request make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the right of reinstatement under the terms of this Order.

(d) Post in conspicuous places at its plant in Clarksdale, Mississippi, in all places where notices to employees are customarily posted, copies of the notice attached to the Intermediate Report marked Appendix.⁵

Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region (New Orleans, Louisiana), shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent to insure that said notices shall not be altered, defaced, or covered by any other material;

(e) Notify the said Regional Director in writing within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

⁵ The caption of this notice shall be amended by substituting the words "A Decision and Order" for the words "The recommendations of a Trial Examiner." If this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "A Decision and Order," the words "A Decree of the United States Court of Appeals Enforcing."

Intermediate Report

Charles A. Kyle, Esq., for the General Counsel.

J. R. Roberson, Esq., and *S. H. Roberson, Esq.*, of *Roberson, Luckett & Roberson*, Clarksdale, Miss., for the Respondent.

Luke Fuqua, Esq., of Memphis, Tenn., for the Union.

STATEMENT OF THE CASE

Upon charges duly filed by the United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, herein called the Union, the General Counsel of the National Labor Relations Board,¹ by the Regional Director of the Fifteenth Region (New Orleans, Louisiana), issued a complaint dated June 21, 1950, against Dismuke Tire and Rubber Company, Inc., Clarksdale, Mississippi, herein called the Respondent, alleging that the Respondent had engaged in and was

¹ The General Counsel and his representatives at the hearing are referred to as the General Counsel. The National Labor Relations Board is herein called the Board.

engaging in unfair labor practices within the meaning of Section 8 (a) (1), (2), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charges, 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:

(1) The Respondent failed and refused to recognize the Union as the exclusive representative of its employees in an appropriate unit and refused to bargain collectively with the Union as the duly authorized representative of its employees; (2) that on or about January 3, 1950, Respondent discriminatorily discharged James Roebuck, and thereafter failed and refused to reinstate him until February 7, 1950, because of his membership in and activities on behalf of the Union; and (3) on or about January 1, 1950, and continuously thereafter Respondent and its agents made statements to employees discouraging union activity, interrogated employees about their union activity, warned and threatened employees against assisting, becoming members of, or remaining members of the Union, assaulted its employees because of their activities in the Union, and advised its employees that it had a cop watching certain employees' homes in order to keep union meetings under surveillance. The complaint charged that by the foregoing conduct the Respondent engaged in violations of Section 8 (a) (1), (2), (3), and (5) of the Act.

On July 17, 1950, the Respondent filed its answer in which it admits that it was engaged in commerce as defined by the Act; neither admits nor denies that the Union is a labor organization but calls for proof thereof; admits that the unit alleged in the complaint constitutes an appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act; admits that it received a request from the Union for recognition as bargaining agent of its employees; and admits that it discharged James Roebuck, but alleges that Roebuck was discharged for adequate reasons, and was reemployed on February 7, 1950. Respondent denies all other allegations in the complaint.

Pursuant to notice, a hearing was held on August 8 and 9, 1950, at Clarksdale, Mississippi, before Allen MacCullen, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by Counsel and the Union was represented by its agent, and 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. A motion by General Counsel at the conclusion of the hearing to conform the pleadings to the proof as to dates, spelling, and minor variances was granted. All parties waived the right to make oral argument. No briefs were filed by any of the parties.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Dismuke Tire and Rubber Company, Inc., is a corporation under the laws of the State of Mississippi, and maintains its principal office and place of business at Clarksdale, Mississippi, and is now and has been continuously engaged in the manufacture of camelback and inner tubes at its plant in Clarksdale, Mississippi; that in the course and conduct of its business during the year ending December 31, 1949, which is representative of all times material herein, the Respondent

purchased raw materials consisting principally of natural and synthetic rubber, carbon black, and other innertube ingredients, valued in excess of \$200,000, approximately 90 percent of which was purchased outside the State of Mississippi, and shipped in interstate commerce to its Clarksdale, Mississippi, plant. During the same period, Respondent manufactured and sold finished products consisting of camelback and inner tubes valued in excess of \$350,000, approximately 60 percent of which was sold and shipped to customers outside the State of Mississippi.

The undersigned finds that Respondent is engaged in commerce within the meaning of the Act.²

II. THE ORGANIZATION INVOLVED

United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, is a labor organization admitting to membership employees of Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Setting and issues*

On December 29, 1949, a majority of the Respondent's production and maintenance employees signed cards authorizing the Union to represent them in collective bargaining. On December 29, 1949, a union representative sent to Respondent by registered mail a letter, received by Respondent on January 7, 1950, advising that the Union represented a majority of its employees, requesting Respondent to recognize the Union as the sole and exclusive bargaining agent for all of Respondent's production and maintenance employees, and requesting a meeting with Respondent. The Respondent admits receiving this request from the Union, and also admits that it made no reply. The issue of refusal to bargain is thus raised.

Receiving no reply to its request for bargaining, the Union filed a request with the Board requesting an election, and on January 18, 1950, Respondent consented to an election and an election was ordered. Thereafter, and prior to the day of the election, the Union received information that Respondent on and after December 29, 1949, engaged in certain unfair labor practices seeking to undermine the Union prior to the election. Thereupon the Union petitioned that the scheduled election be cancelled, and filed charges with the Board, forming the basis for this proceeding. The election was cancelled, and this proceeding followed, raising the further issues as to whether Respondent interfered, restrained, and coerced its employees, and discriminatorily discharged one of its employees.

B. *Supervisory status of Woody Presley*

At the hearing, Respondent stipulated that W. O. Dismuke, L. H. Ray, William Presley, and T. D. Presley are supervisors within the meaning of the Act. Respondent denies, however, that Woody Presley was a supervisor. During 1949 and the early part of 1950, Woody Presley was employed by Respondent in its millroom. There were from five to eight other employees in the millroom on the night shift from 1 a. m. until the day shift reported for work. Presley alternated with another employee in assuming charge of the millroom on the night shift. During this period there was no other member of management present to supervise the work in the millroom. L. H. Ray, general superintendent, testified that Presley was a working supervisor, that he had charge of a small crew

² *Stanislaus Implement & Hardware Company Ltd.*, 91 NLRB 618.

and had to help them out. Dismuke testified that Presley had more sense than the others in the millroom and that he was the "lead man." Several employees testified that Presley was in charge of the millroom every other month. Presley had no authority to hire, promote, suspend, or change the working assignment of any of the employees. He did have authority to recommend the discharge of an employee.³

The above testimony establishes that Woody Presley had authority to recommend the discharge of employees and to responsibly direct the millroom employees, and that such authority required the exercise of independent judgment. The Trial Examiner finds that Woody Presley was a supervisor as defined by Section 2 (11) of the Act.

C. Refusal to bargain; interference, restraint, and coercion

The complaint alleges, the Respondent in its answer admits, and the Trial Examiner finds that the following unit of Respondent's employees is appropriate for the purpose of collective bargaining as defined in Section 9 of the Act:

All production and maintenance employees at the Clarksdale, Mississippi, plant, excluding all supervisory, office, and clerical employees, watchmen and guards as defined in the Act.

On December 29, 1949, there were a maximum of 43 employees in Respondent's production and maintenance departments. On this date 31 of these employees had signed cards authorizing the Union to represent them in matters of collective bargaining.⁴ It is therefore found that on December 29, 1949, and thereafter the Union was and has continued to be the duly designated collective bargaining representative of a majority of the employees in the above-described unit.

W. O. Dismuke, president of Respondent, was asked what he did after he received the request from the Union to bargain on January 7, and testified that he did not do anything, that he put the letter in his desk drawer and did not answer it. Dismuke then gave the following testimony:

Q. You did not want a union out at the plant?

A. I didn't want anything that would create any trouble like we have heard so much about in the past. I didn't want to get shot at. My ignorance would naturally make me feel that way. I wasn't familiar with the union.

Q. You felt pretty strongly about that, didn't you? You really were sort of worried about what might happen if this plant of yours was organized?

A. I had a life-time's savings at stake. Why shouldn't I be worried? I was worried about the people I owed. I was worried about my investment.

Q. And you were quite concerned about it?

A. Certainly I was.

About January 7, 1950, Dismuke asked Troy McCurry if he had signed a union card. Dismuke further told McCurry that if he had signed a union card, he, Dismuke, would classify him as inexperienced labor, and that if McCurry was not satisfied, to quit and get out of Dismuke's way.

³ The above findings are based on uncontradicted credited testimony of Dismuke, Ray, James H. Card, and other employees.

⁴ Dismuke testified that he turned the whole matter of the union organization over to Ray, vice president and general manager. Dismuke was asked if Ray made any report to him on the question of the Union representing a majority of the employees, and Dismuke replied "He told me that as well as I remember that there was nothing else left to do, apparently. They must have the majority or they wouldn't have written this letter."

On January 8, 1950, Dismuke asked William Crosby what in the hell he was trying to do, sell Dismuke out? When Crosby denied trying to sell Dismuke out, Dismuke called him a liar, and said that Crosby had joined up with the damn union, and further told Crosby that the next time he saw that damn little union man, to tell him that Dismuke was not going to have a union in the plant.

Early in January 1950, Dismuke asked Dañ Martín if Martin had talked to one of the Board's agents about Dismuke. When Martin denied that he had talked to one of the Board's employees,⁵ Dismuke hit him in the face with his fist, and as Martin was falling, Dismuke kicked him with his knee.⁶

Early in January 1950, T. D. Presley asked James H. Card if he knew anything about the employees organizing a union. Presley told Card that the employees might just as well forget about trying to organize, that if they did the management would make it hard for them, so hard they will have to quit, or if the management did not do that, the employees would be discharged and the management would hire new help. Presley further told Card that Dismuke would not recognize a union.

In January 1950, T. D. Presley asked Oscar Lee Hill if he had joined the Union.⁷

About the middle of January 1950, Woody Presley asked Crosby how Crosby felt about the Union. When Crosby replied that he was against it, Presley then questioned Crosby how certain other employees felt about the Union. Presley then told Crosby that Dismuke, Ray, and all of the police force in town was against the Union, and that if Crosby would not fool with the Union, he, Presley, would guarantee him his job. Presley further told Crosby that he, Presley, had all of the "niggers scared," that they were so scared they would not vote for the Union. The next day, Crosby saw Presley again and told Presley that he, Crosby, would vote as he pleased at the election, and nobody was going to stop him. Presley replied that Crosby would not have a job in the morning.⁸

Early in January 1950, Woody Presley asked Booker T. Moten if Moten knew anything about the Union. Presley then told Moten that if Moten joined the Union, he would be out of a job, that Dismuke would not work under a union.⁹

In January 1950, William Presley told Crosby that nobody would have any work in Respondent's plant if the boys kept on trying to do what they were doing.

In January 1950 William Presley asked Moten if he knew anything about the Union. Presley then told Moten that the Union would only get people hurt, and to tell all of his friends not to join it.¹⁰

⁵ Martin had given a statement to one of the Board's investigators shortly before this

⁶ The findings as to the questioning of McCurry and Crosby are based on their credited testimony. Dismuke denied questioning McCurry. He admitted having to talk with Crosby on January 8 but denied that it had any reference to the Union. His denials are not convincing and are not credited. The questioning of Martin is based on his credited testimony. Dismuke admitted having talked with Martin at this time, but denied that it had anything to do with the Union. Dismuke testified that Martin had been talking about him unfavorably, but when questioned as to what Martin had said or the substance of it, he replied that he could not remember. His denial that this had anything to do with union organization is not credited. The findings as to the brutal attack on Martin are based very largely on Dismuke's testimony. He appeared to be quite proud of beating up a "nigger," as he expressed it, for talking about a white man.

⁷ The findings as to questioning Card and Hill are based on their credited testimony. All of this was denied by Presley, but such denials are not credited.

⁸ The next morning when Crosby reported for work he was laid off for a week.

⁹ These findings are based on the uncontradicted and credited testimony of Crosby and Moten. Presley is no longer in Respondent's employ. He joined the Armed Forces, and at the time of the hearing his whereabouts were unknown.

¹⁰ These findings are based on the credited testimony of Moten. Presley denied it, but his denial is not credited.

In the latter part of December 1949, Ray asked Martin if they were going to have a meeting at his house.¹¹ Ray then told Martin that if he saw anything like a white man go into Martin's house, he, Ray, would take Martin out and whip him. Ray further told Martin there would be a cop watching Martin's house.¹²

D. Discriminatory discharge of James Benton Roebuck

Roebuck was employed by Respondent as a tube splicer for about 2 years prior to his discharge of January 3, 1950, except for one short break in his service approximately 1 year before his discharge. Roebuck was the leader in the attempt to organize Respondent's employees for the Union. He attended all of the union meetings, solicited employees at their homes and at the plant, and signed up a number of employees for the Union.

On January 2, 1950, William Presley directed Roebuck to work overtime in the place of an absent employee. Presley directed Roebuck to splice 80 tubes before he left. Roebuck spliced the 80 tubes, counted them twice to be sure he was right, and then went home. The next morning when Roebuck reported for work, Presley asked him why he did not splice all of the tubes. Roebuck told him that he did splice them. Presley told Roebuck that he only spliced 72 tubes and he was supposed to splice 80, and asked Roebuck what had happened to the other 8. Roebuck told Presley that he had had no idea what happened to the other tubes. Presley then told Roebuck that he, Presley, could not keep a man around that kept messing things up like Roebuck, that Roebuck had been messing around griping at the boys and keeping them all disturbed. Roebuck then told Presley he would try to do better, but Presley replied that it was too late now.

Roebuck then left the plant and went to the office. Roebuck was very much disturbed and angry. He returned to the plant and told Presley that Presley was stooping very low to fire him when his wife was pregnant, and he, Roebuck, would not have a job. In this conversation, Roebuck used some curse words in talking to Presley.

Obern Finley, a molder operator, counted the tubes after Roebuck spliced them and found 80 tubes. Finley rejected and scrapped 8 of the tubes because the valves were off-center. Roebuck was in no way responsible for this.

Shortly after Roebuck was discharged, McCurry asked Dismuke why Roebuck was discharged, and Dismuke told McCurry that Roebuck was attending to some business that was not Roebuck's, and was getting Respondent's employees all worked up. McCurry asked Dismuke what he meant, and Dismuke told McCurry that the latter knew goddam well what Dismuke meant. When McCurry insisted

¹¹ There was other testimony in the record that union meetings were held at Martin's house in December 1949. Although Ray did not mention the word "Union," Martin testified he understood what Ray meant.

¹² This finding is based on credited testimony of Martin. Ray denied questioning Martin, but his denial is not credited. Testimony was received showing that Respondent employed Charlie Amos, a local policeman, then suspended, for a period of 4 days commencing January 9, 1950, the Monday following the receipt of the letter from the Union. Amos remained around the plant most of the day during this period. He performed no work incident to maintenance or production. The timing of the employment of Amos may be somewhat significant, and it might be argued that Respondent had him there to intimidate the employees. Testimony of several employees, however, did not disclose that they were affected by the presence of Amos. His employment had no connection with the union meetings, as might be assumed from Ray's statement to Martin, as these meetings were held in December 1949. Dismuke testified he employed Amos to protect his property, that he had read in the papers about unions throwing bricks, shooting officers of the employer, and damaging property. While this reason may be a little far fetched, based on all of the evidence, I am convinced that the evidence of the presence of Amos has little probative value, and I have given it no consideration in reaching my conclusions.

that he did not, Dismuke called McCurry a liar and asked McCurry if he had signed a union card.

The Sunday following his discharge, Roebuck met Dismuke, and the latter asked Roebuck what was the matter with the boys at the plant. Dismuke then asked Roebuck why Roebuck was fooling around with that thing out there at the plant, and what did Roebuck mean by trying to cut his, Dismuke's, throat, and going around griping to all the boys and getting them disturbed. Dismuke also told Roebuck that he, Dismuke, knew what was going on at those meetings.

The only material conflict between Roebuck's testimony and that of William Presley was that Presley insisted that he did not give Roebuck instructions to splice a certain number of tubes, but did tell him to splice all of the tubes, and Roebuck left a number of tubes unspliced, and tubes left unspliced at night were cold the next morning, could not be successfully spliced and had to be scrapped. Ray testified that Presley told him Roebuck was discharged because Roebuck had been directed to splice a *certain number of tubes* [emphasis supplied] and had not completed his task. Several employees testified that it was a practice to leave a few tubes unspliced so that when the men reported for work the next morning, the splicer would have something to do.

Dismuke was questioned regarding Roebuck's testimony concerning his conversation on Sunday. Dismuke was very evasive but did not directly deny any of the statements attributed to him by Roebuck. Respondent's counsel finally pointed out to Dismuke that the implication was that Roebuck was discharged because of union activity, and asked Dismuke when he first knew of any union activity at the plant, and Dismuke said his first knowledge of it was when he received the letter from the Union on January 7. Dismuke's denial of any of this conversation with Roebuck, and his denial of any knowledge of union activities prior to January 7 is so clearly contrary to other testimony given by him and by other witnesses that none of it is credited.

Roebuck was reinstated on February 7, 1950, to his former job with Respondent.¹⁸

Conclusions

The Trial Examiner concludes and finds that by the questioning of employees by Dismuke, T. D. Presley, Woody Presley, William Presley, and L. H. Ray, as to the union activities of the employees, and the threatening and coercive statements of all of these supervisors to some of the employees as hereinabove found, the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

The Trial Examiner also concludes and finds that: (1) By the above-described conduct, occurring after the Union made its claim of representing the majority of the employees; and (2) by completely ignoring the Union's request for a bargaining conference, the Respondent has refused and is now refusing to bargain with the Union as the exclusive bargaining agent of all of its employees in the appropriate unit. By thus refusing to bargain the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by the Act.

The Trial Examiner concludes and finds that the reason assigned by Respondent for the discharge of James Benton Roebuck was a mere pretext, and that Respondent discharged Roebuck by reason of his union activities and thereby discriminated against Roebuck in regard to his hire and tenure of employment. By thus discriminating against Roebuck the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

¹⁸ The above findings are based on credited testimony of Roebuck, Finley, and McCurry.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON 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 territories, 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 engaged in certain unfair labor practices, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act. It has been found that the Respondent discriminated in the hire and tenure of employment of James Benton Roebuck by discharging him on January 3, 1950. Although the record discloses that this employee was reinstated on February 7, 1950, he is entitled to reimbursement for working time lost as a result of the discriminatory action. It will therefore be recommended that the Respondent make whole to Roebuck for any loss of pay he may have suffered by reason of the discrimination against him to the date of his reinstatement, less his net earnings during said period.¹⁴

Having found that the Respondent on January 7, 1950, and thereafter refused to bargain with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the Respondent, upon request, bargain collectively with the Union.

A consideration of the entire record herein clearly discloses an attitude on the part of the Respondent of opposition to the purposes of the Act generally. In order to make effective the inherent guarantees of Section 7 of the Act thereby minimizing industrial strife which burdens and obstructs commerce, it will be recommended that Respondent cease and desist from in any manner infringing upon the rights protected in Section 7 of the Act.

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

CONCLUSIONS OF LAW

1. United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.
2. All production and maintenance employees, employed at Respondent's Clarksdale, Mississippi, plant, but excluding all supervisory, office, and clerical employees, watchmen, and guards as defined in the Act, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.
3. On December 29, 1949, United Rubber, Cork, Linoleum and Plastic Workers of America, CIO, was, and at all times since, has been, and now is, the exclusive representative of all employees in the unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act.
4. By refusing on January 7, 1950, and at all times thereafter, to bargain with the above-named Union as the exclusive representative of the employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (5) of the Act.

¹⁴ Since the period of Roebuck's unemployment all falls within one quarter, it has not been necessary to recommend the method for computing back pay prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

5. By discriminating in regard to the hire and tenure of employment of James Benton Roebuck, thereby discouraging membership in the above Union, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

6. 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 (a) (1) of the Act.

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

[Recommended Order omitted from publication in this volume]

KANMAK MILLS, INC., KULPMONT MANUFACTURING COMPANY, INC. *and*
TEXTILE WORKERS UNION OF AMERICA, CIO. *Case No. 4-CA-134.*
February 28, 1951

Decision and Order

On September 28, 1950, Trial Examiner Henry J. Kent issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondents had not engaged in certain other unfair labor practices and recommended that the complaint be dismissed as to such allegations. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief; the General Counsel filed a brief.

The Board ¹ 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.² The Board has considered the Inter-

¹ Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

² At the close of the hearing, the General Counsel moved to amend the complaint to allege that the Respondents violated Section 8 (a) (4) of the Act with respect to Lorraine Petrovich. The Trial Examiner, after reserving ruling thereon, granted the motion in his Intermediate Report, and ruled, in substance, that as the matter had been adequately litigated, the record should not be reopened. The Respondents except to the failure to reopen the record. We find no merit in this exception. While we believe that it would have been better practice for the Trial Examiner to rule on the motion at the hearing, we neither perceive, nor have the Respondents demonstrated, that they have been prejudiced in any manner by the Trial Examiner's action. It may be noted in this connection, that our finding with respect to the violation of Section 8 (a) (4), like the Trial Examiner's, is based upon the testimony of the Respondents' own witness, and the Respondents have not adverted to any additional evidence which they desire to submit in a reopened hearing. Accordingly, the Trial Examiner's rulings are hereby upheld. Cf. *Majestic Metal Specialties, Inc.*, 92 NLRB 1854