

In the Matter of WOODSIDE COTTON MILLS Co. and TEXTILE WORKERS
ORGANIZING COMMITTEE

Case No. C-327.—Decided April 6, 1938

Cotton Textile Industry—Interference, Restraint, or Coercion—Discrimination:
discharge—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Samuel M. Spencer, for the Board.

Mr. H. J. Haynsworth, *Mr. C. F. Haynsworth*, and *Mr. C. F. Haynsworth, Jr.*, of Greenville, S. C., for the respondent.

Mr. Arnold R. Cutler, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges filed and later amended by Textile Workers Organizing Committee, herein called the Union, the National Labor Relations Board, herein called the Board, by Charles N. Feidelson, Regional Director for the Tenth Region (Atlanta, Georgia), issued its complaint, dated September 24, 1937, against Woodside Cotton Mills Co., Greenville, South Carolina, 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. The complaint and accompanying notice of hearing were duly served upon the respondent and the Union.

On October 4, 1937, the respondent filed a special appearance to except to the jurisdiction and authority of the Board, and a motion to dismiss the complaint and the proceeding on the grounds that the operations of the respondent did not amount to interstate commerce within the meaning of the Act and that the Act, if construed to apply to the respondent, was unconstitutional. The respondent, reserving its rights under the aforesaid motion, also filed an answer to the complaint, in which it denied that the operations of the respondent affected interstate commerce within the meaning of the Act or that it had engaged in or was engaging in the alleged unfair labor practices and further denied all the other allegations of the complaint except those concerning its incorporation and business.

Pursuant to notice, a hearing was held in Greenville, South Carolina, on October 4 and 5, 1937, before D. Lacy McBryde, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties.

At the hearing counsel for the respondent made a motion to amend paragraph III of the answer by inserting two dates therein to conform to the proof adduced at the hearing. This motion was granted by the Trial Examiner. On the motion to dismiss the complaint and the proceeding the Trial Examiner reserved his ruling until the close of the hearing, at which time such motion was denied. During the course of the hearing the Trial Examiner made several rulings on other motions and on objections to the admission of evidence.

On November 3, 1937, counsel for the respondent filed a brief, which the Board has considered. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On December 13, 1937, the Trial Examiner filed an Intermediate Report in which he found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act, and recommended that the Board issue a cease and desist order and require the respondent to take certain specified affirmative action. On December 23, 1937, the respondent filed exceptions to the Intermediate Report. The Board has also reviewed these exceptions and, except in two instances, which have been taken into account below, finds them without merit.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, a South Carolina corporation, is engaged in the manufacture of cotton cloth. It operates three plants, all in Greenville County, South Carolina. The main plant, known as the Woodside plant, with which this case is concerned, is located at Greenville while the other two are located at Simpsonville and Fountain Inn.

Approximately 15 per cent of the cotton used by the respondent comes from without the State of South Carolina. All the coal and most of the manufactured parts used by the respondent come from points outside of the State, as do approximately 50 per cent of its

remaining supplies. The respondent uses about 2,800 bales of cotton a month, the cotton purchases for the year 1935 amounting to \$1,065,862. In that year the other supplies amounted to \$160,754. Approximately all the finished cotton cloth is shipped to points outside of the State of South Carolina. In 1935 the respondent produced 7,610,210 pounds of cotton cloth, the sales amounting to \$2,606,535. The operations of the respondent at the present time are substantially the same in character as in 1935.

The sales of the respondent are made through commission houses which are located in New York City. The respondent has its credit facilities in New York and in the towns where the plants are located.

II. THE UNION

Textile Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization and admits to membership employees of the respondent at its Woodside plant. The predecessor of the unit of the Textile Workers Organizing Committee here involved was known as United Textile Workers of America, Local 1684, and was affiliated with the American Federation of Labor. In 1936 the local was absorbed by the Textile Workers Organizing Committee.

III. THE UNFAIR LABOR PRACTICES

On October 10, 1935, John R. Kirby, an employee of the respondent at the Woodside plant, was discharged. Kirby had been a member of the Union since 1934, then holding the office of warden. During September of that year there was a general strike in the cotton textile industry, affecting also the Woodside plant. At that time Kirby acted as captain of the pickets around the Woodside plant. In November 1934, following the strike, Kirby was elected president of the Union for 1 year, an office he held at the time of his discharge. Avery Hall, an employee at the Woodside plant, in response to the question whether he knew Kirby to be an active Union man replied, "I sure did." And when asked whether this fact was generally known in the plant Hall testified, "Most all the hands knowed it." Another witness, Roy Dryman, an employee at the Woodside plant, when asked whether and how he knew Kirby was a Union man testified, "Because he told me he was and he asked me I guess fifty times to join." Dryman further testified, "I don't guess there was a half dozen people in the mill who didn't know he was an active Union man." From the record it is clear that Kirby was an active Union member and that this fact was generally known throughout the plant.

The Woodside plant was divided into two sections, known as Mill

No. 1 and Mill No. 2, though both were in the same building. Prior to Kirby's discharge each section had worked on a day and night shift. In February 1935, pursuant to a predetermined plan, the respondent commenced to make alterations in the plant by which the production would be so changed that the night shift in Mill No. 2, as well as 22 jobs, including those of 15 frame hands, would be eliminated. The alterations, confined to Mill No. 1 and consisting of the replacement of some of the old, obsolete roving frames in the carding department with larger frames of a higher production, were not made all at once, but were continued over a period of months without stopping work on the various shifts. They were completed about the middle of August 1935. The evidence concerning these changes was adduced from the testimony of M. O. Alexander and John T. Bray. At the time of the alterations one was the superintendent of the Woodside plant and the other was the general overseer of the carding department and superintendent of the night shift. At the time of the hearing Alexander was the general superintendent of all three plants operated by the respondent, and Bray was the superintendent of the Woodside plant. It also appears from the record that the proposed changes in the plant and the intended elimination of the 22 jobs were generally known throughout the plant.

On Friday, September 13, 1935, following the completion of the improvements in Mill No. 1, Bray called a meeting of all the employees on the night shift who were working in the carding department on the newly installed larger frames. Bray told the employees that whereas the rate of pay on the old frames had been 15 cents per hank, the new rate on the improved and larger machines would be 13½ cents. At this meeting, Kirby, a frame hand on the night shift in Mill No. 1 and the "spokesman for the union in that department", was the only one to ask questions concerning the effect of the new rate. Bray testified, "As I remember; [Kirby] asked if I thought they would make the same amount of money at the new rate as the old rate. I said we figured they would make approximately the same." Bray testified that nothing further was said, but from other testimony it appears that the discussion did not stop at that point. Kirby testified, "We went out there, all of us and he said they were going to make a change and reduce the rate of pay to thirteen and a half cents and I asked Mr. Bray if we could make as much money at thirteen and one-half cents as we had been making at fifteen cents. He said we could make practically the same. I asked if we would not have to be faster and get around faster to keep up with the machines at a faster speed of process. He only said if they didn't like the job they could look for another one." Avery Hall, another

employee present at the time, testified Bray told Kirby "if he could do any better anywhere else to go ahead."

During the middle of the following week all the frame hands affected by the changed rate, about 15 or 16 in number, held a meeting at the Union hall to discuss the need for more doffers in the carding department. Some of this group were members of the Union. Hall testified "We told him [Kirby] that we ought to have another doffer, they cut 15 cents to 13½ cents, if we had another doffer that would make up for the 15 cent cut, we would make about as much." In the night shift of Mill No. 1 the respondent was employing one doffer where previously there had been three. The day shift still had three, and Kirby testified it was the understanding of this group that the doffers were to be removed altogether from the night shift. At the meeting Kirby was appointed to speak to Bray about the matter. Accordingly, on Friday of that week, September 20, 1935, Kirby testified, "Mr. Bray came across the floor and I asked if it was fair to the night run to have one doffer when the day hands still had three. He said he would run the carding department and would run as he seen fit, and left me, turned and walked off." This conversation was not denied by Bray, though he testified that at the meeting he called in the plant, the matter of doffers was "mentioned." Bray then testified that the reason there were not so many doffers on the night shift as on the day shift was because there were not so many frames running. Bray further testified, "We didn't use as many doffers as we did in the daytime, but we did use as many doffers to the amount of frames as we did in the daytime, and later on we taken all the doffers off." The very thing that the group feared would happen, the removal of all the doffers, did eventually become an accomplished fact.

On Monday, September 23, 1935, which was the next working day, Kirby started at his regular job when S. N. McConnell, at that time the second hand in Mill No. 1, told Kirby he was wanted by Bray. Grover Hardin, until then employed on the night shift in Mill No. 2, was placed in Kirby's position. Kirby reported to Bray and was told that he was to be transferred to the night shift in Mill No. 2, that being the shift which was to be eliminated as soon as the improvements had been completed. Kirby asked Bray why this was being done, and when no reason was given said, "Mr. Bray, I know why you are transferring me out there. It is because I belong to the Union." From the inception of the improvements in the plant the night shift in Mill No. 2 had been continually reduced until at the time of the transfer only three employees were working there. Kirby was the only man to be transferred from the carding room in Mill No. 1 to the carding room in Mill No. 2, where he took Hardin's

place. The Monday following his transfer Kirby was notified by the respondent that his services would be terminated at the end of that week, as the particular set of frames on which he was working were not to be used longer. Accordingly, about 2 weeks after his transfer Kirby was discharged. Shortly thereafter the night shift in Mill No. 2 ceased operating.

Bray testified that in eliminating the night shift in Mill No. 2 he tried to retain the best men. He testified he tried "to pick out the people [he] thought would fit better . . . from an efficiency standpoint, and the people that could get along with people, and cause no confusion in the mill . . . regardless of the time they have been there." Bray testified that neither the pay nor the employment was regulated by seniority, but "everything being equal we try to take care of the people that has been there."

We shall endeavor to apply this test of the respondent to Kirby, on the basis of the evidence presented in the record. Kirby started to work for the respondent during the latter part of April 1933, having had previous experience elsewhere. Though it was up to Bray to make the selection of the men to be kept, the second hand was the employee most familiar with the relative efficiency of the various frame hands in the carding department as he was their immediate superior, worked with them continuously, and kept a written record of their mistakes. From the time of the strike in 1934 to the time Kirby was transferred to Mill No. 2, McConnell was the second hand in charge of the night shift in Mill No. 1. Prior to McConnell's arrival as second hand, the evidence adduced at the hearing was to the effect that Kirby's work was always satisfactory. McConnell testified that Kirby was an average hand, that of the group of approximately 16 frame hands on the night shift in Mill No. 1 there were "two or three that would get better production", but there were "Some didn't get the production he got, couldn't get about as well." Bray admitted he did not seek McConnell's advice before deciding to remove Kirby from the night shift in Mill No. 1 and discharging him shortly thereafter. Bray testified he did not want McConnell's advice because McConnell was Kirby's uncle.

Bray testified he looked into the records of the various frame hands before making Kirby's transfer. But from the pay roll for sixteen weeks beginning on June 3, 1935, and ending on September 21, 1935, it appeared that out of an average of about 16 frame hands on Kirby's night shift in Mill No. 1 there were an average of at least 6 frame hands that did not have as good a record as Kirby's, based on the number of hanks produced per man. The respondent contended that the pay roll did not give a true picture of the relative efficiency of this group, since some did not work as frame hands

continuously but were shifted to various other jobs. However, after preparing to introduce testimony to show whether or not each employee "did his work right through at a particular set of frames", counsel for the respondent did not proceed further, saying, "Well, I won't undertake to do that." Without some proof to show why the pay-roll record should not be used, we feel compelled to adhere to it and find that there were six men working as frame hands in the same department with Kirby who were not as efficient as he.

Further evidence that Bray did not check any records at the time of the transfer appears from his testimony with respect to the records of Clark and Wilborn, two frame hands working in the same department as Kirby. McConnell had testified that of these two men, both of whom had less seniority than Kirby, one was more, and the other less, efficient than Kirby. On the second day of the hearing, following this testimony of McConnell, Bray testified that "since McConnell made the statement I checked over the records, and for the last ten weeks they worked it shows Kirby made less money per hour than either of the two, *but I didn't know it until he made the statement here yesterday.*"¹ Though in cross-examination Bray claimed he knew Kirby's record, but checked it over as he could not remember it, the quoted testimony of Bray appears to be an admission that he was not aware of the efficiency rating of these two men as compared with Kirby until, in fact, the second day of the hearing.

As the second part of the test for determining which employees were to be retained the respondent wanted "people that could get along with people." As to Kirby's standing in this regard, that may be briefly disposed of by the respondent's own testimony, as appears from the following cross-examination of Bray:

Q. Did Mr. Kirby have any dissension there that you know of?

A. I couldn't say whether he did or not.

Q. Was he hard to get along with?

A. I wouldn't say he was hard to get along with.

The respondent tried to imply that Kirby did not work regularly by endeavoring to show in his cross-examination that he was not regular in his attendance at the plants at which he had worked since his discharge by the respondent. But if any conclusion is to be drawn from the only record available, the pay-roll record referred to above, it would seem that Kirby was rarely absent. For the period of 16 weeks noted in the record he was absent but 2 days. Also, McConnell testified Kirby's attendance was as good as the average.

¹ Italics supplied.

On the basis of his efficiency, his ability to "get along with people", and his attendance at the plant, it appears that Kirby was one of the better frame hands of the 16 on the night shift in Mill No. 1. This being so, and "everything" not "being equal" as to this group of 16, the question of seniority need not be considered. It must be noted that Kirby was the only man to be transferred from the carding room in Mill No. 1 to the carding room in Mill No. 2. On the basis of the respondent's own test it is clear that if anyone were to be transferred Kirby should not have been that one.

With this conclusion in mind we nevertheless inquire further into the comparative merits of Kirby and Hardin, since the respondent claimed Hardin to be the better man. At the time of the transfer of these two men, Kirby had already had experience on the large frames whereas Hardin had never had. Hardin testified that he didn't want to make the change as he liked the job he was on and that he told his second hand, "I didn't know whether I could handle a new frame just right or not." Hardin testified further, "I dreaded starting off on them. It is a faster job." But he did decide to take it and "do the best I could, and he [Dover, the second hand in charge of the night shift in Mill No. 2] said 'Well, they will allow until you get used to them. On new jobs they can't expect the best.'" Although the respondent denied that there was any difference between running a large and a small frame, no evidence was introduced by the respondent to show how it had concluded that Hardin was the better of the two. Without such evidence, we must conclude that at the time of the transfer, Kirby was the more experienced and efficient man. Again it would be unnecessary to introduce the element of seniority, "all things" apparently not being equal.

The Union, besides admitting employees of the Woodside plant, also admitted employees from other cotton mills in Greenville. However, there were more members from the Woodside plant than from the others. Though at the time of the strike the membership was quite large, after the strike it had become fairly small. Nevertheless the Union under Kirby held regular meetings and continued active. Following his discharge and departure from Greenville to find other work, however, it became inactive. A few weeks after his departure the Union did not hold further meetings.

The respondent contended that it never knew Kirby was president of the Union and did not even know he belonged to it until his comment to Bray at the time of the transfer. We find, however, in view of the clear testimony that Kirby took an active part in the 1934 strike, and that almost everyone about the plant knew Kirby was active in Union affairs, that the respondent must have been aware of his Union activities. From the record it is clear that Kirby was

discharged for his activities in behalf of the Union and the employees of the respondent at the Woodside plant.

We find that by the above acts the respondent has discriminated in regard to the hire and tenure of employment of Kirby, and that it has thereby discouraged membership in the Union. We also find that by the above acts the respondent has interfered with, restrained, and coerced its employees at the Woodside plant in the exercise of the rights guaranteed in Section 7 of the Act.

At the time of his discharge Kirby was earning an average of \$11.47 per week. Since then he has worked at various jobs and at the time of the hearing was employed as a temporary organizer for the Union. We find that Kirby has not procured regular and substantially equivalent employment.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

Evidence was introduced at the hearing that John R. Kirby was desirous of reinstatement. As his work ceased because of an unfair labor practice, he is entitled to reinstatement, together with back pay. We shall order the respondent to offer to reinstate him and we shall award him back pay for the period from the date of his discharge to the date of such offer of employment, less the amount earned by him during such period.

CONCLUSIONS OF LAW

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. Textile Workers Organizing Committee is a labor organization within the meaning of Section 2 (5) of the Act.

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

3. The respondent, by interfering with, restraining, and coercing its employees at its plant in Greenville, South Carolina, in the exercise of the rights guaranteed in Section 7 of the Act, 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.

ORDER

Upon the basis of the 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 respondent, Woodside Cotton Mills Co., Greenville, South Carolina, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Textile Workers Organizing Committee or any other labor organization of its employees at its plant in Greenville, South Carolina, by discrimination in regard to hire or tenure of employment or any terms or conditions of employment;

(b) In any other manner interfering with, restraining, or coercing its employees at its plant in Greenville, South Carolina, 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 purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Offer to John R. Kirby immediate and full reinstatement to his former position or to a position corresponding to that formerly held by him at the plant in Greenville, South Carolina, with all rights and privileges previously enjoyed;

(b) Make whole said John R. Kirby for any loss of pay he has suffered by reason of his discharge by repayment to him of a sum of money equal to that which he would have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount he has earned during such period;

(c) Post notices in conspicuous places throughout its plant at Greenville, South Carolina, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating that the respondent will cease and desist as aforesaid;

(d) Notify the Regional Director for the Tenth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply therewith.