

DIRECTION

IT IS HEREBY DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, the Regional Director for the Tenth Region shall, pursuant to National Labor Relations Board Rules and Regulations, within ten (10) days from the date of this Direction, open and count the ballots of Grady Burris, Farmer Combs, John Guest, William Manning, Hiawatha Parker, and James Solomon; and thereafter prepare and cause to be served upon the parties a supplemental tally of ballots, including therein the count of the challenged ballots described above.

[Members Houston and Styles took no part in the consideration of the above Supplemental Decision and Direction.]

WESTERN TEXTILE PRODUCTS COMPANY OF TENNESSEE *and* UNITED TEXTILE WORKERS OF AMERICA, AFL.
Case No. 32-CA-252. April 17, 1953

DECISION AND ORDER

On January 13, 1953, Trial Examiner Bertram G. Eadie 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the Respondent and the Union filed exceptions to the Intermediate Report and supporting briefs.

The Board¹ 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. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following exceptions, additions, and modifications.

1. We agree with the Trial Examiner that the record does not establish by a preponderance of the evidence that the Respondent discriminatorily discharged Kaiser for engaging in union activity rather than for talking to other employees away from his machine after having been previously warned against such conduct.

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 [Chairman Herzog and Members Murdock and Peterson].

The Union takes exception with the Trial Examiner's findings primarily because of its disagreement with his resolution of conflicting testimony. As the Trial Examiner had the benefit of personal observation of the witnesses, and as his credibility findings are not inconsistent with the clear preponderance of all the relevant evidence, we see no reason to disturb these findings.²

2. The Trial Examiner found that Van Dyke, vice president of the Respondent's parent corporation, admitted that he interrogated certain of the Respondent's employees concerning their union activities and that the Respondent thereby violated Section 8 (a) (1) of the Act. Because the record does not clearly establish the nature of this interrogation or that it was of the type which the Board customarily finds to constitute interference, restraint, and coercion within the meaning of the Act, we shall overrule the Trial Examiner's finding in this respect.

The Union contends that the Trial Examiner failed to consider the testimony of certain witnesses that Plant Manager Roth and Foreman Scott unlawfully questioned them concerning their union activities and sympathies. However, Roth and Scott, whom the Trial Examiner found to be credible witnesses, denied that they engaged in such conduct. In these circumstances we find, contrary to the Union's contention, insufficient credible evidence upon which to base an 8 (a) (1) finding.

In view of the foregoing, we shall dismiss the complaint in its entirety.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the Board hereby orders that the complaint issued herein against the Respondent Western Textile Products Company of Tennessee, Memphis, Tennessee, be, and it hereby is, dismissed.

²Standard Dry Wall Products, Inc., 91 NLRB 544, enfd. 188 F. 2d 362 (C.A. 3); cf. N.L.R.B. v. Universal Camera Corp., 190 F. 2d 429 (C.A. 2), on remand from Universal Camera Corp. v. N.L.R.B., 340 U. S. 474. However, in view of the testimony of Plant Manager Roth and Foreman Scott, we do not agree with the Trial Examiner that before Kaiser's discharge the Respondent was not aware of any union activity in the plant. On the other hand, we find no sufficient basis for disturbing the Trial Examiner's findings that the Respondent did not know of Kaiser's union activity at that time.

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon a charge filed¹ by United Textile Workers of America² the General Counsel³ of the National Labor Relations Board⁴ by the Regional Director for the Fifteenth Region, Memphis,

¹Filed March 4, 1952.

²Hereinafter referred to as the Union.

³Hereinafter referred to as the General Counsel.

⁴Hereinafter referred to as the Board.

Tennessee, issued a complaint against the Western Textile Products Company of Tennessee, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat 136.⁵

With respect to the unfair labor practices, the complaint alleges in substance. That the Respondent, on or about March 4, 1952, discharged Edwin K. Kaiser and thereafter failed or refused to reinstate him to his former or substantially equivalent position, that the Respondent discharged and failed and refused to reinstate him, as aforesaid, because of his membership in and activities on behalf of the Union, and because he engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection; that Respondent from on or about November 1, 1951, and continuously to date, committed, authorized, instigated, or acquiesced in certain acts and conduct including, but not limited to, the following, to wit:

(a) Inquired, questioned, and interrogated its employees about their and other employees' membership in and activities on behalf of the Union.

(b) Threatened its employees with discharge because of their membership in and activities on behalf of the Union.

(c) Implied knowledge of its employees' union activities in order to interfere with their organizational efforts.

(d) Restrained and coerced certain of its employees by a disparity of treatment in its application of a no-solicitation rule.

Respondent, by the acts described above, did discriminate and is discriminating in regard to the hire and tenure of employment of said Kaiser in order to discourage membership in the Union and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Act.

Thereafter the Respondent filed its answer to the complaint in which it admits the jurisdictional allegations and the discharge of Edwin K. Kaiser and its refusal to reemploy him; but denies the commission of any unfair labor practices.

Pursuant to notice a hearing was held at Memphis, Tennessee, on September 8, 9, and 10, 1952, before Bertram G Eadie, the Trial Examiner designated by the Chief Trial Examiner. All the parties were represented by counsel. Full opportunity to be heard and to examine and cross-examine witnesses was afforded all parties. Upon the opening of the hearing, a motion was made by counsel for Respondent to exclude all witnesses from the courtroom. This motion was denied by the Trial Examiner.

Motion was made by the Respondent at the close of the whole case for a dismissal of the complaint. The decision thereon was reserved by the Trial Examiner as questions of fact were involved which were then undetermined by the Trial Examiner. The motion is now denied. All parties were granted 20 days from September 10, 1952, for the filing of briefs and/or proposed findings of fact or conclusions of law or both. Counsel for the Respondent has duly filed his brief which has been duly considered.

Upon the entire record and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Respondent is and has been at all times material herein a corporation organized and existing by virtue of the laws of the State of Tennessee with its principal office and place of business in the city of Memphis, State of Tennessee. Its capital stock is owned entirely by a St. Louis company, a parent and separate corporation of the same name. It is and at all material times mentioned herein has been engaged in cutting collars, flaps, tabs, hatbands, and other products. During the preceding 12 months it purchased and caused to be shipped to its Memphis plant from points located outside the State of Tennessee materials and supplies valued in excess of \$50,000 and during the same period caused to be shipped from its Memphis plant to points located outside the State of Tennessee products valued in excess of \$25,000. It employs approximately 21 men and women in its Memphis plant.

The Respondent admits and concedes that it is engaged in commerce, within the meaning of Section 2 (6) and (7) of the Act, and the Trial Examiner finds that the Respondent is so engaged.

⁵Hereinafter referred to as the Respondent.

⁶Hereinafter referred to as the Act.

II. THE LABOR ORGANIZATION INVOLVED

United Textile Workers of America, AFL, is a labor organization admitting to membership employees of the Company

III. THE UNFAIR LABOR PRACTICES

A. The discharge of Kaiser

Respondent admits the discharge of Edwin K. Kaiser and its failure to reemploy him, and likewise interrogating certain of its employees.

Kaiser had been employed by Respondent for approximately 6 years and during the last year and a half his main duty was operating the cutting machine.

The machine consisted of a table approximately 60 feet in length and 4 feet in width on which the material to be cut was laid in tiers or layers varying up to 120 thicknesses approximately 60 feet in length and 4 feet in width, determined by the type or quality of the material. These layers were brought under the blade by manual labor. The knife was set or regulated by the operator and he set the blade or punch in motion by a trigger or switch. After the cut was made the knife was again set by the operator for the next cut. Several cuts across the material would be made before it was necessary to further feed material under the knife. The number of cuts across the material was governed by the size of the cut objects. They varied in size from a large collar for a sport shirt to a small pocket flap for trousers. After these objects were cut from the layered pieces of material they were manually pushed from the knife on a continuation of the table and were then gathered by a girl employed to tie them in bundles for further processing.

During the latter months of 1951 the machine, together with other machines, was remodeled by Respondent. The uncontradicted testimony of William C. Roth, plant manager of Respondent, is credited as to the following:

We had made a device on the machine to pull up the goods a specified length. We had made improvements in the die carriage to more specifically space the dies as they made their cuts across the goods, and we had put in a take off conveyor to take off the completed cuts after they were cut in the die press.

After the machine was remodeled and operated by Kaiser for a time and in the month of January 1952 he was called to the lunchroom and interviewed by Scott, his foreman, and Roth, the plant manager. Kaiser's version of the conversation between them follows:

I think they said something at the time about talking to other people during working hours, and I told them, well, there wasn't nothing wrong with that, that everybody in the plant talked to everybody else; and they also mentioned about the time that I asked for a raise before that, a week or so -- I don't know just how far back -- and I told them yes, I was going to have to have more money or more time, and Mr. Roth told me I didn't need any more time or no more money, and I told him I wasn't satisfied, that I intended to try and find another job, and if I did, I would give him notice.

The Trial Examiner credits the testimony of Scott, the foreman, in his version of the conversation between Kaiser, Scott, and Roth, which follows:

Q. Now, then as a result of your seeing him talking around the plant what did you do?

A. I told Mr. Roth.

Q. And then what happened?

* * * * *

A. Mr. Roth told me to tell him to come into the lunch room, he wanted to talk to him, He talked to him about his low production and his talking to other employees and shutting down his machine and also stopping them.

Q. Stopping what?

A. Stopping the other employees from work while he talked.

The testimony of William C. Roth is also credited by the Trial Examiner as to that conversation which follows:

On January 29, I told Mr. Kaiser that we would not tolerate his talking to other employees which would hinder his production and also the production of other employees on other machines in the plant. Now the discussion was approximately 10 minutes, I would suggest.

Q. Did you refer to his request for a raise?

A. Yes, I did refer to his request. I told him that on or about the middle of January he had asked for an increase and here he was seen talking to other employees and not at his machine and doing his work the way we felt he should, and yet at that time he wanted a raise, and his immediate supervisor was telling me he wasn't doing his work properly and that surely wasn't any way for an employee to react that wanted an increase in rate.

Following the refusal of Respondent to grant Kaiser an increase in pay and subsequent to the warning given him by Roth and Scott in the lunchroom on January 29, 1952, Kaiser wrote the Union at their Atlanta office, under date of February 1, 1952, to the effect that a representative of the Union be sent to help organize the plant. As a result of such communication Herman J. Eckerle, the representative of the Union, appeared in Memphis on February 25, 1952, and met employees Kaiser and Harbor. His credited testimony follows.

At that time I outlined the procedure for organizing the plant. I gave them cards to have other employees sign, and they at that time signed cards for me themselves.

On March 4, 1952, at about 9:15 a.m. a rush order had been given to Scott, the foreman, to make up and ship. It required the use of the machine operated by Kaiser. Scott in turn directed Kaiser to get it out at once. He then left Kaiser and later that morning, at about 9:40 a.m., Roth inquired of Scott whether the order had been shipped. Scott went to Kaiser's machine to check and found that Kaiser had not started to get the order out. Kaiser was not at his machine, the machine was stopped, and Kaiser's helper was idle. Scott observed Kaiser talking to Ashley at her machine. He watched them conversing and then approached Kaiser and the following conversation, according to the testimony of Kaiser, was entered into between them:

Foreman came by and said, 'Well, boys, let's get to work.' I told him I was getting my work done. He said no, I wasn't, I had a woman over there waiting. I told him I knew I had a woman waiting -- that was the tier of the goods I was running, and he said my production was down last month. . .

A. I said I didn't believe my production was down last month, and he said he could show me the records that the production was down last month and I told him I wanted to see the records, so he went to the office and I went about my work. And about 11:30 Charlie Scott, the foreman, came back out and said they was ready and I went to the office.

* * * * *

A. They came in and handed me a chair and told me to wait a few minutes. I sat back there about five minutes because he was talking on the phone, and he came back and said, 'Well, I am sorry your service with the company ended at 12:00 o'clock noon.' . . My service with the company would be ended at 12:00 o'clock noon. They were letting me go for violating the rule of talking on the job.

The version of the conversation as testified to by Scott is as follows:

A. Well, I remember on March 4 that we had some orders to get out that day and Mr. Roth had given them to me early that morning, and about 9:45 he came out to see if it was ready to go and I told him I didn't know but I would check on it, so I went over to the collar cutting department and Mr. Kaiser wasn't there, and he was over at Mrs. Frances Ashley's machine talking to her, and I guess he stood there and talked for about 10 or 12 minutes, and I went over and asked him if he had it cut, and he said no. I said, 'Well let's get back on the machine and get it cut. I got to get it out today.'

He asked me what in hell I meant by 'Let's get back on the machine,' and I told him, well, he couldn't be doing his work walking around talking to somebody else. Besides, he was hindering other people's work, and he told me he thought he was doing plenty on that machine, that he was doing a pretty fair day's work, and he didn't intend to do any more, and I said, 'Well you might think you are doing plenty, but we don't,' and I said, your records don't show it!

He said, 'I would like to see those records.'

I told him, 'Well, I don't reckon it is a company policy that you can see them, but I will find out,' so I went in to see Mr. Roth and he was talking on the telephone. I came back out. This was about three or four minutes before rest period in the morning. Ed went back to his layup machine, but he didn't work any before rest period. Then I went in to see Mr. Roth . . . and I told him what had happened, and I told him that the way Ed had talked to me I thought he should be discharged.

Roth's testimony of the transaction follows.

On March 4, 1952, we had a rush order which had come into the office that morning. Now, the order came in after we had the operation started on the collar cutting department. I gave the order to Mr. Scott. I then told Mr. Scott that that order, a specific size was requested by the company from whom we received the order to be shipped that day. Now, that was somewhere around 8.30, quarter of nine; on or about 9:45 that morning I noticed Ed Kaiser talking to Frances Ashley at her sewing machine, the machine she operates. I didn't know how long he had been talking to her and didn't care at that time.

I wanted to find out about the rush order that we had to get out that day, I went out to Mr. Scott and asked him whether the rush order was complete and he said he didn't know and I told him to go find out and I went back into the office and I didn't, did not check up further to see whether or not, what went on in the plant after that. . . . About 10.15, 10:20, somewhere around that time on March 4 I finally got to talk to Mr. Scott. Mr. Scott recommended that Mr. Kaiser be discharged and I asked him why, and he said that Ed violated a previous warning which we had given to him, to Mr. Kaiser on January 29. I asked him if it was in reference to the talking he was doing at that time, leaving his machine down. He says that it was I asked him. He then says, 'I want the man discharged.'

B. Interference, restraint, and coercion

On March 5, 1952, the day after Kaiser's discharge, Van Dyke, the vice president of Respondent, with offices in St. Louis, went to the plant in Memphis and interviewed many of the employees. He testified in part as follows:

. . . I got as much information from them about the situation [union activity] as I could and went out to ask people in the factory, and they were right frank. They told me a good many things.

The Respondent's officers testified, which testimony is credited by the Trial Examiner, to the fact that they had no knowledge or information that they were in anywise informed, observed, or knew of any activity on the part of the employees looking to the establishment of the Union as bargaining agent for the employees, until shortly after the discharge of Kaiser.

Concerning his conversation with Scott and Roth on January 29, 1952, Kaiser testified as follows:

And they started talking about business generally slow, the people generally start talking about a union, and wanted to know what I knew about the Union talk that was going around. I told them I didn't know a thing about the union talk going around, but I was for the Union myself.

The testimony is discredited by the Trial Examiner for the reason that at that time he had been called before his superiors to account for his dereliction of duty and further that the record does not substantiate his claim that there was "any Union talk going around."

Ashley testified specifically that on March 3, 1952, she was interrogated by Scott. Her testimony is rejected and discredited by the Trial Examiner for the reason that it was made in answer to a leading question some 6 months after the alleged occurrence, relative to a fact of the utmost importance in this case. The witness testified to a further conversation held with Roth in which the self-same expressions allegedly credited to Scott were used by him, but she could not specify any particular day.

Interrogation is found to have been practiced by Van Dyke in his many admissions contained in the record of this case, but all after the discharge of Kaiser.

C. Conclusions reached by the Trial Examiner on the facts

The record herein is lacking in substantial evidence that Kaiser was discharged by reason of the fact that he had engaged in union activities. There was apparently no union activity among the employees when Kaiser first was taken to task for his conduct in leaving his machine and entering into conversations with other employees. His employment required his close attention except when his machine was shut down. He was assisted by a woman employee who, after he had made the cuts, moved them from the machine and tied them in bundles. When the machine was shut down other work was found for Kaiser and his helper.

His work was not satisfactory to his employer. He was warned to that effect during January 1952. At that time he asked that his pay be raised. His request was denied. The Respondent had previously remodeled its machine to get out further production. Kaiser, however, in the opinion of Respondent's officers did not respond as he should have in further production. When the Respondent complained to him about his work and his request for an increased wage was refused, he, for the first time, contacted and requested the Union to organize the employees. The organizer for the Union thereafter met Kaiser and another employee on February 29, 1952. Cards were given to them to have employees sign. It was then that Kaiser became a member of the Union by signing a card.

On the morning of March 4, 1952, Kaiser was given an assignment by Scott to get a special rush order out, which had been telephoned to the plant. Later that morning Roth saw Kaiser talking to Ashley, a woman employee, and inquired of Scott whether the order had been shipped. Scott did not know and endeavored to ascertain its whereabouts. Kaiser was not at his machine and he noticed him talking to Ashley. He ordered or directed him to stop talking and to get to his machine and get the order out. Kaiser remonstrated and defended his actions, reasoning that there was no rule against talking to other employees, and that he was in the act of getting the material to do the work. He was discharged shortly thereafter.

The Trial Examiner credits the testimony of the company officials that they had no knowledge whatsoever that Kaiser was engaged in any union activity, until Eckerle, the union representative, telephoned immediately after the discharge of Kaiser on March 4, 1952, and said that one of his men had been discharged and he wanted him reinstated or charges would be preferred to the Board.

In conclusion the Trial Examiner finds that the record does not contain a preponderance of the substantial evidence that the discharge of Kaiser by the Respondent was occasioned, caused, or brought about by his union activities. The preponderance of the substantial evidence supports the contention of the Respondent that it had acted solely by reason of the fact that its officers, rightly or wrongly, had come to the conclusion that Kaiser was encroaching on Respondent's time for his own purposes to its detriment in slowing down his production and that of other employees. The action taken in discharging him was in nowise occasioned or brought about by any union activity on his part.

Van Dyke, the vice president of the Respondent, testified that he had interrogated many of the employees on March 5, 1952, the day after the discharge of Kaiser, as to their membership and activities in and for the Union. It is found that such conduct on the Respondent's part constitutes a violation of Section 8 (a) (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Company set forth in section III, above, occurring in connection with operations of the Company 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 Company engaged in certain unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom to effectuate the policies of the Act; and that the Company be ordered to cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by the Act.

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

CONCLUSIONS OF LAW

1. The Respondent, Western Textile Products Company of Tennessee, is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. By interfering with, interrogating, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (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 did not violate the provisions of Section 8 (a) (3) of the Act in discharging Edwin K. Kaiser from its employ on March 4, 1952.

[Recommendations omitted from publication.]

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist any 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 mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain members of any labor organization. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

WESTERN TEXTILE PRODUCTS COMPANY OF TENNESSEE,
Employer.

Dated..... By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

THE RIVOLI MILLS, INC. *and* INTERNATIONAL LADIES' GARMENT WORKERS' UNION, A. F. of L., PETITIONER

THE RIVOLI MILLS, INC. *and* INTERNATIONAL LADIES' GARMENT WORKERS' UNION, A. F. of L. Cases Nos. 10-RC-1568 and 10-CA-1386. April 17, 1953

DECISION AND ORDER

On December 31, 1952, Trial Examiner Alba B. Martin issued his Intermediate Report and Report on Challenged Ballots 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 and Report on Challenged Ballots attached hereto. In the same report, the Trial Examiner also recommended disposition of the challenged ballots cast in the representation election. Thereafter, the Respondent filed exceptions to the Intermediate Report and Report on Challenged Ballots and a brief in support thereof.