

Local 919, Retail Employees Union, Retail Clerks International Association, AFL-CIO, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all 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).

THE SUPERIOR UPHOLSTERY COMPANY,  
*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.

**Fairbank Knitting Mill, Inc. and John Jerome Pompura. Case**  
*No. 6-CA-2250. December 5, 1961*

### DECISION AND ORDER

On September 13, 1961, Trial Examiner Albert P. Wheatley 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 Intermediate Report attached hereto. Thereafter the Respondent filed exceptions to the Intermediate Report together with a supporting brief. A brief in support of the Intermediate Report was filed by the General Counsel.

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 Rodgers, Fanning, and Brown].

The Board 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.<sup>1</sup>

### 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

<sup>1</sup> In adopting the Trial Examiner's finding that Respondent had knowledge of Pompura's union activities, Member Rodgers does not rely upon the small number of employees at the plant or the small size of the community involved. He does rely on the following factors: The timing and the abruptness of the discharge; the Respondent's explanation to Pompura that he had been discharged at least in part because of his "outside activities"; and the Respondent's stated belief that the "stuff" of Pompura's brother (a known union proponent) had "rubbed off" on Pompura.

Relations Board hereby orders that the Respondent, Fairbank Knitting Mill, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Teamsters, Chauffeurs and Helpers Local Union, No. 491, or in any other labor organization, by discharging, refusing to reinstate, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join Teamsters, Chauffeurs and Helpers Local Union, No. 491, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from engaging in any or all such activities, except to the extent that such rights 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, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

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

(a) Offer to John Jerome Pompura immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

(b) Make whole John Jerome Pompura for any loss of pay he may have suffered by reason of the discrimination against him by payment to him of a sum of money equal to that which he would have earned as wages from the date of the discrimination to the date of the offer of reinstatement, less his net earnings during such period, in accordance with the formula set forth in *F. W. Woolworth Company*, 90 NLRB 289.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due and the rights of employment under the terms of this Order.

(d) Post at its place of business in the vicinity of Fairbank, Pennsylvania, copies of the notice attached hereto marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Sixth Region, shall, upon being duly signed by a representative of Respondent, be posted on receipt thereof, and be maintained for a period of 60 consecutive days thereafter, in conspicuous places, including all

<sup>2</sup> In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

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

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that :

WE WILL NOT discourage membership in Teamsters, Chauffeurs and Helpers Local Union, No. 491, or in any other labor organization of our employees, by discharging or in any other manner discriminating against them in regard to their hire and tenure of employment.

WE WILL offer to John Jerome Pompura immediate and full reinstatement to his former or to a substantially equivalent position, without prejudice to his seniority or other rights and privileges.

WE WILL make whole John Jerome Pompura for any loss suffered as a result of the discriminatory termination of his employment.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of Teamsters, Chauffeurs and Helpers Local Union, No. 491, or any other labor organization, except to the extent that such right may be affected by an agreement in conformity with Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

FAIRBANK KNITTING MILL, INC.,  
*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.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon charges filed by John Jerome Pompura against Fairbank Knitting Mill, Inc. (herein called Respondent), a complaint was issued on June 21, 1961, alleging violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act. This proceeding with all parties represented, was heard before Albert P. Wheatley, the duly designated Trial Examiner, in Uniontown, Pennsylvania, on August 1, 1961. After the close of the hearing the General Counsel

and the Respondent filed briefs,<sup>1</sup> which I have considered in the preparation of this report. In addition the General Counsel filed a motion to correct the transcript. No opposition to said motion has been received and said motion is hereby granted.

Upon the entire record and observation of the witnesses, I hereby make the following:

## FINDINGS AND CONCLUSIONS

### I. THE BUSINESS INVOLVED

Respondent, a Pennsylvania corporation, with its principal place of business in Fairbank and Uniontown, Pennsylvania, engages in the manufacture, sale, and distribution of textile goods and related products. During the period of time material herein Respondent shipped from its Fairbank plant, the only plant involved herein, to points outside of Pennsylvania, finished products valued in excess of \$141,000 and received from outside of Pennsylvania, products valued at between \$2,000 and \$3,000. On the basis of the foregoing findings of fact, I find and conclude that Respondent is engaged in commerce or in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

### II. THE LABOR ORGANIZATIONS INVOLVED

Teamsters, Chauffeurs and Helpers Local Union, No. 491 (herein called the Teamsters), and United Mine Workers of America, District 50 (herein called District 50), are labor organizations within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

The issue herein is whether John J. Pompura was discharged in violation of Section 8(a)(1) and (3) of the Act because he engaged in concerted and union activities protected by the Act.

During the early part of 1959 several local business people organized the Respondent Company and started operating the plant involved herein at Fairbank, Pennsylvania. The organizers became the directors and principal stockholders and from time to time actively handled problems concerning this new business. One such problem arose on or about March 1, 1961, when the board of directors met with a group of employees headed by Frank and John Pompura and discussed wages and other working conditions. At this meeting the board of directors authorized wage increases but not in the amount sought by the employees. At this time the knitters were not working full time and John Pompura, an unmarried knitter, suggested that he be laid off and such work as was available be distributed among the other knitters, each of whom was married. The board of directors rejected this suggestion.

Shortly after the meeting between the board of directors and the employees, noted immediately above, Frank Pompura was discharged for refusing "to train a new knitter." However, prior to his discharge Frank and his brother, John Pompura, told Perry Marsiale, secretary of Respondent and a member of Respondent's board of directors, that they intended "to get a union." Despite a prior warning from Plant Manager Joseph Rura that attempts "to get a union organized" would lead to discharge, Frank and his brother, John Pompura, around the middle of March 1961 contacted a representative of District 50, and obtained cards to be signed by employees designating District 50 as their bargaining agent. During the next 2 weeks, the Pompuras solicited signatures to these cards among employees of Respondent. Their efforts were not very successful due to employee dissatisfaction with District 50 and efforts on behalf of District 50 ceased about April 1, 1961. On April 7, 1961, John Pompura contacted a representative of the Teamsters and scheduled a meeting between this representative and the employees of Respondent for 9 p.m. on Monday, April 10, 1961. Between April 7 and 10, John contacted employees of Respondent and told them about the scheduled meeting. When John Pompura arrived home from work on April 10, he spoke with the Teamsters agent and was informed that this agent could not attend the meeting scheduled for that night. John Pompura then left his home and contacted his contacts and advised them of the change in plans. During John's absence from his home, Plant Manager Joseph Rura left a message with John's mother that he (John) was not to come in to work any more.

After the close of the business day on April 10, Thomas Underwood, a top level official of Respondent, telephoned Joseph Rura, Respondent's plant manager, and

<sup>1</sup> The briefs were received in due course on or before September 5, 1961.

told him (Rura) they (some of the members of the board of directors) "had a little discussion at his [Underwood's] home that evening. And he [Underwood] called me [Rura] and told me to call Mr. [John] Pompura up and tell him not to come in to work any more." Rura left such a message with Pompura's mother and John got the message when he arrived home. The next day John Pompura asked Underwood why he (Pompura) had been discharged and was told by Underwood that "it was the choice of the directors" and it was because of "outside activity."

Immediately prior to the call from Underwood to Rura wherein Rura was told to discharge John Pompura, Frank Magazine, president and a director of Respondent, and Perry Marsiale, secretary and a director of Respondent, called upon Underwood at his home and discussed plans for expansion of Respondent's business. During the course of this meeting Magazine complained that he was being bothered by telephone calls from employees claiming that John Pompura was disturbing them and complained about requests for meetings (from Frank Pompura) between Respondent's board of directors and the employees to discuss working conditions at the plant<sup>2</sup> and directed Underwood to discharge John Pompura. The call from Underwood to Rura, previously noted, followed.

When first asked why John Pompura was discharged Magazine testified "because there were too many employees complaining about John Pompura" bothering them at work.<sup>3</sup> Magazine testified further that these complaints started in February 1961 and continued to the date of the decision to discharge Pompura, that there were about a dozen such complaints and about half of these were received on the date of the decision to discharge Pompura. Later in his testimony, Magazine testified that John Pompura was discharged because he threatened the plant manager (Rura) and Rura in turn gave Respondent an ultimatum of "either you fire him [John Pompura] or I am going to quit myself." Still later in his testimony Magazine indicated that John Pompura was laid off because of his request for layoff, previously noted in this report.

Magazine's testimony that John Pompura's request for layoff was a factor considered at the time of the decision to lay him off was elicited by a leading question by Respondent's counsel and, in the light of the entire record, I am not convinced that this factor played any part in the decision to discharge John Pompura. I am also of the view that, in the light of the entire record, the ultimatum given by Plant Manager Rura was not a motivating cause for this discharge. No such reason was assigned prior to the hearing in this matter. The ultimatum arose out of an incident wherein Plant Manager Rura believed he was being threatened by Frank and John Pompura and was delivered from "two weeks to a month" prior to John Pompura's discharge and was to the effect that "if it [the threatening action] keeps going on" either Pompura or Rura would have to cease being employed by Respondent. The nature of the "ultimatum," the lapse of time between the giving thereof and the discharge of Pompura and the fact that Plant Manager Rura was "shocked" and "surprised" at the discharge indicate that it was not a motivating cause of the discharge, and I so find. Rather it appears to be an afterthought.

President Magazine was the only witness who testified that employees complained that John Pompura was bothering them. Magazine could not recall the names of any employees who complained and did not give the details of any complaints. Joseph Rura, the plant manager and the logical person with whom employees would lodge such complaints, testified that although John Pompura frequently engaged employees in conversation, no employee ever complained to him about this matter. In the light of the entire record in this matter, including the fact that other employees engaged in conduct similar to that attributed to John Pompura without being disciplined therefor and the appearances of the witnesses as they testified, I am not convinced that John Pompura's talking with other employees while they were working was the motivating cause for his discharge. What then was the real reason? I believe, and find, it was John Pompura's activity on behalf of the Teamsters Union.

While there is direct evidence that Respondent resented concerted and/or union activity on the part of its employees<sup>4</sup> and that Respondent was aware of John

<sup>2</sup> As noted above, meetings between the board of directors and the employees were not unusual

<sup>3</sup> In a letter written prior to issuance of the complaint in this matter, Magazine stated that John Pompura was laid off "for disturbing other employees while they were operating the machines." A similar reason is stated in the answer to the complaint filed herein

<sup>4</sup> There is direct evidence that Respondent resented Frank Pompura's activity on behalf of employees and believed that this activity rubbed off on to John, that Respondent sought informants concerning union activity among its employees, and, as noted above, that John Pompura was warned that union activity would lead to discharge.

Pompura's concerted activity and interest in union activity generally, there is no direct evidence that Respondent was aware of John's activity on behalf of the Teamsters. Nevertheless, in the light of the record as a whole, such knowledge may be, and is, inferred. Several factors warrant such a finding and two are especially significant: (1) the timing of the discharge and (2) the abruptness thereof. As noted above, the discharge took place on the date the organizational meeting on behalf of the Teamsters was to take place and while John, the employee who had made the initial contact with the Teamsters 3 days earlier, was informing employees of the interest of the Teamsters in representing them and of the change in plans for holding the organizational meeting. In addition, John was summarily dismissed at the end of the first day of a pay period—dismissed without warning or explanation on Monday night, April 10, 1961—and the only activity by John Pompura at or about the time of his discharge varying from his normal activity was his activity on behalf of the Teamsters. These facts plus the small number of employees at the plant (40 to 45 of whom 35 were women) and the small size of the community where John's activity on behalf of the Teamsters took place warrant not only a finding and conclusion that Respondent was aware of John's Teamsters' activity, but, in the light of the other facts noted in this report, a finding and conclusion that Respondent was motivated by this activity in discharging John Pompura.

In the light of the fact that John Pompura was the kingpin for the Teamsters' organizational activities, the sequence of events—especially the timing of the discharge in relation to the organizational efforts, the failure of Respondent's contentions to stand up under close examination, and Respondent's resentment of concerted and/or union activity, I am not convinced that Respondent's contentions are anything more than pretexts to conceal the real reason—antiunion motivation.

#### CONCLUSIONS OF LAW

In summary, I find and conclude:

1. The evidence adduced in this proceeding satisfies the Board's requirements for the assertion of jurisdiction herein.
2. Teamsters, Chauffeurs and Helpers Local Union, No. 491, and United Mine Workers of America, District 50, are labor organizations within the meaning of Section 2(5) of the Act.
3. The evidence adduced establishes that Respondent discriminatorily discharged and/or laid off John Jerome Pompura and thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

[Recommendations omitted from publication.]

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**Lo-K Foods, Inc. and Dairy Employees Union, Local 754, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.** *Case No. 13-CA-4199. December 5, 1961*

#### DECISION AND ORDER

On August 31, 1961, Trial Examiner C. W. Whittemore issued his Intermediate Report herein, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint herein be dismissed, as set forth in the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

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 Leedom, Fanning, and Brown].