

Whittaker Knitting Mills, Inc., Div. Whittaker Corp.  
and Textile Workers Union of America, AFL-CIO,  
CLC. Cases 11-CA-5259 and 11-CA-5302

December 18, 1973

## DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS  
AND KENNEDY

On August 21, 1973, Administrative Law Judge Sidney D. Goldberg issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief and Respondent filed a brief answering the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

<sup>1</sup> The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

## DECISION

SIDNEY D. GOLDBERG, Administrative Law Judge: In this case, tried before me at Raleigh, North Carolina, on June 5 and 6, 1973, the company admits that it discharged the two employees named in the complaint but insists that it did so because they falsified their employment applications and not because of any union activities.

The complaint, as amended,<sup>1</sup> alleged that Whittaker Knitting Mills, Inc., Div. Whittaker Corp. (respondent or the company) had, after interrogating employees concerning their union activity, threatening them with discharge, and, restricting their communication, discharged Karen Walker and David M. Henderson to discourage their

<sup>1</sup> A charge alleging discrimination against Karen Walker was filed March 12, 1973, and a charge alleging discrimination against David M. Henderson was filed April 16, 1973. A complaint on the Walker charge was issued April 18, 1973, and, on May 17, 1973, the Regional Director

activity on behalf of Textile Workers Union of America, AFL-CIO, CLC (the union).

Respondent answered, admitting the discharge of Walker and Henderson, but denying that it was based upon their union activities, and denying the other allegations of improper conduct. The issues so raised came on for trial before me as set forth above. All parties were represented; they were afforded an opportunity to adduce evidence, cross-examine witnesses, and argue on the facts and the law. Briefs filed by General Counsel and by counsel for respondent have been considered.

For the reasons hereafter set forth in detail, I find that the General Counsel has failed to prove that the discharge of Walker and Henderson was based upon their union activities.

Upon the entire record<sup>2</sup> herein, and considering the demeanor of the witnesses while testifying, I make the following:

### FINDINGS OF FACT

#### 1. The parties

Respondent, a manufacturer of textiles, admits that it annually exports from North Carolina products valued at more than \$50,000 and that it is engaged in interstate commerce, I so find.

It is admitted that the union is a labor organization.

#### 2. Summary of events

Except in two critical areas—whether Walker and Henderson engaged in protected activities and, if they did, whether the company had any knowledge concerning such activities—the facts are substantially undisputed.

Karen Walker and David M. Henderson are comparatively well-educated young people with strong social interests. Henderson holds a bachelor's degree in political science from Duke University and he spent some time in postgraduate study at Southern Methodist University. Walker attended the University of Cincinnati for about 2-1/2 years. They both testified that their political philosophy is communism but that neither has ever been a member of the Communist Party.

On October 10, 1972, Walker applied for employment at Whittaker Knitting Mills. She completed an application form, stating in the space dealing with education that she had been graduated from junior and senior high school, but she left blank the box next to the word "college." She listed several restaurants in New Jersey as her places of previous employment and gave two persons, a minister in New Jersey and a farmer in North Carolina, as personal references. She was interviewed by Roger Russell, the company's personnel director, on October 23 and was hired as a knitter October 25, beginning work that same day.

On October 26, 1972, Henderson applied for employment by the company. He completed an application form,

consolidated the two cases and amended the complaint to cover both Walker and Henderson.

<sup>2</sup> Typographical errors in the transcript of proceedings have been corrected by order dated August 8, 1973.

stating that he had been graduated from high school, but leaving blank the box next to the word "college." He stated that he had been employed by a firm called Ridden & Co., in California, and gave the members of that firm as his personal references. He was interviewed by Russell the same day; he was hired as a mechanic trainee as of October 31, and reported to work on that date.

Both Walker and Henderson testified that one of their purposes in obtaining employment at Whittaker Mills was to organize it. Beginning in late December, they testified, they began talking to other employees, both in the plant and at the employees' homes. On one occasion, Henderson and Walker had two other employees, Ann Sessions and James Minnotti, visit with them in Henderson's apartment and they discussed political philosophy, after which Walker gave Minnotti some books to read. Neither Walker nor Henderson ever signed an authorization card for the union or ever asked any other employee to do so.

During the afternoon on February 18, Douglas Anderson, supervisor of the third shift, asked Vartkes Egsegian, a training supervisor, whether he had heard a rumor that Walker and Henderson were "communists" and that they carried blue cards signifying their membership. Egsegian said he had not. Later that day Egsegian told James Minnotti, a mechanic he knew was friendly with Henderson, that he had heard that Walker and Henderson were members of the Communist Party and, according to Egsegian, Minnotti answered "I could have told you that."

The following day, when he came on duty, Egsegian reported his conversations with Anderson and Minnotti to Russell, the personnel director. Russell immediately telephoned an investigating organization and asked it to check the data contained in the employment applications of Walker and Henderson.

On Friday afternoon, March 2, the investigator reported to Russell by telephone that the California employment reference given by Henderson was "not an incorporated type of business" and that he was not able to verify Henderson's California "experience." He also informed Russell that Henderson had a degree in political science from Duke University. With respect to Walker, the investigator reported that he was unable to verify any of the employment she had listed and was unable to verify her personal references except that he had reached the minister in New Jersey who said that "he could not say that he actually knew her." He further reported that she had attended college and had at least applied to William and Mary but he was not certain she had gone there. The investigator promised final reports, in writing, within a day or two.

On the basis of this oral report, Russell testified, he decided on Friday afternoon to terminate Walker and Henderson. He cleared this decision with the plant manager the following day.

Henderson was on the third shift (midnight to 8 a.m.). He worked his shift beginning at midnight Sunday-Monday and, at 8 a.m. Monday, was called into Russell's office. Russell asked Henderson whether he had attended Southern Methodist University and Henderson admitted that he had. When Russell asked him whether he had attended Duke University, Henderson answered that if Russell knew

enough to ask the question he also knew that the answer had to be in the affirmative. Russell then pointed out that the dates Henderson had given for his employment in California covered the same period as his academic work and Henderson admitted that those statements in his employment application were also untrue. Russell stated that, with such education, Henderson's purpose at Whittaker could not be to work as a mechanic but Henderson stated that he liked and needed the job. Russell said that Henderson "had put him in a bad place" and that he had no choice but to let him go. Henderson testified that there was no mention, during the interview, of either communism or union activity. Henderson was then discharged and he left the plant.

When Henderson came into the parking lot, he met Walker who was also on the third shift and with whom he had been riding to and from work. Walker testified that Henderson told her he had been discharged and that the reason given was his falsification of his employment application.

Later that day Walker arranged to have her personal attorney call the plant. He did so and reached the plant manager, to whom he said that Walker had been engaged in union activities among the employees and that he wished to put the company on notice of that fact.

Shortly after Walker reported for duty at midnight, she was called into Russell's office. Russell said that her application had some discrepancies in it concerning her education; that he felt that she had more education than disclosed, and that she had a college education. He then made references to Princeton and William and Mary. Walker answered that Princeton had been an all-male college when she completed high school and that she did not attend William and Mary. Russell terminated her employment and said that if he had made a mistake he would "eat crow." Walker testified that there was no reference during the interview to either communism or union activity.

When she reached home at about 2 a.m., Walker wrote Russell a letter confirming her termination and stating that it had been based upon the fact that she had attended William and Mary but had omitted that item from her employment application. She stated that she intended to take the matter to the National Labor Relations Board. Walker received her final paycheck a few days later with a handwritten note from Russell saying: "Would you prefer the University of Cincinnati 1967-1969 & other discrepancies & omissions too numerous to mention".

### 3. Contentions of the parties

The General Counsel contends that inquiries by company officials concerning the activities of Henderson and Walker show that respondent knew that they were discussing union organization with other employees; that it sought an excuse to discharge them; and that the admitted omissions of educational backgrounds in their employment applications were used as a pretext.

The company contends that it had no knowledge of any union activities by either Walker or Henderson. It concedes that the receipt of information that they were "communists" stimulated the inquiry into their employ-

ment applications and that this played a part in the decision to discharge them, but it insists that their discharge was based entirely upon their falsification of their employment applications.

#### 4. Discussion and conclusion

##### a. *Preliminary*

Both Walker and Henderson testified frankly to their political belief in communism, that is, that the workers should be the owners of the means of producing wealth and that the real struggle in the world today is that of the workers for power. They also testified that, in discussion with other employees, they frankly advocated these beliefs. One of these employees was James Minnotti.

Respondent's account of the series of events leading to the termination of Walker and Henderson, outlined above, is, on its face, plausible and it is supported by evidence, including the admissions of Walker and Henderson that their statements concerning their education and experience were false. On the basis of the evidence which he has adduced, however, the General Counsel contends that the company's use of the misstatements in Walker's and Henderson's applications was merely a pretext to cover its antiunion motive for their discharge. The real problem, therefore, is whether the General Counsel has sustained his burden of showing, by a preponderance of the evidence, that the company's purpose in discharging Walker and Henderson was to discourage their activities on behalf of the union. The resolution of this problem, in turn, depends upon two other questions: whether Walker and Henderson were engaged in protected activities and whether the company had knowledge of those activities.

##### b. *The union activities*

Prior to his employment at Whittaker, Henderson testified, he had talked with Wilbur Hobby, chief executive of the North Carolina AFL-CIO,<sup>3</sup> about organizing the plant. Hobby referred them to Scott Hoyman of the Textile Workers Union and Walker wrote Hoyman a letter. There is no evidence that the letter was answered or that there was any personal contact with the union until after Walker and Henderson were discharged.

Both Walker and Henderson testified that they never signed union authorization cards or asked any Whittaker employee to do so, that neither of them ever wore a union button or asked anyone else to do so, and that they never publicly distributed handbills or other material before their discharge.

They both testified that they discussed political philosophy and advocated both the validity and necessity of a communist society. It is apparent, from their testimony, that the basis and central subject of the talks they said they had with other plant employees was the revolution of the present society into one organized on the basis of the tenets of political and social communism. They testified that they

talked, during the period of their employment, with as many as 12 (Henderson) or 20 (Walker) employees, telling them that they, Walker and Henderson, were communists; that communism was "the way to go"; and that the workers needed to organize for the coming struggle for power and to "smash capitalism". They testified that they told these employees that the revolution would be violent if the capitalists introduced violence but they denied that they had ever advocated specific violence, such as the seizure of the Whittaker plant or its machinery. It also appears from their testimony that, in discussing the struggle for power, Henderson and Walker stated that unions were useful as a "first step" in preparing for that struggle and, when asked by the employees which union they meant, they talked of the Textile Workers' Union.<sup>4</sup>

Walker testified that, at Henderson's apartment in January, she gave Minnotti two books to read—Edward Bellamy's "Looking Backward" and Friedrich Engel's "Socialism—Scientific and Utopian"—and a copy of "The Progressive Worker" a newspaper she helped prepare.<sup>5</sup> Another employee, Ann Sessons, was present but there was no testimony that anything was given to her.

In addition to their talking with other plant employees, Henderson testified that on one occasion, some months before his discharge, he discussed unionism in general with Carl Maas, the plant manager, who answered that he was "firmly against unions" and would never want his workers to be "subjected" to one. Henderson also testified that Maas said that communism would be good for undeveloped countries like India and those in Southeast Asia because that is the only way they could modernize, but Henderson did not testify that he told Maas that he was a communist. Henderson testified that he never discussed unions or unionism with any other supervisor.

Walker testified that only once—except for the discussion with Karen Holt described below—did she discuss unions with a supervisor; that on that occasion, without disclosing her own attitude, she talked with a floorlady named Rose Hill and Hill said that people who wanted a union would not last long at the plant.<sup>6</sup> Although she testified that she and Henderson were discussing the possibility of organizing a shop committee and putting out a leaflet, Walker testified that she never asked any other employee to assist in either of these endeavors.

There is no doubt that, after they were discharged, both Walker and Henderson passed out leaflets and copies of "The Progressive Worker" at the entrance to the plant. Also after they had been discharged they had an interview with an official of the union and he offered to represent them in filing their charge with the Board.

##### c. *Company knowledge*

Russell testified that his decision to terminate Walker and Henderson was made late in the afternoon on March 2, after he had received the telephone call from the investigator reporting that both Walker and Henderson had more education than was shown on their applications

<sup>3</sup> Walker testified that this contact occurred about a month after she was hired by Whittaker.

<sup>4</sup> In 1971 an election was held at the plant and resulted in a vote against the Textile Workers.

<sup>5</sup> Minnotti testified that he did not read "all" of this material.

<sup>6</sup> This incident is not alleged as a violation of Section 8(a)(1). Walker also testified that Hill was no longer at the plant.

and that their personal references were not reliable. Russell admitted that the original report he had received from Egsegian, that Walker and Henderson were communists, in addition to triggering his investigation, was treated by him as true and that it contributed, in a major degree, to his determination to discharge them. These two factors were the only ones underlying his decision, Russell testified, because he had no knowledge at that time of any other facts that required consideration.<sup>7</sup>

The General Counsel, in support of his contention that union activities by Walker and Henderson were known to the company and that the investigation of their employment applications was a "search for an excuse to terminate" them, points to Russell's testimony that he heard, in January, about the gathering of Walker, Sessons, and Minnotti in Henderson's apartment and his admission that, since the plant was nonunion, any meeting of employees might be "suspected" of being a union meeting. Investigation of Russell's suspicions concerning Walker and Henderson then proceeded, the General Counsel contends, through Egsegian's interrogation of employees, with direct questions to employee Fred White concerning Walker and Henderson, surveillance of their activities at the plant, and, finally, to a "search for an excuse to terminate" them.

The General Counsel's argument, in several respects, lacks support in the record. White's testimony was that Egsegian, after asking whether he had heard anything about union activities in the plant, asked him about union activities by Henderson and he answered that he knew of none. There is no reference to Walker in White's testimony concerning this conversation with Egsegian. Egsegian, while admitting that he had questioned several employees about union activity and that, in talking with White early in February, "it is quite possible I asked him if he heard about any union activity or union talk",<sup>8</sup> firmly denied that he asked any questions about union activity by Henderson. White's testimony on this point is not convincing: he testified to two separate conversations with Egsegian, the foregoing one early in February, and another one late in March, after Walker, Henderson, and White had all terminated their employment at the plant. White admitted that he was "mixed up" between the two conversations but was clear that Walker and Henderson, and their discharge, were discussed at the conversation late in March. Under these circumstances, and considering White's hesitancy while testifying, I am unable to find, on his testimony alone, that in February Egsegian asked specifically about Henderson's union activities.

While the source of Anderson's statement to Egsegian characterizing Walker and Henderson as communists does not appear in the record, there is no dispute that he made that statement. Egsegian's testimony about his conversation with Minnotti is clear and Minnotti's effort as a witness to avoid corroborating Egsegian's testimony was unconvincing. In any event, there can be no dispute that Russell, immediately following Egsegian's report, request-

ed that an investigation be made concerning the information given by Walker and Henderson in their applications for employment and that on March 2 he received reports that showed that their applications contained major misstatements.

As heretofore noted, Henderson was discharged at 8 a.m. on Monday, March 5. He met Walker shortly thereafter in the parking lot and he told her what had happened to him. Neither testified that they discussed any other subject. Earlier that morning, however, according to Walker's testimony, there had occurred a conversation between her and Karen Holt, her floorlady, which is relied upon by the General Counsel as proof of respondent's knowledge of the union activities of Walker and Henderson and of respondent's antiunion motive. The conversation, according to Walker, occurred at 4 o'clock that morning during a break: she testified that Holt told her that a knitter to whom Walker had talked earlier that day had gone to Timmons, the shift supervisor, and had complained about it; that Timmons had instructed her, Holt, if she saw Walker again talking to any other employee, to send her to the office to be disciplined. According to Walker, Holt then said, "sometimes I will tell you what it is all about" but, when she answered that she thought it was about the union, Holt replied "Right," and continued by saying that "several people had complained to supervisors about David Henderson and [Walker] talking about the union." Holt further told her, Walker testified, that both she and Henderson should be "real careful" whom they talked to because they were both being watched and that she, Holt, had been told by a mechanic who worked with Henderson that Henderson would make "a real good mechanic but he wouldn't stay around very long if he didn't keep his mouth shut about the union." Holt concluded, according to Walker, by saying that she "felt like a policewoman." Holt denied having had any conversation with Walker on this date, except for customary casual comments, and she denied each of the statements attributed to her by Walker.

In addition to showing that respondent had knowledge of the union activities of Walker and Henderson before they were discharged, the General Counsel contends that this conversation constitutes interference, restraint, and coercion violative of Section 8(a)(1) of the Act.

Upon all of the evidence, however, I am unable to make a finding that this conversation occurred. A serious obstacle to my acceptance of Walker's account is the testimony of both Walker and Henderson concerning their conversation when they met in the parking lot shortly after 8 a.m., that morning. They testified that Henderson told Walker that he had just been discharged and, had the conversation with Holt occurred as Walker described it, it seems incredible that Walker would fail to tell Henderson about it but there is no mention, in the testimony of either Walker or Henderson concerning their conversation when they met that morning, of any of the damaging statements made by Holt. Moreover, Walker's further testimony that it was because of Holt's statements to her, and not because

<sup>7</sup> At this time, Russell testified, he did not know that Walker and Henderson had been discharged from a Burlington Textiles plant because of similar misstatements in their employment applications there.

<sup>8</sup> This interrogation is alleged as interference, restraint, and coercion

violative of Section 8(a)(1) of the Act but, since there is nothing in the question itself or its background to show that the questioning had any coercive qualities, no violation is found

of Henderson's discharge, that she asked her lawyer to put the company on notice concerning her union activities, appears to be both an explanation of her failure to tell Henderson about her conversation with Holt and an effort on her part to bolster her account of that conversation. Since Walker impressed me as an intelligent and knowledgeable person, within the limits of her age and experience, I am convinced that she recognized that this testimony, if accepted, would go far toward establishing an unlawful reason for her discharge and that of Henderson in place of the reason assigned by the company—the admitted falsification of their employment applications. This testimony, therefore, must be regarded as self-serving and given weight accordingly. In view of Holt's absolute denial of this conversation, Walker's testimony that she had never before discussed unions or union activities with Holt, Walker's demeanor, and the factual probabilities involved, I cannot find, on the basis of Walker's testimony alone, that this conversation occurred as Walker described it.

Summing up all the evidence, therefore, I find that Russell, having heard from Egsegian that Walker and Henderson were communists, instituted an investigation of their employment applications and, when that investigation disclosed that they had misstated the extent of their education and Henderson, at least, had falsified his previous employment record, he was satisfied that he had adequate reason for discharging these two employees and that he thereupon did so. In view of the principle, so well established as to require no citation of authority, that, so far as this Act is concerned, an employer may discharge employees for any reason or no reason, so long as the discharge is not to infringe on rights guaranteed by the

<sup>9</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec.

Act, respondent herein may not be faulted if it discharged Walker and Henderson either because they falsified their employment applications or because they were, or it believed them to be, communists. On this record, I cannot find that the organizational activities of Walker and Henderson were known to the respondent or that they played any part in respondent's decision to discharge them. Accordingly, I shall recommend that the complaint herein be dismissed.

On the basis of the foregoing findings of fact, and upon the entire record, I reach the following:

#### CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2), and engaged in commerce within the meaning of Section 2(6) and (7), of the Act.
2. The union is a labor organization within the meaning of Section 2(5) of the Act.
3. Roger Russell, Vartkes Egsegian, and Karen Holt are supervisors of respondent within the meaning of Section 2(11) of the Act and its agents within the meaning of Section 2(13) of the Act.
4. Respondent has not violated either Section 8(a)(1) or (3) of the Act.

On the foregoing findings of fact and conclusions of law, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>9</sup>

The complaint herein is hereby dismissed.

102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.