

In the Matter of ALABAMA MILLS, INC. and LOCAL No. 2051, UNITED  
TEXTILE WORKERS OF AMERICA

Case No. C-76.—Decided July 6, 1936

*Cotton Textile Industry—Strike—Employee Status:* during strike—*Interference, Restraint or Coercion:* during strike: initiating and fostering anti-unionism among townspeople and public officials; by public officials, business men and townspeople; intimidating union members; employment of armed guards; terroristic activities against union members; refusing to meet with representatives of strikers for purposes of negotiation—*Condition of Employment:* non-membership in union—*Discrimination:* notice to strikers of termination of employment; requiring strikers to make individual applications for re-employment; non-reinstatement following strike; denial of employment to union members—*Reinstatement Ordered, Strikers:* discrimination in reinstatement; displacement of employees hired during or following strike; preferential list ordered, including—*Back Pay:* awarded—*Reinstatement Ordered, Non-Strikers:* union members denied employment upon reopening of plant following strike.

*Mr. Mortimer Kollender* for the Board.

*Mr. Arthur Fite*, of Jasper, Ala., and *Mr. H. A. McWhorter*, of Birmingham, Ala., for respondent.

*Mr. Homer L. Welch*, of Birmingham, Ala., for the Union.

*Mr. Fred. G. Krivonos*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

Local No. 2051, United Textile Workers of America, hereinafter termed the Union, having duly filed a charge with the Regional Director for the Tenth Region, the National Labor Relations Board, by its agent, the said Regional Director, issued and duly served its complaint dated February 11, 1936, against Alabama Mills, Incorporated, Winfield, Alabama, respondent herein, alleging that the respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, hereinafter termed the Act.

In substance, the complaint alleges that the respondent, a Delaware corporation authorized to do business in the State of Alabama, is engaged, at a place of business in the town of Winfield, Alabama,

hereinafter termed the Winfield plant, in the production, sale and distribution of textile products in interstate commerce; that in July, 1934, after a strike at the Winfield plant, it was closed by the respondent and remained closed for over a year; that in November, 1934, the respondent and the Union accepted the terms of a basis for the settlement of the strike and for the reopening of the plant proposed by a Commissioner of Conciliation, United States Department of Labor; that on or about November 1, 1935, after the respondent had reopened the Winfield plant for operation, the respondent refused, at the request of Union representatives, to meet a Union committee to arrange for the reinstatement of Union members, and demanded new applications of employment from Union members who wished to return to work; that since reopening its Winfield plant, the respondent has surrounded the Winfield plant mill property with a wire fence, has stationed special police guards there, has repeatedly refused Union members access to the mill property to make application for jobs unless they renounced their Union membership and has stated that the respondent was "not working any Union people" at the Winfield plant; that the respondent, since resuming operations, has hired a large number of employees who are not members of the Union; and that the respondent has, since November, 1935, failed and refused to reinstate 142 employees who are Union members by reason of their Union membership and activity.

The respondent's answer, in brief, admits its corporate existence, but denies that its operations of the Winfield plant constitute interstate commerce; it admits the allegations as to the July, 1934, strike and its acceptance of the proposed basis for settlement in November, 1934, but alleges that the spirit of the proposed basis of settlement was violated when some of the persons named in the complaint participated in a "march" to the plant in September, 1935, when the plant was being prepared for reopening; it admits that some of its employees, before the July, 1934, strike, had joined a labor organization and admits that in the latter part of October, 1935, it received a request from Union representatives at Winfield for a meeting with the respondent, but states that none of those making that request were at that time employees of the respondent; it alleges that since resuming the operation of the Winfield plant in November, 1935, it has had in its employment a sufficient number of employees for its production requirements, and that it has no knowledge of whether such employees are members of a union; it alleges that no officer, agent or employee of the respondent was authorized to refuse to permit any one to apply for employment or to make the anti-union statements alleged in the complaint; and it alleges that the respond-

ent has not refused to employ any person named in the complaint by reason of Union membership. All other allegations of the complaint are denied.

Pursuant to notice thereof duly served on the respondent, Noel R. Beddow, duly designated by the Board as Trial Examiner, conducted a hearing commencing on March 10, 1936, at Jasper, Alabama. The respondent appeared by Counsel, Arthur Fite and H. A. McWhorter, and participated in the hearing, announcing, however, that it did so "without waiving any question or any defense." The Board was represented by counsel. Full opportunity to be heard, to cross-examine witnesses and to produce evidence was afforded to all parties.

In the course of the hearing, the Trial Examiner overruled the respondent's motion to dismiss (Exhibit B-5) and its plea to the Board's jurisdiction and in abatement<sup>1</sup> (Exhibit B-6). The motion to dismiss argues the unconstitutionality of the Act, that the respondent is not engaged in interstate commerce and that the facts alleged in the complaint are not sufficient to show that the respondent "has been guilty of any unfair labor practice". The plea to the Board's jurisdiction and in abatement raises the same questions in a different way. The Trial Examiner's rulings on the motion and the plea are affirmed and the motion and the plea are hereby denied. Except as noted below, we find no prejudicial error in any of the Trial Examiner's other rulings at the hearing and they are affirmed.

The Trial Examiner sustained the respondent's objection to the introduction in evidence of a document entitled, "Analysis of Strikes and Lockouts in 1934 and Analysis for September 1935", prepared by the Bureau of Labor Statistics, United States Department of Labor, and printed by the United States Government Printing Office in 1936 under a facsimile of the seal of the Department of Labor (Exhibit B-27, marked for identification). The ruling was made on the ground that the document was not a certified copy. We find that the document is relevant and material on the issues of unfair labor practices affecting commerce and is an official publication of the United States Department of Labor and therefore admissible in evidence. This document is hereby admitted in evidence and made Board Exhibit 27. On June 3, 1936, the respondent, through its counsel, entered into a stipulation with counsel for the Board, incorporating a statistical statement, certified by the United States Department of Labor, of strikes in the cotton textile industry from January 1, 1934, to July 31, 1935, as Exhibit B-32 in the record, subject, however, to the respondent's reservation of exceptions

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<sup>1</sup> At the hearing, the plea was amended to substitute the word "judicial" for the word "jurisdictional" in paragraphs (g) and (h) on pages four and five thereof.

as to the relevancy thereof. We find this document relevant and material to the issues of unfair labor practices affecting commerce, and it is hereby admitted into the record as Exhibit B-32.

At the hearing, on motion of counsel for the Board to conform to proof, and with the consent of counsel for the respondent, the Trial Examiner amended the date alleged in paragraph 10 of the complaint from July, 1935, to September, 1935. The Board finds that paragraph five of the complaint requires a similar amendment to conform to proof, and, pursuant to Article II, Section 7 of National Labor Relations Board Rules and Regulations—Series 1, as amended, paragraph five of the complaint is hereby amended to substitute the words, "September, 1935", for the words, "July, 1935".

Pursuant to Article II, Section 35 of National Labor Relations Board Rules and Regulations—Series 1, the Board, on April 3, 1936, ordered the proceeding to be transferred and continued before it.

Upon the entire record in the proceeding, including the pleadings, the stenographic transcript of the hearing, and the documentary and other evidence offered and received at the hearing, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE RESPONDENT AND ITS BUSINESS

I. The respondent, Alabama Mills, Incorporated, is a Delaware corporation organized in 1933, authorized since December, 1933, to do business in the State of Alabama. It was created in that year upon the reorganization of the Alabama Mills Company, incorporated in 1928. It is engaged in the production, sale and distribution of cotton textiles.

II. The respondent operates ten cotton mills, constructed by its predecessor corporation in about 1928 and put into full operation in October, 1929. They are located in ten different towns in Alabama, each built and operated to specialize on different fabrics for a particular trade.<sup>2</sup> However, the market for textile products varies constantly, and mill equipment and machinery are changed frequently to meet changing market demands. The respondent's ten mills average approximately 11,000 spindles each. The respondent

<sup>2</sup>The ten mills, located in the following Alabama towns, and their specialties, are:

Aliceville—suitings, shoe twill.  
 Fayette—work clothing, suitings  
 Russellville—goods for rubber trade, some domestics  
 Haleyville—goods for the abrasive trade, some suitings  
 Jasper—bag goods, some berets and slub goods.  
 Clanton—gabardine, dress goods  
 Wetumpka—denim, overalls, work clothes  
 Greenville—sheetings, bag goods  
 Dadeville—corduroys, specialties  
 Winfield—osnaburgs, toweling, sheetings, domestics

operates a combined total of approximately 115,000 spindles of the estimated 28,000,000 in the United States. Very few cotton textile companies are as large. The payroll of the ten mills totals approximately \$1,750,000 a year.

III. (a) At the Winfield plant, the respondent is engaged in the production, sale and distribution of osnaburgs, toweling, sheetings and various cotton fabrics sold in the domestic market. The Winfield plant normally employs 325 to 350 workers. Its payroll amounts to \$3300 to \$3500 a week.

(b) Cotton is the principal raw material used in the Winfield plant. Starch, burlap and sizing compound are also used. The respondent also purchases coal, "picker sticks" made of hickory, belting, and frequently a considerable amount of replacement parts for the machinery in the plant. The cotton is purchased separately for each plant. Some materials are purchased in carload lots, shipped to one of the mills, and distributed among the other mills, including Winfield, in one of the respondent's three motor trucks.<sup>3</sup> The trucks are also used to transfer cotton and other materials as needed from other mills to Winfield, and from mill to mill.

(c) At the Winfield plant, raw cotton arrives in bales by rail and truck, mainly the latter, and is unloaded at the respondent's warehouse, located on the respondent's spur track there. As needed,<sup>4</sup> the bales are opened, placed in a bale breaker, the cotton is cleaned and fluffed, and then processed by 16 or 18 individual but consecutive processing operations<sup>5</sup> into cotton yarn and woven into cloth. The manufacturing process, from the time a bale of cotton is opened and until the cotton cloth is completed and placed in the warehouse, is

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<sup>3</sup> Redmond testified that the three trucks are operated entirely within the State of Alabama

<sup>4</sup> Redmond testified that the manufacturing process may begin on receipt of the cotton at the warehouse, if it is needed at the time; sometimes the cotton may remain in the warehouse from six weeks to eight months before it is processed

<sup>5</sup> The cotton, after it is cleaned and fluffed, is blown into a picker and comes out in a "lap". The lap is put through a card and comes out in a web, which is put through a collender roll into a can in the form of a sliver. The can of sliver is put into a draw frame, drawn twice and then put through a "slubber", from which it comes out in the form of a "roving" on a bobbin. The roving bobbin is then worked into finer roving, depending on the yarn desired. For coarse yarn, the roving is put on a spinning frame and made into finished yarn, either on a warp bobbin or a filling bobbin. For finer yarn, the roving is first made finer. At the spinning frames, two classes of yarns are spun, warp yarn and filling yarn. The filling yarn goes to the weave room to be woven into cloth. The warp yarn is spooled on large spools and taken from the creel to the warpers where it is run on a "large" or a section beam. The section beams then go through the "slashers" where a "sizing" is put on the yarn. From the slashers the yarn comes out on a "loom beam", which is taken to the "drawing-in-room" or "tying-in-room" where it is drawn through reeds and harness, made ready for the loom. Loom-fixers place the loom-beams on the looms, set the harness and the picker motions, and the weaver weaves the cloth. Cloth handlers take the cloth from the loom when the roll is large enough and take it to the cloth room, where the burlers and inspectors inspect it; then it is graded. When found perfect, the cloth goes on to balers and pressmen who bale it and make it ready for shipment. Finished cloth is placed in the warehouse whence it is shipped to fill orders.

continuous. At the Winfield plant, the respondent manufactures to order and tries as much as possible not to manufacture except on order. The respondent also manufactures subject to future orders, anticipating the market. Cloth may remain in the warehouse before shipment. An average inventory of \$40,000 to \$50,000 of finished products is kept at each of its mills.

(d) The respondent's sales of cotton cloth manufactured at the Winfield plant are made through a commission house, Bliss-Fabian & Company, New York City, its sole selling agent for all of its plants.<sup>6</sup> The selling agent makes all of the respondent's sales, pursuant to the terms of a contract with the respondent. Orders are taken by the agent, at general market prices; the original of the order is sent to the respondent's offices in Birmingham, Alabama, and a copy to the Winfield plant, where the order is filled and shipped to the customer. All goods sold are billed to the selling agent, who collects the invoices and settles with the respondent, deducting commissions. The agent, under the contract with the respondent, sometimes advances to the respondent a certain amount of receivables to meet payrolls and to buy cotton and supplies. The respondent's selling agent does a slight amount of advertising for the respondent in trade journals.

(e) Approximately 13 per cent of the raw cotton purchased by the respondent for its operations in the Winfield plant is purchased in Mississippi and transported from there to the Winfield plant in Alabama; approximately 87 per cent of the raw cotton used at the Winfield plant is purchased in Alabama.<sup>7</sup> Practically all of the starch, burlap and sizing compound used is purchased in other states. Some of the "picker sticks" are purchased outside of Alabama; the belting and machinery replacement parts are purchased in many other states. All of the raw cotton is shipped f. o. b. the Winfield plant. Picker sticks and machinery replacement parts are, to a considerable extent, shipped f. o. b. the manufacturer.

(f) All of the respondent's finished product manufactured at the Winfield plant is sold to customers in states other than the State of Alabama, and shipped by the respondent f. o. b. the Winfield plant.<sup>8</sup> Shipments are made by rail and truck, mostly the former. The cloth is loaded from the respondent's warehouse to cars on its spur

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<sup>6</sup> Redmond testified that this commission house also acts as selling agent for other mills.

<sup>7</sup> The respondent's purchases of cotton for the Winfield plant, for the period from November, 1935, to February 29, 1936, totalled 722 bales at a cost of about \$49,000. Of these amounts, 96 bales, at a cost of \$6,066 37, were purchased in Mississippi and the balance in Alabama.

<sup>8</sup> From November, 1935 to February 29, 1936, the respondent shipped cotton textiles amounting to \$60,579.86 to customers in New York, Connecticut, New Jersey, Missouri, Georgia, Virginia, and Louisiana. These shipments are typical of the respondent's shipments over a period of a year.

track. The respondent's customers convert the cloth into towels, bags, work clothing and pockets for work clothes. The respondent manufactures toweling for two or three customers, who cut the cloth into towels, hem and sew it, and distribute the towels throughout the United States. To a limited extent, the respondent marks its cloth with its own registered trade mark<sup>9</sup> on such products where the customer does not have his own brand.

IV. The respondent's operations with respect to the purchase of raw materials, its manufacturing process and its sales and shipments set forth above in finding III as to the Winfield plant, characterize, approximately, its operations in its nine other plants.

V. (a) In the course of the respondent's operations in all of its mills, including the Winfield plant, as set forth above, there is a flow of considerable quantities of raw materials, belting and machinery replacement parts from many states other than the State of Alabama to its mills, including the Winfield plant, in that State, and of large amounts of cotton cloth (all of the cloth produced) from its mills, including the Winfield plant, in Alabama, to many other states.

(b). The respondent's operations in all of its mills, as set forth above, constitute a continuous flow of trade, traffic and commerce among the several States.

(c) The respondent's operations in the Winfield plant, as set forth above, constitute a continuous flow of trade, traffic and commerce among the several States.

## II. THE UNION

VI. Local No. 2051, United Textile Workers of America, affiliated with the American Federation of Labor, is a labor organization, composed of employees at the respondent's Winfield plant. The Union was chartered in November, 1933. In November, 1935, according to a list of members as of that month prepared by the Union's recording secretary from the Union's financial records, it had 167 members in good standing (Exhibit B-20).

## III. RELATIONS BETWEEN THE RESPONDENT AND THE UNION UNTIL SEPTEMBER, 1935

VII. (a) In January, 1934, there was a strike at the Winfield plant in protest against the "stretch-out" system.<sup>10</sup> The strike lasted several weeks; the plant was shut down during that time. The

<sup>9</sup> The respondent's trade mark is called "The Big Ten"; it consists of a circular disc, with ten spokes, each bearing the name of one of its ten mills.

<sup>10</sup> Under the "stretch-out" system, instituted at the Winfield plant after the Code for the industry under the National Industrial Recovery Act went into effect, when the plant began to operate on an eight-hour day the amount of work required of each employee was increased and about every third employee was eliminated

strike was settled and the plant resumed operations when the respondent agreed to discontinue the stretch-out and reinstate all the strikers. In March, 1934, there was another strike at the Winfield plant, caused by a continuation of the stretch-out and the respondent's failure to reinstate four or five Union members. The strike lasted two weeks; the mill was again shut down. Settlement was effected and the mill reopened after an agreement by the respondent to reinstate all strikers without discrimination, pending intervention by the National Textile Labor Relations Board, if necessary. On July 17, 1934, employees at the Winfield plant again went out on strike. This strike, too, was caused by the stretch-out and discrimination—"they were just firing the people wholesale because they belonged to the Union." The plant was shut down.

(b) The July strike continued until the latter part of November 1934. Negotiations and conferences in October and November between a Union committee representing employees of the Winfield plant, officers of the respondent, a representative of the National Textile Labor Relations Board and C. L. Richardson, Commissioner of Conciliation, United States Department of Labor, finally resulted in a basis of settlement proposed to the respondent and the committee by Richardson on November 23, 1934 (Exhibits B-21, 21a, 23), and accepted writing on that day by the respondent (Exhibit B-23a) and by the committee (Exhibit B-22). Under the settlement proposal: (1) both parties agree to make all reasonable efforts to adjust grievances, with either party to have the right to file a complaint with the National Textile Labor Relations Board in the event of disagreement; (2) the respondent agrees to reinstate to their former positions all employees on its payroll on July 17, 1934, without discrimination, as fast as business warrants; (3) it is understood that employees will not be discriminated against for joining or not joining an organization of their own choosing.<sup>11</sup>

(c) Negotiations for the reopening of the Winfield plant and the return of the respondent's employees there to work under the November settlement proposal continued between Union committees and the respondent's president and officers until the summer of 1935. There were conferences in the respondent's offices in Birmingham, in January, April and August, 1935. At each of these meetings, the discussion embraced the reopening of the Winfield plant, the return of the employees to work, and evictions or eviction notices from the

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<sup>11</sup> The settlement negotiations also disposed of 32 cases of claimed discrimination in the discharge of Union members, apparently before the July strike. Thirty of these cases were dropped; two were to be submitted to the Textile Labor Relations Board for final decision (Exhibits B-24, 24a).

respondent's houses in the mill village.<sup>12</sup> At these conferences, the Union committees informed Redmond that the employees asked him to reopen the plant and that the employees were ready to return to work under the November settlement proposal. Redmond's reply was that a lack of orders prevented the operation of the plant then, but that he hoped he could operate it in the future. The committee also called Redmond's attention to the evictions and eviction notices and at one time brought him affidavits from Winfield business men and citizens that four employees threatened with eviction were not "trouble makers". Redmond promised "he would see about it", and that if all was peaceful and there was no trouble, there would be no more evictions. However, the employees referred to in the affidavits were evicted, and in June and in July more eviction notices were issued and more workers were evicted from the mill village.<sup>13</sup> At the last meeting between the Union committee and the respondent, when the subject of the November agreement was brought up, Redmond informed the committee that there was "no agreement", that it had "died with the N. R. A."<sup>14</sup>

#### IV. THE UNFAIR LABOR PRACTICES

VIII. Early in September, 1935, the respondent began to prepare the Winfield plant for operation. According to Redmond the plant was kept shut down after the July, 1934, strike and the November, 1934, strike settlement proposal because the export market for the plant's product, cloth 30 inches wide, had disappeared due to foreign competition. By September, 1935, however, there were prospects for a domestic market for a 40 inch cloth. Early that month, the respondent employed a small number of mechanics and loom fixers to adjust the Winfield plant looms, then capable of making only 30 inch cloth, to a 40 inch cloth; a few workers were also employed to run cotton and goods in process through the looms in order to avoid waste and damage. All together, about eight to 12 workers were employed.

<sup>12</sup> The respondent owns 38 or 40 dwelling houses in the mill village at the Winfield plant. The streets of the mill village are private streets that serve the houses in the village.

<sup>13</sup> According to the testimony by John Blakney, an employee of the respondent at Winfield and who was a Union official representing employees in these conferences, the evictions totalled about 25. Redmond testified that about 15 were evicted by November, 1935. Redmond, in reply to questioning about his reasons for the evictions, testified: "The houses were there, occupied, and using water and lights and I wanted the houses so when I got ready to operate I could put employees in them"

<sup>14</sup> Although Blakney testified that Redmond had made these remarks at a conference with the Union committee in April, 1935, he also testified that these statements were made at the last conference with the committee, which, according to his testimony, was in August. Redmond could not have referred to the "death" of the N. R. A. before the decision by the United States Supreme Court in the *Schechter* case on May 27, 1935. Blakney's testimony, then, as to these statements by Redmond must refer to the conference in August, or certainly a conference *after* May 27th and *not* at the April conference.

IX. By about September 5, 1935, the Union members had learned that the Winfield plant was being overhauled and that there were prospects of employment. On about that day, Blakney spoke to Sinclair, the respondent's cashier at the plant, and asked him "if they couldn't use some of the Union help". Sinclair replied in the negative. Blakney then asked him for a meeting with the Union committee; Sinclair said that was out of his power, but referred him to Redmond. The next day Blakney telephoned Redmond and asked for a meeting with the Union committee. Redmond's reply was, "we have no committee". When Blakney asked him if he meant he did not intend to live up to the "agreement" (the strike settlement proposal), Redmond answered, "we have no agreement".

X. (a) Redmond's statements and the employment by the respondent of non-Union workers, besides the mechanics engaged in widening looms, at the Winfield plant, led the Union and other labor organizations in the town to hold a mass meeting in Winfield on September 13th. At the meeting arrangements were made to parade to the plant to tell the workers there that Union members were out and the reason they were out and to "ask them not to do this". Before the parade, a committee of four called on Mayor James McDonald of Winfield in his office, and asked him to lead the parade. The Mayor refused to do so, saying, "the town council met last night . . . and went on record that they were going to protect the Alabama Mills, and help them run without Union help, regardless". The Mayor, however, detailed two police officers to lead the parade.

(b) Led by the two police officers, 150 or 200 of those at the mass meeting—textile workers, miners, hod-carriers, clerks—paraded peaceably to the edge of the mill property, where they found Sinclair when they arrived. Sinclair was requested to ask the workers inside to come to the door; that the paraders wanted to talk to them. Sinclair went inside three times and each time returned to say that those inside did not want to come out. Sinclair then asked the paraders to wait and telephoned Redmond in Birmingham. Redmond ordered the work at the Winfield plant to be stopped and the plant to be shut down. Blakney shook hands with Sinclair and told him the Union committee was ready to meet him at any time. The paraders then, still led by the two police officers, marched back to town and disbanded. There was no disturbance or trouble of any kind during this time, nor any threat thereof.

XI. (a) The work of clearing and widening the looms at the Winfield plant ceased for about two weeks after the parade. During this time, before the end of September, a committee of Winfield citizens, including Mayor McDonald, who, according to Redmond may be one of the respondent's stockholders, and Pierce, one of the respondent's

directors and also a stockholder, called on Redmond and petitioned, verbally, for the reopening of the Winfield plant. The committee members told Redmond that they were missing the Winfield plant payroll, that it was the only payroll the town had.<sup>15</sup> Redmond's reply was that he would try to open the Winfield plant if the town and county officers "would maintain order"; "keep law and order." Redmond then spoke to Couch, the sheriff of Marion County, and other town and county officials and asked them if they could keep "law and order" if the plant was reopened. They assured him they could. When the sheriff, however, claimed he had no money to employ deputies, Redmond agreed to reimburse him for the expenses in connection with their employment.

(b) At about the end of September, the respondent, on Redmond's order, had a barbed wire fence, six or eight feet high, built around the Winfield plant and the mill village. Eight or ten armed guards were deputized by the sheriff and stationed about the plant to guard it day and night. The respondent paid for their services. The respondent also built little shacks inside the barbed wire fence for the use of the deputies, and put stoves in them. E. C. Curtis, employed by this Board as a Field Examiner, investigated the charge in this case before the issuance of the complaint, and in connection therewith visited Winfield. In his testimony, he described the plant as thus guarded and protected as a "German prison camp."

XII. The Winfield plant was reopened for further overhauling and loom widening about October 1, 1935. On October 31st, the Union wrote to Redmond requesting a conference with a Union committee about the date of resuming operations and the return of Union members to work (Exhibit B-14). In Redmond's reply, dated November 1st, he states that "we do not have any employees at Winfield except those . . . now at work in the mill. All the employees that were working in there last year terminated their employment when they went out on strike. In resuming operations we will be glad to consider applications from anyone that wants to work in the mill . . ." Two subsequent letters from the Union to Redmond, dated November 12 and 19, 1935, the former letter again requesting a meeting, were not answered by the respondent.

XIII. (a) In about November, 1935, the respondent began employing workers for the Winfield plant. Deputies guarding the plant handed out application blanks. Some of the applicants were required to secure the endorsement of Pierce, the respondent's director residing in Winfield,<sup>16</sup> or of other business men of the town before their appli-

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<sup>15</sup> The Winfield plant is the only industrial plant in the town, which has a population of 2500 to 3000; the plant, when operating, employs more than a tenth of the town's total population.

<sup>16</sup> Redmond testified that there is a director of the respondent residing in every Alabama town in which it operates a mill

cations were acted upon, as to whether they would make "desirable employees", "deemed to be peaceable."

(b) When Union members or relatives of Union members presented themselves at the mill property and asked to see the superintendent or other of the respondent's officials about work, they were informed by armed deputies guarding the plant that Union members or relatives of Union members were not being employed at the Winfield plant. One guard informed an applicant that the barbed wire fence was "to keep the dogs out." Curtis, the Board's field examiner, was told by a guard at the fence that those who desire work at the plant must throw their Union cards away and give up the Union, "because this is a non-union mill, we are not working Union people"; that applicants for work must be passed upon by "a couple of people in town, and they would know whether they were Union people or not."

XIV. Between about November, 1935, and February 29, 1936, the respondent employed approximately 270 workers at the Winfield plant (Exhibit B-31). Of these, about 200 had never been employed there before; some of them were inexperienced. Among the about 70 former employees rehired, 51 were working in the Winfield plant on July 17, 1934, the day of the last strike. But among the 270 employed, there appears the name of only one worker, Charlie Terrell, listed on the Union's November, 1935, membership roster, showing 167 Union members.<sup>17</sup>

XV. When asked at the hearing why 200 new employees were hired at the Winfield plant when approximately 140 experienced workers who wanted their jobs were available, Redmond replied:

"Well, we endeavored to operate the plant three different times with those particular employees, and were not able to do it successfully, and it was either leave the plant down, or get some other employees."

He also testified that these workers were not excluded from employment because of the strike, but "because of continuation of the strike, interference by their leadership", which he believed was Union leadership.

#### V. CONCLUSIONS

XVI. (a) Through Redmond's testimony, the respondent sought to establish that the use of Pierce and other Winfield citizens to pass on

<sup>17</sup> The list of workers employed by the respondent since November includes the names of two workers, Luther Perry and Troy Smith, listed among the 142 named in the complaint. But these two names are not listed on the Union's list of members in good standing in November.

Blakney testified that on the recommendation of Rice, an official of the respondent, he was employed at the respondent's mill in Jasper, Alabama since December, 1935. Blakney testified, however, that he wanted his job back at the Winfield plant. The charge in this case was filed on December 7, 1935.

Redmond testified that a few other Union members were working at other plants.

applicants for employment and the enclosure of the mill property with barbed wire and the stationing of armed guards there was for the purpose of keeping disorderly workers out of and away from the plant. The evidence clearly reveals that all this is a flimsy subterfuge for the respondent's actual intentions in such conduct—to keep Union members from employment. Redmond testified that those who participated in the parade on September 13th were, as he first put it, disorderly, or, as he amended his testimony on further questioning, they “threatened disorder”. But the evidence leaves no doubt that the parade to the edge of the mill property on that day was absolutely peaceful, was at the request of the paraders led by two Winfield police officers, and that there was not the faintest threat of disorder. Redmond testified that he considered the July, 1934, strikers as employees until the fall of 1935, and that their “disorder” caused him to consider that status to have been forfeited. Again, the subterfuge is apparent for the same reasons. In fact, there is evidence indicating Redmond's intention to evade the terms of the strike settlement proposal as early as the summer of 1935. The evictions in June and July were admitted by Redmond to have been in preparation for reopening the plant; in August Redmond told Blakney that the agreement “died with the NRA”, and on September 5th he announced to Blakney that there was “no committee” and “no agreement”. The peaceful parade on September 13th merely served the respondent as an excuse for a display of feudal brutality aimed to terrorize the mill workers there to renounce Union membership and association if they wanted to work and live. In this, the respondent had the assistance of Winfield citizens, some of them stockholders in the respondent, eager to again have the town's sole payroll back, and of the law enforcement authorities of the town and county. The citizens knew who were Union members. The town council had already voted to help the respondent run “without Union help”; the sheriff merely deputized armed guards for duty about the “German prison camp”. The respondent paid their salaries. In view of the anti-Union atmosphere the respondent had created in the town, Redmond's testimony that the guards, paid by the respondent, were under the sheriff's orders, and were not authorized to make anti-Union statements, is a meaningless technicality. The guards, like the citizens who passed on applicants for work, were obviously imbued with the respondent's undoubtable desire to keep Union members out of work in the Winfield plant and thus destroy the Union.

(b) Our conclusions are confirmed by the inescapable fact that of 270 workers employed by the respondent at the Winfield plant from about November, 1935, to February 29, 1936, and with about 150 Union member workers, experienced mill hands, known by the

respondent to be available for and desiring work, only one worker on the Union's membership roster in November was employed. This glaring fact reveals without possibility of question the hypocrisy of the respondent's pious assertions, through Redmond's testimony, that Union membership or activity played no part in the selection of workers for employment after the Winfield plant resumed operations in November. Moreover, these assertions are negated by Redmond's own testimony that "interference" by Union leadership in the three strikes (in January, March and July, 1934) made it necessary to "either leave the plant down, or get some other employees". Workers who sought jobs at the Winfield plant when it resumed operations in November were refused employment because they were Union members and had engaged in concerted activities for mutual aid and protection. In cases such as these, where the attitude of the employer is plainly shown to be one of uncompromising hostility to the employment of Union members, it is unnecessary to produce specific evidence that each employee affiliated with the Union personally applied for reinstatement and was refused.

(c) In refusing, after September, 1935, the Union's repeated requests to meet a Union committee to arrange for the return to employment of workers who participated in the July, 1934, strike under the terms of the November, 1934, strike settlement proposal, the respondent interfered with the right of its employees to collective bargaining. Redmond testified that he considered the July strikers as employees until the fall of 1935. Section 2, subdivision (3) of the Act provides that the term "employee" shall include individuals "whose work has ceased as a consequence of, or in connection with, any current labor dispute . . ." The July, 1934, strike continued until the settlement proposal in November; and the Union, through its committees, continued negotiating and attempting to negotiate with the respondent for the reopening of the plant and the return of the strikers to work from the time of the settlement proposal in November, 1934, until after the reopening of the Winfield plant for operation in about November, 1935. The "dispute" actually continued during that entire time; it was not settled, but remained suspended pending action by the respondent in reinstating the strikers on reopening the Winfield plant; the strikers retained their status as employees throughout, and the respondent admitted it so considered them, at least until the fall of 1935. Their status as employees, given them by the Act, cannot be abrogated by the respondent on the fancied pretext of "disorder" in the September 13th parade.

Having concluded that the respondent has denied its employees their right to collective bargaining under the Act, we find it unneces-

sary to pass on the allegations of the complaint charging the respondent with refusal to bargain within the meaning of Section 8, subdivision (5) of the Act.

(d) The respondent's conduct, as set forth above, in refusing and denying work to Union members after resuming operation of its Winfield plant because of their Union membership and activity, constitutes discrimination in regard to hire and tenure of employment and thereby discourages membership in a labor organization, in this case the Union.

(e) The respondent's conduct in so refusing and denying work to Union members after resuming operation of its Winfield plant, because of their Union membership and activity, constitutes interference, restraint and coercion of its employees in the exercise of their rights 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.

(f) The respondent's conduct, in refusing to meet a Union committee on request to negotiate the return of participants in the July, 1934, strike to work under the terms of the November, 1934, settlement proposal, and in causing its officials and agents and citizens and public officials of the town of Winfield and the County of Marion, Alabama, to terrorize the mill workers in Winfield to renounce Union membership and association, and by other conduct, as set forth above, constitutes interference, restraint and coercion of its employees 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 and other mutual aid or protection.

#### VI. THE RESPONDENT'S CONDUCT IN RELATION TO INTERSTATE COMMERCE

XVII. (a) Discrimination by the respondent against its employees who were Union members occasioned, at least partially, the strikes at the Winfield plant in March and July, 1934. Operations ceased completely at the plant for more than a year after the July strike. Statistics compiled by the Bureau of Labor Statistics, United States Department of Labor, and published in 1936 by the United States Government Printing Office under the seal of the Department (Exhibit B-27), show that of 1856 strikes and lockouts in the United States beginning in the year 1934, involving 1,466,695 workers, 853, or 45.9 per cent, were "organization strikes", including the issues of union recognition and discrimination, and involved 761,607 workers, or 51.9 per cent of the total workers involved. In the cotton textile

industry, statistics compiled by the same Bureau of the same Department, certified under the seal of the Department and the signatures of the Secretary of Labor and the Commissioner of Labor Statistics (made Exhibit B-32 by stipulation), show that in 1934, of 66 strikes and lockouts involving 274,380 workers and causing 3,458,354 man-days of idleness, 33 were "organization strikes", including the issues of union recognition and discrimination, involved 247,002 workers and caused 3,134,019 man-days of idleness. In 1935, from January through July, 16 out of 28 strikes in the industry were "organization" strikes, involved 8,169 workers and caused 209,384 man-days of idleness.

(b) On the basis of experience in the respondent's Winfield plant and in other plants, the respondent's conduct as set forth in findings VIII to XVI above, has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### THE REMEDY

To remedy as much as possible the harm done by the respondent to the Union and Union members, we shall order the respondent to offer employment to Union members at the Winfield plant. In hiring 270 workers since resuming operation of the Winfield plant, the respondent has employed more than 100 workers over and above the number of Union members available for employment. The respondent denied and refused employment and discriminated as to all but one of the Union members by reason of their Union membership and activity; all of them are entitled to jobs in the plant. A restoration of the *status quo* at the plant as of the time the respondent resumed operations in the fall of 1935 requires that in order to reinstate Union members who participated in the July, 1934, strike to their former positions the respondent shall displace workers hired to take their places; and in order to give jobs to other Union members refused work because of Union affiliation, the respondent shall displace workers hired for jobs in which such Union members were experienced. In addition, Union member employees who participated in the July strike and whose positions were filled by other workers since the fall of 1935 are entitled to back pay from the dates such positions were so filled by the respondent, and we shall so order.

Although we shall so order the respondent to reinstate employees, the Union may desire to assert its right to bargain collectively with the respondent under the terms of the November, 1934, strike settlement proposal. Since the respondent, in refusing repeatedly to negotiate with the Union as to reinstatement under the terms of the

November, 1934, settlement proposal has denied its employees the right to bargain collectively guaranteed them by the Act, we shall also order the respondent, on request, to enter into negotiations with the union concerning such reinstatement.

### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact, and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. Local No. 2051, United Textile Workers of America, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

2. The respondent, by denying and refusing, after resuming operation of the Winfield plant, employment to workers and to return employees to work because they joined and assisted a labor organization, thus discriminating in regard to the hire or tenure of employment of each of them and thereby discouraging membership in the labor organization known as Local No. 2051, United Textile Workers of America, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the National Labor Relations Act.

3. The respondent, by denying and refusing, after resuming operation of the Winfield plant, employment to workers and to return employees to work because they joined and assisted a labor organization, thus interfering with, restraining and coercing its employees at the Winfield plant in the exercise of the rights guaranteed them in Section 7 of the Act, has engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

4. The respondent, by interfering with, restraining and coercing its employees at the Winfield plant in the exercise of the rights guaranteed them in Section 7 of the Act, and by causing citizens and public officials of the town of Winfield and the county of Marion, Alabama, to do so, and by refusing to meet a Union committee on request to negotiate the return of participants in the July, 1934, strike to work under the terms of the November, 1934, settlement proposal, and by each item of such conduct, all as set forth in findings VIII to XVI above, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

5. The unfair labor practices in which the respondent has engaged and is engaging, as set forth in the preceding conclusions 2, 3, and 4, constitute unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

## ORDER

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Alabama Mills, Incorporated, and its officers and agents shall:

1. Cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of their rights 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 and protection, as guaranteed in Section 7 of the Act, and from in any manner inducing or causing citizens and public officials from interfering with, restraining or coercing its employees in the exercise of such rights;

2. Cease and desist from in any manner discouraging membership in Local No. 2051, United Textile Workers of America, or in any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment, by refusing to employ any person or to return to work any of its employees, for joining or assisting Local No. 2051, United Textile Workers of America, or any other labor organization of its employees, or by threatening or causing others to threaten to do so.

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

(a) Offer immediate employment to employees at the Winfield plant who were employed by the respondent on July 17, 1934, and who went out on strike on that day, and who are members of Local Union No. 2051, United Textile Workers of America, in all cases in which the respondent has since resuming operation of the Winfield plant since the fall of 1935 employed others to do the work of such employees, and in all other cases place such employees on a preferential list to be offered employment, in the order of seniority, as and when their services are needed;

(b) Make whole the employees described in the preceding paragraph, and each of them, in all cases in which the respondent has since resuming operations in the fall of 1935 employed others to do the work of such employees, by payment to each of them, respectively, of a sum of money equal to that which each of them would normally have earned as wages during the period from the respective dates on which such others were employed in their places to the date of such offer of reinstatement, computed at the wage rate such others so employed were paid during such period, less the amount, if any, which each respectively earned during such period;

(c) Offer immediate employment at the Winfield plant to any and all other persons who were members of Local No. 2051, United Textile Workers of America, in November, 1935, in all cases in which the respondent has since the fall of 1935 employed others to do work for which such persons are experienced, and in all other cases place such members on a preferential list to be offered employment, in the order of seniority as and when their services are needed;

(d) Upon request, enter into negotiations with Local No. 2051 for the purpose of collective bargaining in respect to the strike settlement proposal of November, 1934;

(e) Post notices immediately in conspicuous places in all of its plants and at the entrances to such plants, stating (1) that it will cease and desist as aforesaid; and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.