

In the Matter of MILLFAY MANUFACTURING COMPANY, INC. and
AMERICAN FEDERATION OF HOSIERY WORKERS, BRANCH 40

Case No. C-172.—Decided June 5, 1937

Hosiery Manufacturing Industry—Interference, Restraint or Coercion: espionage; surveillance of organizational meetings; expressed opposition to labor organization, threats of retaliatory action; denial of right of employees to be represented by non-employees—*Company-Dominated Union:* abortive attempt to initiate and form—*Strike:* provoked by employer's attempt to impose company-dominated union upon employees; prolonged because of refusal to bargain collectively—*Employee Status:* during strike—*Unit Appropriate for Collective Bargaining:* plant; eligibility for membership in only organization among employees—*Representatives:* proof of choice: application for membership in union; election; participation in strike—*Collective Bargaining:* employer's duty as affected by strike, by majority rule; refusal to meet, recognize, and negotiate with representatives; failure or refusal to make counter proposals; no *bona fide* intent to bargain collectively—*Reinstatement Ordered, Strikers:* strike provoked by employer's violation of Act; displacement of employees newly-hired during strike.

Mr. Daniel B. Shortal for the Board.

Mr. William E. Barrett and *Mr. John Swendloff*, of Buffalo, N. Y., for respondent.

Mr. Isadore Katz, of Philadelphia, Pa., for the Union.

Mr. David Persinger, of counsel to the Board.

DECISION

STATEMENT OF CASE

On November 28, 1936, the American Federation of Hosiery Workers filed a charge with the Regional Director for the Third Region (Buffalo, New York), against the Millfay Manufacturing Company, Inc., Buffalo, New York, charging that Company with violations of Section 8, subdivisions (1), (2), and (5) of the National Labor Relations Act, 49 Stat. 449, hereinafter called the Act. On January 4, 1937, the American Federation of Hosiery Workers filed a supplemental charge alleging that the Millfay Manufacturing Company, Inc., hereinafter referred to as respondent, had violated Section 8, subdivisions (1), (2), (3), and (5) of the Act. On February 13, 1937, the Board issued its complaint against respondent alleging that respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (2), (3), and (5),

and Section 2, subdivisions (6) and (7) of the Act. The complaint and accompanying notice of hearing were duly served upon the parties. On February 20, 1937, respondent filed its answer denying the allegations in the complaint, and alleging that the Board is without jurisdiction and that the complaint is defective.

On March 1, 2, and 3, 1937, pursuant to the notice, a hearing was held at Buffalo, New York, before Walter Wilbur as Trial Examiner duly designated by the Board. Respondent was represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues was afforded all parties.

At the beginning of the hearing respondent objected to the continuance of the proceedings until the question of jurisdiction raised in its answer had been determined. The Trial Examiner overruled the objection. At the conclusion of the hearing respondent moved to dismiss the complaint on the ground that the Board had failed to prove its jurisdiction. The Trial Examiner denied the motion. The Board has reviewed these and other rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On April 28, 1937, the Trial Examiner filed his Intermediate Report in which he found that respondent had committed unfair labor practices in violation of Section 8, subdivisions (1), (2), and (5) of the Act. He found that the evidence as to the discharge of Henry Ostempowski was not conclusive.

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

FINDINGS OF FACT

I. RESPONDENT AND ITS BUSINESS

Respondent is a corporation organized under the laws of the State of New York on December 13, 1922, with its office and plant in Buffalo, New York. It is engaged in the manufacture of full-fashioned ladies' hosiery for the Berkshire Knitting Mills, Reading, Pennsylvania. The Berkshire Knitting Mills, which owns stock in respondent, is one of the largest concerns in the industry.

The raw materials used by respondent are silk and mercerized cotton yarn. The silk comes from Japan. It is purchased by the Berkshire Knitting Mills and shipped to the Duffy Mills, Buffalo, New York, to be thrown. The thrown silk is transported by truck from the Duffy Mills to respondent's plant to be knitted into stockings. Mercerized cotton yarn is purchased by the Berkshire Knitting Mills from factories in Pennsylvania and is shipped to respondent to be knitted into stocking tops.

Respondent's operations are divided into eight departments, viz., legging, topping, footing, looping (the process whereby the heel is fastened to the toe), seaming, examining, mending, and shipping. Under normal operating conditions respondent's weekly production amounts to about 5,000 pairs of hose.

The Berkshire Knitting Mills instructs respondent how the stockings are to be made, how many are to be knitted, to what destination they are to be sent, and how long shipments are to continue.

Hosiery is shipped from respondent's mill "in the gray", and must be boiled, dyed, boarded, and boxed before it is ready for the consumer market. From 1927 to about April, 1936, all of respondent's products were shipped out of the State to be finished at the Reading, Pennsylvania, plant of the Berkshire Knitting Mills. Since about April, 1936, all respondent's goods have been finished by two independent concerns in New York City and in Philadelphia, Pennsylvania, in accordance with orders from the Berkshire Knitting Mills.

Respondent charges the Berkshire Knitting Mills for labor only, and presents its bill for each shipment at a price per dozen hose.

Approximately 500 workers, about one half of whom are girls, were employed at respondent's mill on December 7, 1936; the day preceding the strike. At that time respondent operated a day shift and a smaller night shift.

II. THE UNION

The American Federation of Hosiery Workers is a national labor organization affiliated with the United Textile Workers of America. Branch 40 is a local of the American Federation of Hosiery Workers, and is a labor organization.

III. THE UNFAIR LABOR PRACTICES

A. Interference with the employees in the exercise of the right to self-organization

Early in November, 1936, the American Federation of Hosiery Workers, hereinafter referred to as the Union, sent two organizers to Buffalo for the purpose of organizing the employees of respondent. The organization drive was completed on January 9, 1937, when 452 of the employees received a charter from the Union and thereby became Branch 40.

About November 10, 1936, the Union held a meeting at which a number of respondent's employees, including Walter Stackewicz, were present. Stackewicz testified that he was present with the knowledge and approval of Lebo, superintendent of the mill. Max Mosloff, a foreman at the mill, waited outside the meeting and wrote

down the name of each employee who left. Stackewicz met Mosloff and reported to him all that had transpired.

The next day the employee who had been last to leave the meeting was assigned as helper to Stackewicz. Lebo told Stackewicz that he did not want the helper to remain in respondent's employ. Accordingly, Stackewicz deliberately spoiled his helper's work to such an extent that the latter finally resigned. A foreman complimented Stackewicz on his successful execution of a delicate assignment and promised him a raise in pay. Lebo confirmed the promise.

On November 23, Lebo addressed all the employees in the mill. At that time the workers at the Duffy Mills (see Section I, above) were on strike and were picketing respondent's plant. Lebo warned the employees not to be influenced by the Duffy Mills strike because respondent would never operate a union shop.

That night a second meeting was held and a number of the mill employees were present. At least 80 leggers signed applications for membership in the Union. Again Mosloff waited outside and noted each employee who left.

The following day Lebo told several employees who had attended the meeting that their work was not satisfactory and that they were to be fined. The fines were not actually levied.

On Saturday, November 30, the Union called a third meeting. Many of respondent's employees attended and several expressed strong dissatisfaction with the system whereby any employee in the mill could be fined by a foreman or Lebo without previous notice of those acts or omissions which would subject him to a fine. The leggers voted to strike in protest. As before, Mosloff waited outside the meeting hall, but on this occasion Henry Jintek, the night foreman, was with him. These two watched the mill employees leave. On December 2, the next working day, 80 leggers struck and joined the Duffy Mills pickets around respondent's plant.¹

The presence of a foreman outside the Union meeting place on three occasions, the presence of Stackewicz as a spy at the first meeting, the successful attempt to force Stackewicz's helper to resign, and Lebo's warning to all employees to have nothing to do with an outside labor organization on pain of the loss of their jobs, constitute flagrant intimidation of the employees. We find that respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

¹ It may reasonably be assumed that the Duffy Mill strikers picketed the plant of respondent because of the relations between respondent and the Duffy Mills, set forth in Section I, above.

B. The discharge of Henry Ostempowski

The evidence relating to the allegation in the complaint that respondent discharged Henry Ostempowski because he engaged in union activity, and in so doing committed unfair labor practices in violation of Section 8, subdivisions (1) and (3) of the Act, is not clear. Ostempowski, the only witness on the question of his discharge, testified that he attended the first Union meeting about November 12, 1936, and the second on November 23. He planned to be present at the third meeting on November 30, but met Mosloff and Jinteck outside the meeting hall and decided not to go in.

Ostempowski further testified that on December 2, the next working day after the November 30 meeting, his regular helper was transferred to another machine and replaced by a new man. Ostempowski asked why the change was made but received no explanation. While Ostempowski and his new helper were turning welts the same day, Lebo walked up and asked how long the helper had been employed in the mill. He was told that the helper had worked three and a half months. Lebo said that in that time he had not yet learned to turn welts, and then apparently without further explanation discharged Ostempowski.

The circumstances surrounding Ostempowski's discharge are confusing. No connection is shown between Lebo's question about the helper's experience and his dismissal of Ostempowski. We agree with the Trial Examiner that the evidence with respect to Ostempowski is not conclusive. We will not therefore decide his case at this time, but will order that the record be reopened for the purpose of receiving further evidence relating to his discharge.

C. Domination and interference with the formation of a labor organization

On Monday, December 7, John Peters, Edmund Syroczyński, Mike Wilk, and Edward Stortz, hereinafter referred to as the four men, were discussing the formation of an independent association of respondent's employees when Lebo approached them and inquired why they were not at work. Stortz said they were talking of organizing an independent association as suggested by Wilk. Before anyone had time to explain to Lebo the nature of the association he launched into a lengthy description of its merits.

In reply to a question by Stortz, Lebo said that the four men could promise those employees interested in joining the association that conditions in the mill, including wages, would remain unchanged. He said that before he could give his permission for the four men to solicit members he would have to consult his superiors. While the four men waited for Lebo to return, three foremen came

up to them and pointed out the benefits which would accrue to the members of such an organization. Later Mr. Welch, bookkeeper in Lebo's office, told the four men that he had thought of such an organization the day before and had prepared a draft of a petition to be circulated among the workers. Wilk had said to the other three that he had thought of forming an association only that morning. The coincidence that Welch should have had the same idea the day before created a suspicion in the minds of Peters, Syroczyński, and Stortz that all was not above board.

The four men met with Lebo and again asked what they could promise the employees who would be willing to join such an association. Welch, who was still present, interrupted to suggest they promise the establishment of a committee to present grievances to the management. Lebo agreed and said he would also grant a wage increase. Upon demand he refused to put his concessions in writing. Thereupon, Stortz said he would have nothing further to do with the matter. Peters and Syroczyński agreed with him. Wilk said he would abide by their decision. However, that evening Wilk and others circulated petitions² and a number of employees on the night shift signed up for the association. The association made no further progress because, as will appear subsequently, the employees struck the next day in protest against respondent's efforts to organize it.

As we have said in a comparable case:³

"In our opinion, Section 8, subdivision (2) of the Act forbids domination or interference not only where it is successful, and a labor organization is actually formed, but also makes it an unfair labor practice where the domination or interference is unsuccessful. In this case, the respondent was unsuccessful because of the firmness of its employees. Since the Act is remedial, it is appropriate to require the respondent to cease and desist from unfair labor practices which may, at some future time, be more successful."

It is clear from the evidence that respondent attempted to dominate and interfere with the formation of the association. Lebo and a number of foremen went out of their way to express their approval of the association and permitted four employees to shut down their machines during working hours in order to discuss plans for organizing it. Lebo told Stortz that before the four men could actively begin organizing he would have to get in touch with his

² The evidence does not make it clear whether these petitions were the same as the one drafted by Welch.

³ *In the Matter of Canvas Glove Manufacturing Works, Inc.*, I N L R B 519

superiors. Later that day he approached Stortz and told him that the plan had been approved and that Stortz was to go ahead with it. When Stortz refused, Lebo accused him of not considering the interests of respondent. Beyond all this, there is the suspicious circumstance that Welch, Lebo's bookkeeper, and Wilk conceived the notion of the association almost simultaneously, and yet tried to give the appearance of following independent courses of action.

It is clear from this evidence that respondent was disposed to tolerate the proposed association only if it suited its own plans. Even if it be assumed that respondent, through its agents, did not make the original suggestion, respondent at least seized the opportunity to turn the proposal to its own ends. Thus, Lebo had the four men wait while he consulted his superiors as to the advisability of the association from respondent's point of view. It is not the privilege of an employer to approve or disapprove of a projected labor organization of his employees. In this case, respondent made its own interest in the association all the more obvious when Lebo berated Stortz for abandoning the project.

We therefore find that respondent attempted to dominate and interfere with the formation of a labor organization, and, by such acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. *The refusal to bargain*

1. The unit

The Union contends that the employees in the eight departments constitute a unit appropriate for the purposes of collective bargaining. At the hearing respondent raised no objection to the appropriateness of this unit. In fact, as is set forth below, Lebo has expressed a willingness to bargain with a committee composed of one representative of each department of the mill. Obviously he regarded the employees in all departments as constituting an appropriate bargaining unit.

We find that a unit composed of the employees in the legging, footing, topping, looping, seaming, examining, mending, and shipping departments of the mill, except those in a supervisory capacity, would insure to the employees the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act, and constitutes a unit which is appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. Majority representation

On the morning of December 8, 1936, the employees at the mill expressed concern at the action of the night shift the previous day in signing the petition for an association. In protest against the attempts of respondent to foist a company dominated union upon them, they voted to strike, shut off their machines, and sat down.

Shortly thereafter Lebo came on the floor of the mill to find out why no work was being done. Stortz, acting as spokesman for the employees, explained their action. Lebo suggested that they vote for the association or for an outside union, and that at the same time each department elect a representative to discuss the situation with the management. Lebo said that he would bargain with a committee of department representatives so long as the workers did not affiliate with an outside organization.

A vote was taken and about 385 of the approximately 400 employees present voted for an outside union. Each of the eight departments elected a representative and the representatives formed a committee, hereinafter referred to as the committee. The committee thereupon presented its demands to Lebo who said he would grant two of them but was without authority to bargain about the others. The committee asked that he put his two concessions in writing, but Lebo refused and the committee retired.

Later that day the committee again called on Lebo and asked that Lebo meet with Mr. Held, organizer for the Union, as representative of a majority of the employees. Lebo refused to meet any outsider and the committee withdrew. The committee then got in touch with Held and invited him to come into the mill and address the strikers. He did so and passed out applications for membership in the Union.

At the hearing Edward Przesiek, Treasurer of Branch 40, testified to the number of applications for membership in the Union signed by the striking employees, the dates on which they were signed, and the dates on which they were transmitted to the Union; the number of members who had paid initiation fees and dues, the dates on which these were paid, and the dates on which the initiation fees were transmitted to the Union. Throughout his testimony Przesiek constantly referred to the official books and records of Branch 40 which he had with him on the witness stand. Respondent cross-examined Przesiek on his testimony and had full opportunity to examine the books and records of Branch 40.

Przesiek, in his testimony, in connection with which he referred to his books and records, stated that on December 8, 1936, when Held addressed the strikers, 385 employees signed applications for membership in the Union. He also testified that on December 10, when Held was elected representative, 452 employees had signed applica-

tions for membership. He further testified that on January 9, 1937, when the strikers received their charter from the Union and Branch 40 was established, 482 employees had signed applications for membership in the Union.

If there were any doubt as to the representation by the Union of a majority of respondent's employees, it would be dispelled by an examination of the other circumstances in the case. Thus, on December 8, the sit-down strikers voted 385 to 16 in favor of an "outside union". The Union was not specifically named but it was the only active union in the community in which the employees were eligible for membership, and it had been attempting to organize the mill for over a month. Under the circumstances it is a fair inference that the strikers meant the Union when they voted for an "outside union". It was Lebo who suggested that the vote be taken. When he met with the committee that day and refused their request to meet with Held he avoided mentioning the Union by name but referred to "outsiders". It is fair to assume that he, too, meant that the employees choose between the Union and the association when he suggested the vote.

At the same time that the strikers voted for an "outside union" they elected the committee to represent them. Thereafter Lebo met with the committee several times and recognized them as representing the striking workmen. On several occasions Barrett, president of respondent, met with the committee as representative of the strikers. But at all times both Lebo and Barrett refused to even consider meeting with an "outsider", as they called Held, although the committee repeatedly requested them to do so, because, as the committee told them, the employees had by vote and otherwise designated the Union as their representative.

Obviously respondent was aware that more than four-fifths of its employees were on strike on December 8 and at all times thereafter. Also respondent was aware that 385 employees had, on December 8, expressed a preference for an "outside union", which could only have meant the Union. Respondent recognized that the committee represented an overwhelming majority of its employees and was repeatedly informed by the committee that all the employees whom it represented had designated the Union as their bargaining representative.

Under all the circumstances we find that on December 8, 1936, and at all times thereafter, the Union was the representative of a majority of the employees in the appropriate unit, and by virtue of Section 9 (a) of the Act, was the exclusive representative of the employees in the unit, for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

On December 9 the strikers left the mill and joined the leggers' and Duffy Mills' pickets around respondent's plant. The strike is still going on.

We find that the strike begun on December 8, 1936, and continuing at the time of the hearing, is a controversy concerning the representation of employees in negotiating and seeking to arrange terms and conditions of employment. We find therefore that the work of respondent's employees ceased because of a current labor dispute, and that they were, on December 8, 1936, and have been at all times since, employees of respondent.

On December 10, 1936, all the mill strikers, about 452, held a meeting, set up an organization which later became Branch 40, and elected officers who continued as officers of Branch 40. Stortz was elected president. Held was designated as representative.

On December 16, a conference was arranged between Mr. Barrett, president of respondent,⁴ and the committee and Held.⁵ Barrett refused to talk with an "outsider" and insisted that Held withdraw. In order not to interfere with a possible settlement of the labor dispute, Held retired.

The committee demanded that the Union be recognized as the collective bargaining representative of the strikers. The entire conference was taken up by Barrett in questioning the committee on the meaning of "union recognition". At the close of the conference it was agreed that the committee should present its demands in writing and that respondent should reply in writing. This was done. Respondent's reply, unsigned, stated:

"After our lengthy discussion and after consideration of your collective demands the company finds it cannot agree to them. Further bargaining would be futile. In view of the basic claims and principles contained in the demands and developed in the discussion further conferences would not be fruitful."

The answer concluded with the statement that the mill would remain closed for the present.

On January 9, 1937, the strikers received their charter from the Union and Branch 40 was formally established. At that time the membership was substantially the same as on December 10, 1936.

On February 20, 1937, the committee met with Barrett in the rectory of Father Justyn, a local priest, and asked that Held be present. Barrett refused. This meeting was as unsuccessful as

⁴ Mr. Barrett is the same Wm. E. Barrett who acted as counsel for respondent at the hearing.

⁵ A stenographic report of the conference was entered in the record as Board's Exhibit No. 8.

that of December 16. The committee restated its demands and Barrett flatly refused them. He then made respondent's only "counter-offer", viz., that each employee sign an individual contract!

The committee submitted respondent's proposal to the vote of Branch 40 and it was rejected. New demands were drafted in the form of a written contract between the Union and respondent. The first line read:

"This agreement entered into this 1 day of February, 1937, between the American Federation of Hosiery Workers, an unincorporated association of hosiery workers, and the Millfay Manufacturing Company, Inc. . . ."

On February 22, Stortz presented the above contract to Barrett who took one look at it and said, "This is no good. The first line alone eliminates this proposal. This is nothing but a union contract. Here you are refusing my proposal, and here you bring one of your own in." Stortz asked Barrett to discuss the matter with Held. Stortz testified, "Barrett said he would not see Held if hell froze."

Respondent consistently refused to meet with and recognize Held as the representative of its employees, although at no time did respondent question that a very large majority of its workers had designated the Union as their representative. At the hearing respondent objected that the Union had not submitted proof of its claim to represent a majority of the employees. At no time previously had respondent asked for such proofs, and the tenor of all respondent's relations with its striking employees leads us to believe that this objection was an afterthought that did not influence respondent in its relations with its employees prior to March 1, 1937. In view of the events above set forth, it must have been obvious to respondent that a large majority of its employees had designated the Union as their bargaining representative.

Respondent at no time refused to meet with Held *unless* proof of his official status was presented, but instead it refused to meet with Held or any "outsider" under any conditions.

The December 16 conference upon which respondent seems to rely as evidence of its good faith in attempting to reach a collective agreement with its employees then on strike, indicates the complete absence of any intent on the part of respondent to bargain collectively. The entire conference, which lasted several hours, was consumed in what amounted to a cross-examination of the committee on its interpretation of "union recognition." Respondent's reply to the written demands made by the Union thereafter, pursuant to the understanding reached at the end of the conference, amounts to a flat refusal to engage in further discussion.

Barrett's attitude at that and at all succeeding conferences is indicated in a remark he made in reply to an attempt by a committeeman

to explain that under a collective agreement the employees would do better work because their morale would be improved. Barrett said, "You are opening a question that will last all night, whether you can run the plant better or whether we can." Such a remark shows the absence of any desire or intent by respondent to understand the problem or seek a solution through the medium of mutual discussion and collective bargaining. To Barrett it was solely a question of whether he and the other officials of respondent were to continue to operate the mill in any manner they saw fit regardless of the rights of their employees.

At the conference on February 20 respondent for the first and last time offered a "counter-proposal". This "counter-proposal" was that collective bargaining be discarded and individual bargaining substituted.

On February 22 Barrett met with a representative of the striking employees for the last time. Stortz handed him a proposed contract which he flatly refused even to read because it embodied the name of the Union.

To completely clarify respondent's attitude toward collective bargaining it is only necessary to mention the colloquy between Barrett, in his capacity as counsel for respondent, and the Trial Examiner at the hearing:

"Mr. Barrett: This contract they brought here was a closed shop contract.

"Trial Examiner Wilbur: I did not catch that as I read it. Perhaps I missed something.

"Mr. Barrett: It is an exclusive bargaining contract, the same thing.

"Mr. Katz: Oh, no, it is not.

"Mr. Barrett: It is in my viewpoint. It is a matter of law, how we describe a closed shop contract."

Barrett's statements to the Trial Examiner when considered in conjunction with respondent's written reply to the committee's demands, makes it evident that respondent does not intend to comply with the provisions of the Act until compelled to do so.

We find that on December 8, 1936, and at all times thereafter, respondent has refused to bargain collectively with the representatives of its employees.

By refusing to bargain collectively with the representatives of its employees, respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The activities of respondent set forth in Section III above, occurring in connection with the operations of respondent described in Section I above, have a close, intimate and substantial relation to

trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

The employees struck on December 8, 1936, because respondent attempted to dominate and interfere with the formation of a labor organization. The strike was continued and other employees joined it because respondent refused to bargain collectively with the representative of the majority of the employees. The employees struck, and have continued to strike, because of respondent's unfair labor practices (see Conclusions of Law, below) and are, therefore, entitled to be reinstated to their former positions. We shall order that the employees who went out on strike be offered reinstatement to their former positions.⁶

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law:

1. The American Federation of Hosiery Workers is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. By its attempt to dominate and interfere with the formation of a labor organization, respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the Act.

3. Respondent's employees in the legging, footing, topping, looping, seaming, examining, mending, and shipping departments of respondent's mill, not in a supervisory capacity, constitute a unit appropriate for purposes of collective bargaining, within the meaning of Section 9, subdivision (b) of the Act.

4. By virtue of Section 9, subdivision (a) of the Act, the American Federation of Hosiery Workers, having been designated by a majority of the employees in a unit appropriate for the purposes of collective bargaining, has been at all times since December 8, 1936, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

5. By refusing to bargain collectively with the representatives of its employees, respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, re-

⁶ *In the Matter of Columbian Enameling and Stamping Co.*, I N. L. R. B. 181.

spondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

7. The strike which began on December 8, 1936, and was continuing at the time of the hearing, is a labor dispute, within the meaning of Section 2, subdivision (9) of the Act.

8. Respondent's employees on strike at the date of the hearing are employees, within the meaning of Section 2, subdivision (3) of the Act.

9. The unfair labor practices in which respondent has engaged and is engaging are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

ORDER

Upon 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 respondent, Millfay Manufacturing Company, Inc., its officers, agents, successors, and assigns, 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, and 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 and protection;

2. Cease and desist from dominating and interfering with the formation or administration of any labor organization of its employees, or contributing financial or other support to it; or from attempting to do so;

3. Cease and desist from refusing to bargain collectively with the American Federation of Hosiery Workers as the exclusive representative of all its employees in the legging, footing, topping, looping, seaming, examining, mending, and shipping departments of respondent's mill, except those in a supervisory capacity, in respect to rates of pay, wages, hours of employment or other conditions of employment.

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

(a) Offer reinstatement to all employees of respondent on strike on March 1, 1936, the date of the hearing, who have not obtained any other regular and substantially equivalent employment, dismissing if necessary, persons employed for the first time since December 8, 1936;

(b) Upon request, bargain collectively with the American Federation of Hosiery Workers as the exclusive representative of all

its employees in the appropriate unit in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) Post notices in conspicuous places throughout all departments of respondent's mill stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting; and

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

It is further ordered that the record be reopened for the purpose of receiving further evidence relating to the discharge of Henry Ostempowski.