

In the Matter of S & K KNEE PANTS COMPANY, INC. and AMALGAMATED CLOTHING WORKERS OF AMERICA

Case No. C-106.—Decided June 9, 1937

*Men's Clothing Industry*—"Run-Away Shop"—*Interference, Restraint or Coercion*: closing plant with intent to remove operation to new location—*Discrimination*: closing plant, discharge of employees—*Employee Status*: following discriminatory discharge—*Reinstatement Ordered*: at new location of operations; displacement of employees hired since resumption of operations at new location; transportation expenses to new location of operations ordered paid.

*Mr. Lawrence A. Knapp* for the Board.

*Mr. Monroe I. Schechter* and *Mrs. Isabel P. Schechter*, of Lynchburg, Va., for respondent.

*Mr. Fred. G. Krivonos* and *Mr. Frederick P. Mett*, of counsel to the Board.

DECISION

STATEMENT OF CASE

Charges having been duly filed by the Amalgamated Clothing Workers of America, hereinafter termed the Union, the National Labor Relations Board, by its agent, the Regional Director for the Fifth Region (Baltimore, Maryland), issued and duly served its complaint dated December 23, 1935, against the S & K Knee Pants Company, Inc., Lynchburg, Virginia, respondent herein, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449, hereinafter termed the Act.

In substance, the complaint as amended<sup>1</sup> alleges that the respondent, a Virginia corporation, with its principal office and places of business in Lynchburg, Virginia, hereinafter termed the Lynchburg plants, is engaged in the production, sale, and distribution of men's wearing apparel in interstate commerce; that on October 18, 1935, the respondent ceased operations of and closed its Lynchburg plants and thereafter concluded arrangements to transfer its operations to the city of Culpeper, Virginia, for the reason that the re-

<sup>1</sup> With the respondent's consent, paragraphs 3 and 4 of the complaint were amended at the hearing.

respondent's employees had joined and assisted the Amalgamated Clothing Workers of America, a labor organization, and had engaged in concerted activities for the purposes of collective bargaining and other mutual aid and protection, and for the reason that the respondent sought and seeks to avoid collective bargaining with the Union; that by the closing of its Lynchburg plants and by the resulting discharges of all of its employees, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and discriminated against them in regard to hire and tenure of employment, thereby discouraging membership in the Union.

In substance, the respondent's answer, as amended, admits its corporate organization as alleged in the complaint, and admits the allegations in paragraph two of the complaint as to the interstate nature of its business; every other allegation in the complaint is denied.<sup>2</sup> The answer further alleges that the complaint fails to state a cause of action, in that the respondent was not operating at the time the complaint was issued, and in that the allegations that the respondent moved its effects to Culpeper, Virginia, do not state any unfair labor practice set forth in the Act; that the respondent had bargained with an independent committee of its employees; that the Union was not authorized to represent its employees; that the Union was free to follow the respondent wherever it moved; that the respondent was obliged to close its Lynchburg plants because of inefficiency and insubordination of its employees upon their return to work after a strike, and because of rumors of a second strike; and that the respondent did not announce its intention of resuming operations in Culpeper until December, 1935.

Pursuant to notice thereof duly served on the respondent, Henry G. Perring, duly designated by the Board as Trial Examiner, conducted a hearing commencing on January 30, 1936, at Lynchburg, Virginia. The respondent appeared by counsel, Monroe J. Schechter, its secretary-treasurer, and his wife, Isabel P. Schechter, and participated in the hearing. The Board was represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties.

At the commencement of the hearing, counsel for the respondent announced he was making a special appearance, and moved to dismiss the complaint on the grounds that the Act is unconstitutional and that the complaint is defective in that the allegations that the

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<sup>2</sup> The respondent's answer, in form, denies every allegation in the complaint "with the exception of allegation number 2". At the hearing, the respondent orally admitted the allegations as to its corporate existence, and expressly admitted the allegations as to the interstate nature of its business. The respondent's motion to amend its answer "to include a general denial of paragraph 4 as amended" was granted by the Trial Examiner.

respondent had closed its Lynchburg plants and arranged to move to Culpeper for the reason that the respondent sought and seeks to avoid collective bargaining with the Union states a conclusion of law. The motion was denied by the Trial Examiner, and his ruling is hereby affirmed. At the conclusion of the testimony, counsel for the respondent renewed the original motion to dismiss and also moved to dismiss the complaint for lack of proof to support a cause of action against the respondent. These motions were likewise denied by the Trial Examiner and his rulings are hereby affirmed. We find no prejudicial error in any of the Trial Examiner's other rulings made during the course of the hearing and they are hereby affirmed.

Upon the record thus made, the Trial Examiner, on June 3, 1936, filed an Intermediate Report, finding and concluding that the respondent had engaged in unfair labor practices affecting commerce, as alleged in the complaint, in that it closed its Lynchburg plants and arranged to resume operations in Culpeper in order to avoid collective bargaining with its employees through the Union, and in so doing interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and discriminated against its employees in regard to hire and tenure of employment, thereby discouraging membership in the Union. The respondent duly filed exceptions to the Intermediate Report, excepting, in general terms, to the Trial Examiner's findings and conclusions as contrary to the weight of evidence.

We find that the evidence supports the Trial Examiner's findings and conclusions. We find nothing in the respondent's exceptions to the Intermediate Report requiring any material alteration of such findings and conclusions.

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

#### FINDINGS OF FACT

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

I. The respondent, S & K Knee Pants Company, Inc., is and has been since December, 1930, a Virginia corporation, and until October, 1935, had its principal office and places of business in Lynchburg, Virginia.

II. (a) Until October 18, 1935, the respondent was actively engaged, at two plants in Lynchburg, in the production, sale and distribution of low-priced men's clothing, including trousers, knee pants and lumber jacks. It employed about 190 workers.

(b) Ninety-five per cent of the raw materials, chiefly cotton and woolen textiles, used by the respondent in its operations at the Lynchburg plants, were purchased and transported from states other than the State of Virginia to its plants in Lynchburg, Virginia.

(c) The respondent's volume of business for a year totalled approximately \$300,000 or \$325,000. Seventy-five per cent of the men's clothing manufactured by the respondent was sold and transported from its Lynchburg plants throughout the United States to states other than the State of Virginia. Its sales were made by salesmen, including Emanuel Schechter, the respondent's president, traveling from Lynchburg, Virginia, throughout the United States to solicit orders.

III. In the course of the respondent's operations, as described above, there was a continuous flow of large quantities of raw materials from states other than the State of Virginia to its Lynchburg plants, and of large amounts of completed men's clothing from its Lynchburg plants to states throughout the United States other than the State of Virginia. These quantities and amounts comprised all but a small portion of the raw materials and finished products so caused to be transported by the respondent.

## II. THE UNION

IV. The Amalgamated Clothing Workers of America, affiliated with the American Federation of Labor, is a labor organization, with a membership of about 150,000 workers in the men's clothing industry throughout the United States and Canada.<sup>3</sup>

## III. THE RESPONDENT AND THE UNION

V. (a) Before the organization of the respondent and its commencement of operations in Virginia in 1930, the Schechter family operated the "S & K Knee Pants Company" in New York City. They "had a union shop"; their workers were members of the Union, with which the firm dealt. The Schechters moved to Virginia in 1930 in search of unorganized and cheaper labor, commencing operations in Lynchburg in December of that year as the respondent company.

(b) After the National Industrial Recovery Act was declared unconstitutional in May, 1935, the respondent increased the working hours of its employees from 36 to 45 and cut the wages of its employees, in many instances from the Code minimum of \$12 a week to as low as \$5 a week.

VI. Early in July, 1935, the respondent's employees began to join the Union. By the third week in July about 85 per cent of its employees were Union members. The respondent, through Emanuel Schechter, its president, and Monroe Schechter, its secretary-treas-

<sup>3</sup>For a fuller and more detailed discussion of the Amalgamated Clothing Workers of America and its position in the men's clothing industry, see *In the Matter of Friedman-Harry Marks Clothing Company, Inc.*, Cases Nos. C-40 and C-50, I. N. L. R. B. 411 and 432, respectively.

urer, who were in active charge of the operation of the Lynchburg plants, greeted the advent of the Union among its employees with open and active hostility. Several members were discharged, but were quickly reinstated after the Regional Director for the Fifth Region had conferred with the Schechters.

VII. (a) On August 23rd, Miller, a member of the Union's general executive board, came to Lynchburg at the request of Miss Dilla Hawes, the Union's local organizer. He conferred with the Schechters on that day about an increase in the very low wages being paid the respondent's employees. The Schechters refused to consider an increase. Miller met the Schechters three or four times in the ensuing week, once with a committee of employees who were Union members. In these conferences the Schechters not only refused any increase, but announced the possibility of another cut in wages in November. At their last meeting with Miller, the Schechters told Miller, "Well, we had our say last night, . . . and it is your move next."

(b) When all efforts to negotiate with the respondent for an increase in wages had failed, the Union, at a membership meeting, voted to strike. The strike began on August 30th, and the plant was picketed. Monroe Schechter then requested of R. W. B. Hart, Lynchburg city manager, that the city take measures to break the strike, apparently by preventing picketing; but Hart refused to interfere with the lawful use of the city streets.

(c) A committee of citizens, consisting of the mayor, city manager, Shewel, a merchant, and others, intervened in an effort to settle the strike. A number of meetings took place between the Schechters, a committee of employees, Miller, and the citizens. The Schechters were adamant in their absolute refusal to recognize the Union, or to sign any settlement agreement with the Union. In order to effect a settlement, Miller, with the consent of the Union members, withdrew from direct participation in the settlement, and, on September 6th, a settlement agreement was finally signed by Emanuel Schechter for the respondent and a committee of workers for its employees (Exhibit B-1, appended to the respondent's answer). Under the settlement agreement, strikers were to be reinstated without discrimination; the respondent was to recognize a shop committee of employees to discuss increases in pay; the work week was to total 40 hours, with overtime "voluntary"; the minimum wage was to be \$8; certain increases were to be made in piece rates; work was to be equally divided in slack periods; and the respondent was not to discharge any worker for Union activity.

VIII. (a) The respondent's employees returned to work on Monday, September 9, 1935. During the following week, certainly not later than Thursday, September 12th, the respondent decided to cancel

a lease entered into with J. B. Winfree in August, 1935, for a factory building in Lynchburg to which it had planned to move. Plans and contracts for the renovation of the building were ready on September 9th, and this fact was communicated to the respondent by Winfree about September 10th. The respondent and Winfree agreed on a payment by the respondent of \$6,000 to cover the expenses of the architect, the landlord, and Winfree, and the lease was actually cancelled on September 16th, but with the verbal understanding that the \$6,000 was to be applied to the renovation of the building if the respondent later decided to reenter the leasing arrangement.

(b) Operations at the Lynchburg plants tapered off after mid-September. No new raw materials were purchased and no new orders were sought. On October 18th, when the orders on hand were completed, the respondent closed its Lynchburg plants, discharged its employees, and announced its intention to retire from business.

(c) When a number of its employees were being paid after the closing of the plants on October 18th, they were asked if they would return to work "without the union" if the respondent resumed operations. Schechter instructed Portnoy, the respondent's superintendent, to note the names of workers who said "yes".

IX. Late in October or early in November, after the closing of the Lynchburg plants, the respondent entered into negotiations for the erection of a factory in Culpeper, Virginia, "a good labor town". A Virginia corporation, The Culpeper Industrial Building, Incorporated, was chartered on November 15, 1935, and on December 9, 1935, the Schechters signed a lease for a factory site in Culpeper. The Schechters also announced their intention of removing the respondent's operations to Culpeper. Ground was being broken for the factory at the time of the hearing in January.

#### IV. CONCLUSIONS

X. (a) The sequence of events at the respondent's Lynchburg plants from the time its employees joined the Union in July, until the time of its arrangements to remove the plants to Culpeper in November and December, lead to the inescapable conclusions that the respondent, in closing its Lynchburg plants and discharging its employees there, and in preparing to remove its operations to Culpeper, was motivated solely by its admitted hostility to the Union, its desire to avoid bargaining with the Union which had been chosen by 85 per cent of its employees as their representative for collective bargaining, and by its intention to discourage membership in the Union.

(b) The respondent contends that its reasons for closing the Lynchburg plants and the removal to Culpeper were insubordination and inefficiency of employees upon their return to work after the

strike. The evidence does not sustain its contentions. There is evidence of presentation of grievances by the shop committee during the first few days after the return to work, and of minor friction in reestablishing the routine of operations. This does not amount to insubordination. As for inefficiency, the respondent's evidence, based on general estimates, to show that production of trousers dropped is not supported by evidence that the same number of workers were employed after the strike. Further, there is evidence that the respondent, after the strike, made more lumber jacks than before; this may account for the drop in the production of trousers.

(c) The respondent's officers admitted, in their testimony, that they did not want its employees to join the Union. They admitted that they expected the Union, as such, to leave Lynchburg after the respondent had signed the strike settlement agreement with a committee of its employees and not with the Union. In their testimony, they admitted their hostility to the presence of Miss Hawes, the Union organizer, in Lynchburg after the strike, even for merely educational purposes. They stated and testified at the hearing that they would not take back any of the employees in the Lynchburg plants under any circumstances.

(d) The evidence leaves no doubt as to the respondent's unequivocal hostility toward the Union, its determination not to recognize it or deal with it under any circumstances, and its determination to force its employees into giving up their right to freedom of choice of representatives for collective bargaining. By closing its Lynchburg plants and preparing to move to Culpeper, the respondent made brutal use of its economic power over its employees, already working at miserable wages, to club them into submission, to starve them into renouncing the Union. The evidence convinces us that the respondent had formed its intention to close the Lynchburg plants during the very first week upon resuming operations after the strike, when it decided to cancel the lease for the new factory in Lynchburg. In fact, the evidence is persuasive that the respondent may have entered the strike settlement proposal, not with the *bona fide* intention of resuming continuous operation, but merely to fabricate materials on hand and then to close the plants and possibly to remove them, in order to avoid collective bargaining with the Union. The Schechters testified that during the strike, due to newspaper stories about it, they received many offers from towns seeking factories. The respondent knew, from its own experience, how to move away to avoid the Union. The germ of the idea of moving was, very likely, not absent from the Schechters' minds when the strike settlement agreement was signed.

(e) While the Schechters may have contemplated removal of their Lynchburg plants as early as September, they also took the precau-

tion of verbally arranging that the \$6,000 paid for the cancellation of the lease for the projected new plant in Lynchburg would be applied to improvements there in the event they decided to reenter the leasing arrangement. In his testimony, Emanuel Schechter admitted that in doing so he had "the thought in mind that we might decide again to go back into business here in Lynchburg". At the time this agreement was made, it is clear from the Schechters' testimony that the respondent would continue or resume operations in Lynchburg only upon the condition that its employees renounced the Union. Thus it is manifest that the closing of the Lynchburg plants was contemplated by the respondent in September as a disciplinary measure—discipline by deprivation of the chance to earn a living—to get them to give up their Union membership and activity, with the possibility of continuing or resuming operations in Lynchburg in the event they dropped the Union. As an alternative anti-Union weapon the respondent was prepared to move to Culpeper, "the good labor town".

XI. (a) The respondent's conduct in closing its Lynchburg plants and in preparing to remove its operations to Culpeper, and the discharges of its employees because of their Union membership and activity, as set forth above, constituted interference with, 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.

(b) The respondent's conduct in closing its Lynchburg plants and in preparing to remove its operations to Culpeper, and the discharges of its employees because of their Union membership and activity, as set forth above, constituted discrimination in regard to hire and tenure of employment, thereby discouraging membership in a labor organization.

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

XII. (a) The respondent's refusal to recognize the Union and failure to bargain collectively with the Union as the chosen representative of its employees caused the strike in its Lynchburg plants, on August 30, 1935, as set forth above. From that date until September 9th, the Lynchburg plants were completely shut down.

(b) The migration of the respondent and other such manufacturers in order to avoid recognition of and collective bargaining with the Union materially affects, restrains, burdens, and alters the

flow of raw materials and manufactured goods from and into the channels of commerce.<sup>4</sup>

XIII. The activities of the respondent set forth in findings VI to XI above, occurring in connection with the operations of the respondent described in findings I to III 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

XIV. According to the testimony and admission of Emanuel Schechter, the respondent's president, the respondent first determined to discontinue operations on the evening of September 12, 1935. We have found that the respondent's conduct in closing its plant on October 18th, and in discharging its employees by that date, was discriminatory. The discharges were the result of unfair labor practices committed by the respondent, and the respondent's employees discharged between September 13, 1935, and October 18, 1935, retained the status of employees under the terms of Section 2, subdivision (3) of the Act, which provides that "the term 'employees' . . . shall include . . . any individual whose work has ceased . . . because of any unfair labor practice . . ."

A considerable period of time has elapsed since the hearing in this case. At that time the respondent's plants at Lynchburg were still completely shut down and it had not resumed operations anywhere else. We do not know whether the respondent has since that time resumed operations at its Lynchburg plants or at any other place, and if it has, under what corporate or other title, and through what agent or agents acting in its behalf. In order to repair as much as possible the harm wrought by its conduct, we shall order the respondent, in the event that it has not resumed operations at its Lynchburg plants or anywhere else since the date of the hearing, to reinstate to their former positions, without prejudice to seniority or other rights or privileges previously enjoyed, whenever, wherever, and under whatsoever circumstances it resumes operations, all of its employees who were on any of its payrolls between September 13, 1935, the first day after the evening on which the respondent determined to close its plants at Lynchburg to avoid the Union, and October 18, 1935, the date of the closing of its plants, and who have not since obtained regular or substantially equivalent employment elsewhere, upon application by such employees, before hiring anyone

<sup>4</sup>For a more detailed discussion of the migration to cheaper labor markets in the men's clothing industry, see *In the Matter of Friedman-Harry Marks Clothing Company, Inc.*, Cases Nos. C-40 and C-50, I N. L. R. B. 411 and 432, respectively.

else. In the alternative, we shall order the respondent, if it has resumed operations since the date of the hearing and regardless of where and under what circumstances, upon application, to reinstate to their former positions, without prejudice to seniority or other rights and privileges previously enjoyed, all of its employees who were on any of its payrolls during the period from September 13 to October 18, 1935, and who have not since obtained regular and substantially equivalent employment elsewhere, to the extent that work for which they are now available is being performed by persons engaged for the first time since October 18, 1935, and dismissing if necessary such persons so engaged, and place the remainder of such employees, who do not receive reinstatement, on a preferred list prepared on the basis of seniority in their respective classifications to be called for reinstatement as and when their labor is needed. Furthermore, in so far as the obtaining of reinstatement requires removal from Lynchburg, Virginia, to some other place, it shall order the respondent to pay the transportation expenses of its employees and their families to such other place.

#### CONCLUSIONS OF LAW

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

1. The Amalgamated Clothing Workers of America is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The employees of the respondent who were discharged between September 13, 1935, and October 18, 1935, were, at the time of their discharges, employees, within the meaning of Section 2, subdivision (3) of the Act; and their work having ceased in consequence of unfair labor practices, they at all times thereafter retained the status of employees of the respondent, except in so far as they obtained regular and substantially equivalent employment elsewhere, within the meaning of Section 2, subdivision (3) of the Act.

3. The respondent, by closing its Lynchburg plants and preparing to remove its operations to Culpeper, Virginia, and by discharging its employees at the Lynchburg plants, thus discriminating in regard to hire and tenure of employment to discourage membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

4. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

5. The aforesaid unfair labor practices are 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, S & K Knee Pants Company, Inc., and 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 or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

2. Cease and desist from in any manner discouraging membership in the Amalgamated Clothing Workers of America, or any other labor organization, by discrimination in regard to hire or tenure of employment or any term or condition of employment, or by threats of such discrimination.

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

(a) If it has not resumed operations since the date of the hearing, upon application reinstate to their former positions without prejudice to seniority or other rights and privileges previously enjoyed, all of its employees on any of its payrolls during the period from September 13 to October 18, 1935, who have not since obtained regular and substantially equivalent employment elsewhere, before employing any other persons, whenever it resumes operation of its Lynchburg plants or commences operations in any other plant or plants, in Lynchburg or Culpeper, Virginia, or elsewhere, whether such operations be resumed or commenced in its present corporate title or any other corporate or other title;

(b) If it has resumed operations since the date of the hearing, regardless of where such operations have been resumed and regardless of whether such operations have been resumed under its present corporate title or under any other corporate or other title, upon application reinstate to their former positions, without prejudice to seniority or other rights and privileges previously enjoyed, all of its employees, who were on any of its payrolls during the period from September 13 to October 18, 1935, who have not since obtained regular and substantially equivalent employment elsewhere, to the extent that work for which they are now available is being performed by

persons engaged for the first time since October 18, 1935, and dismissing if necessary such persons so engaged, and place the remainder of such employees on a preferred list prepared on the basis of seniority in their respective classifications, to be called for reinstatement as and when their services are needed;

(c) Reimburse each of its employees for transportation expenses, including the expense of transporting their families, occasioned by removal from Lynchburg, Virginia, to some other place in order to obtain reinstatement;

(d) Post notices immediately in conspicuous places at the doors of its Lynchburg plants, stating (1) that it will cease and desist as aforesaid; (2) that it will take the affirmative action, as aforesaid; and (3) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

(e) Post such notices immediately at its plant or plants in operation, or upon resuming operations of its Lynchburg plants or upon commencing operations in Culpeper, Virginia, or elsewhere, at the doors of such plants and in conspicuous places in all departments of such plants and near the time clocks;

(f) Notify the Regional Director for the Fifth Region, in writing, within fifteen (15) days from the date of this Order, what steps it has taken to comply herewith.

[SAME TITLE]

## SUPPLEMENT TO DECISION

*October 13, 1937*

The National Labor Relations Board, having issued a Decision, including findings of fact, conclusions of law, and order, in the above entitled case on June 9, 1937 (*supra*, p. 940), and being advised that the respondent has resumed operations, the Board hereby orders that Section 3, subdivision (b) of its Order be modified by inserting between the words "application" and "reinstate" the words, "on or before November 15, 1937".