

In the Matter of MOORESVILLE COTTON MILLS and LOCAL NO. 1221,  
UNITED TEXTILE WORKERS OF AMERICA

*Case No. C-85.—Decided June 10, 1937*

*Cotton Textile Industry—Collective Bargaining:* employer not required to discuss grievances or to bargain collectively with minority representatives; employer's duty as affected by majority rule—*Strike—Employee Status:* during strike—*Discrimination:* non-reinstatement following strike—*Reinstatement Ordered, Strikers:* discrimination in reinstatement—*Back Pay:* awarded.

*Mr. Mortimer Kollender* for the Board.

*Mr. Zeb V. Turlington*, of Mooresville, N. C., and *Quinn, Hamrick & Hamrick*, of Rutherfordton, N. C., for respondent.

*Mr. H. D. Lisk*, of Charlotte, N. C., for the Union.

*Mr. Louis L. Jaffe* and *Mr. Frederick P. Mett*, of counsel to the Board.

DECISION

STATEMENT OF CASE

On December 19, 1935, Local No. 1221, United Textile Workers of America, hereinafter referred to as the Union, filed with the Regional Director for the Tenth Region (Atlanta, Georgia), a charge that the Mooresville Cotton Mills, Mooresville, North Carolina, hereinafter referred to as respondent, had engaged in and was 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, 49 Stat. 449. On March 2, 1936, the Board issued its complaint, signed by the Regional Director for the Tenth Region. The complaint and accompanying notice of hearing were duly served upon respondent and the Union.

The complaint alleges in substance that respondent refused to discuss certain grievances with the duly designated representatives of its employees; that as a result of such refusal the employees of respondent had struck; that both before and after such strike respondent had discriminated with respect to the terms and tenure of employment against certain persons, because they had joined and assisted the Union.

Thereafter, respondent filed its answer to the complaint. Respondent claimed that the Act is unconstitutional in that it violates the Fifth and Tenth Amendments to the Constitution of the United

States, and that the Board was without jurisdiction to proceed. Respondent denied that it had refused to discuss grievances and denied that it had discriminated with respect to employment.

Pursuant to the notice, a hearing was held in Charlotte, N. C., on March 16 and 17 and April 27 and 28, 1936, before Walter Wilbur, duly designated as Trial Examiner by the Board. Full opportunity to be heard, to examine and cross-examine witnesses and to produce evidence bearing upon the issues was afforded all parties.

On April 30, 1936, the Board, deeming it necessary in order to effectuate the purposes of the Act, ordered that the proceedings be transferred to and continued before it in accordance with Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended. Thereafter a brief was filed by counsel for respondent and oral argument was had before the Board in Washington, D. C., on June 16, 1936.

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 and existing under the laws of North Carolina, with its factory and principal place of business at Mooresville, North Carolina, and is engaged in the manufacture of towels, wash cloths, bath mats, furniture slip coverings, automobile slip coverings, dress goods, men's suitings, curtain cloths, flannel, outing flannel, wide inner lining, and other novelty goods. Respondent is the second largest towel manufacturer in the United States, making approximately 15 per cent of the towels manufactured. Its annual gross sales are approximately \$3,000,000. In September, 1935, when the present controversy arose, respondent employed about 1400 persons. It employed over 2000 at the time of the hearing.

Most of the materials used by respondent in the conduct of its business, such as cotton, chemicals, starches, dyes, and fuels, are purchased by it from and through brokers and distributors located in North Carolina. Some of these materials, however, have their origin in States other than North Carolina.

All of respondent's products except towels are manufactured to order. All of the orders for merchandise come to it through the New York offices of an independent commission company which has offices in numerous cities throughout the country and which distributes on a national scale. Upon receipt of an order respondent immediately proceeds to fill such order either by drawing on its stock, in the case of an order for towels, or by manufacturing, in the case of an order for other items. Finished products are loaded by

respondent's own employees in railroad cars on a siding inside the gates of respondent's plant whence they are shipped to all parts of the United States. Between 90 and 95 per cent of its products are shipped to States other than North Carolina, either to ultimate consumers or to manufacturers for further processing. Respondent markets its products under various registered trade names and marks.

## II. THE UNION

Local No. 1221, United Textile Workers of America, is a labor organization of employees of respondent. It was first established in 1919. In 1927 it ceased to function. It became active once more in October, 1933, and had continued active to the time of the hearing. On September 23, 1935, it had approximately 424 members; shortly before the hearing it had approximately 285 members.

## III. EVENTS LEADING TO THE STRIKE OF SEPTEMBER 23, 1935

During the year 1935 there occurred a series of discharges which disturbed many of the employees and particularly the more active Union membership. In March, T. F. Moore, president of the Union, was discharged. Two employee committees discussed this discharge with the management. The latter relied on Moore's production records, which apparently were poor, to demonstrate his inefficiency. Moore had been employed by respondent for 25 years and the committees did not seem completely satisfied that his alleged inefficiency was the reason for the discharge.

On September 17, 1935, J. R. Rogers,<sup>1</sup> secretary of the Union, was discharged. It is not necessary for us to determine the reasons for this discharge, since the Board makes no claim with respect to it, but the circumstances make clear the concern of Rogers' fellow Union workers. Rogers had been employed nine years. On September 17, Rogers' foreman told him that since he was entitled to a better job than he then had, it was not "fair" to ask him to stay, and so he must go. This discharge disturbed the membership. On September 19, the Union voted to strike the following Monday, September 23, unless satisfaction was received from the Company with respect to the discharges and other matters, and it was determined to send a committee to the management.

During the morning of September 21, 1935, a grievance committee of the Union met with J. F. Matheson, respondent's president, and presented to him a typewritten paper<sup>2</sup> stating among other things that the overseers of respondent were engaging in practices which were tending to promote discontent among the employees and that

<sup>1</sup> This name also appears as J. F. Rogers in the transcript of testimony.

<sup>2</sup> Board Exhibit No 9.

the members of the Union were unable to give their best services under such conditions; it requested that respondent adopt a "fair rule for the hiring and discharging of workers", that respondent's overseers be instructed to discontinue their discrimination against Union members, and that the discharged employees be reinstated to their respective former positions; it threatened a strike unless respondent satisfactorily met these requests. Matheson examined this paper and stated: ". . . 'It looks like it is sort of a knife in the back to attempt to pull a strike without any knowledge whatever on our part of any grievance throughout the plant right at the time we are just on the verge of closing the loan<sup>3</sup> and our financial troubles could be straightened out' . . . 'It seems to me that this thing has been approached in the wrong manner here, but, there is one thing certain, we have spent nine months working purely for the interests of the employees of the Mooresville Cotton Mill, at heart, working to get the financial conditions of the mill straightened out so that employment can be maintained, and we hope increased, and there is one thing certain, that after all this work we have done, and since there has been no intimation of any grievance, the mill is going to open Monday morning, and every employee in the Mooresville Cotton Mill that wants to come to work can come.'" The committee concluded that Matheson's remarks were intended to foreclose any further discussion and withdrew. On Monday, September 23, 1935, the strike was called. On that day approximately 1000 of respondent's 1400 employees went out on strike; this strike was still in progress at the time of the hearing.

On the basis of the aforementioned conduct of Matheson on September 21, 1935, the complaint alleges that respondent has refused to discuss certain grievances with the committee of the Union and has thereby engaged in unfair labor practices within the meaning of Section 8, subdivisions (1) and (5) of the Act. We feel we would be warranted in concluding that respondent's conduct constituted an actual refusal to discuss grievances with the committee, but this it is unnecessary to decide. It is not an unfair labor practice within the meaning of Section 8, subdivisions (1) and (5), of the Act for an employer to refuse to discuss grievances with employee representatives when such representatives do not represent a majority of his employees. That the Union, on September 21, 1935, represented only a minority of respondent's employees is clear from the record.

In consequence, the allegations of the complaint under Section 8, subdivisions (1) and (5) of the Act, insofar as they are based on respondent's refusal to discuss grievances with the Union committee, will be dismissed.

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<sup>3</sup> Respondent at this time was negotiating for a loan with the Reconstruction Finance Corporation.

## IV. DISCRIMINATION IN REINSTATEMENT AFTER STRIKE

By striking, respondent's employees did not sever their relation with respondent. Section 2, subdivision (3) of the Act provides in part:

"The term 'employee' shall include any employee, . . . and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other other regular and substantially equivalent employment . . ."

That the work of respondent's striking employees had ceased in connection with or in consequence of a current labor dispute is clear (See Section 2, subdivision (9) of the Act). By virtue of Section 2, subdivision (3) of the Act, these striking employees, in so far as they have not obtained regular and substantially equivalent employment elsewhere, remained employees of respondent at all times after the strike. As such respondent was obliged under the provisions of the Act to refrain from committing any unfair labor practices against them.

After the strike commenced respondent assured a representative of the Board and a conciliator that it would not replace employees for at least four weeks. Respondent, indeed, relies heavily on this pledge as showing its lack of antagonism to the Union or to those active in prosecuting the strike, particularly in picketing. Nevertheless, a number of employees who sought to return, some within the first four weeks, others at later times, were refused reinstatement. At the time of their application for reinstatement none of these employees had obtained regular and substantially equivalent employment elsewhere. As to each of these employees counsel for respondent sought to suggest by his questions that the job sought was filled, and that no other job was available. These refusals, in nearly every case, were accompanied by expressions of hostility based on strike activity. Respondent's witnesses, in some instances, denied that these expressions were made, but the reasons now suggested by respondent for refusing to reinstate are so inconsistent with known facts and respondent's own avowals, that we are inclined to believe that these expressions of hostility were uttered and were indicative of the true reason.

At the end of the first five weeks of the strike only about 900 persons were employed. Among them were new employees, some inexperienced. Respondent continued to hire, and at the time of the hearing had 2000 employees. Respondent has submitted its records down to March 14, 1936, and these show that there has been a con-

tinuous addition of employees down to that date. Shortly after the strike system of written applications for work was installed.

*H. M. Hardy.* Hardy did not walk out until three days after the strike began, having finally been induced to do so by his wife, who was an active striker. He applied for reinstatement the following week and was told by his foreman that he was not going to be worked any more. He asked if his wife would be reinstated and was told no. He applied again a number of times. Summers, the superintendent, told him that he should not have joined with the strikers. Upon respondent's own theory that its freedom from anti-union bias is shown because it kept the jobs open four weeks, there is, of course, no explanation for the refusal in this case. Counsel for respondent, well aware of this, sought to brazen his way out of the dilemma by heckling Hardy on the witness stand. Referring to respondent's refusal to reinstate Hardy, he asked him: "Don't you think they exercised pretty good judgment (in refusing to reinstate him) if you changed your mind on one Thursday and decided you would walk out because you were sympathizing with the strike, and by the next Thursday changed your mind and decided that you were going to work, that you were just about so uncertain you thought they were exercising pretty good judgment in not employing you?"

*John Brown.* Brown was on the picket line. He returned for work three weeks after the strike began. He was told there was no work for him. He was not asked to fill out an application card.

*Van Helms.* Helms applied for reinstatement three weeks after the strike began, and again one week later. His foreman taxed him with having been on the picket line, which Helms denied. He was refused reinstatement. He was not asked to fill out an application blank.

*Mrs. C. W. Sherrill.* Mrs. Sherrill was a hemmer in the towel room. She applied for reinstatement six weeks after the strike began. At first she was told she would have a job. On the same evening she was given a notice of eviction from her house, which was company owned. She returned to the mill the next day. An office girl asked her if she had been on the picket line. She then saw Summers, the superintendent, who asked her if she was not the first in the towel room to belong to the Union. She was never asked to file an application. In the week ending November 9 (the sixth after the strike began), three persons were hired in the towel department; in the week ending November 23, five more persons were hired.

*C. E. Rogers.* Rogers applied for reinstatement in the fourth, seventh, and thirteenth weeks after the strike began. He first applied to Summers, the superintendent, who told him he was not needed and that he was going to "bust the union". Summers said that he would look Rogers up and see what there was against him. When Rogers returned he asked Summers what he had found and

was told "damn plenty". He was not going to reinstate people who threw bombs in his yard. Rogers applied again after Christmas at the regular office. The office girl asked if he had been on the picket line. When he replied that he had, she said that there was no point in his filling out an application blank.

*Van Benfield.* Benfield applied for reinstatement five weeks after the strike began. He asked Summers if he needed any doffers. Summers replied "Yes", then he said, "As far as I am concerned you are still striking". Benfield said, "Well, I need a job", and Summers replied, "Yes, I needed you during the strike, too; I don't intend to work you any more".

*R. M. Waugh.* Waugh did not apply for reinstatement until February, 1936. He had been employed by the respondent for 18 years and was a section man in the spinning room. When Waugh applied he was asked if he had been a striker. On giving an affirmative answer he was told to see Summers. Summers, when asked for reinstatement said, "What do you think I am"? Waugh asked Summers if he had anything against his work. He replied that he did. Waugh commented on the fact that 18 years was a long time to find out that a man's work was not satisfactory. Waugh was on the picket line for six weeks. Waugh received notice of eviction from his company house on October 10, which was less than three weeks after the strike had begun.

*A. J. Helms.* Helms applied for reinstatement in December, 1935. He was told by his foreman that it would be a long time before he was worked. He returned again and saw Summers. Summers asked him if "Tom Moore (the president of the Union discharged the previous March) is done with you", and mentioned the fact that Helms had been on the committee which had taken up Moore's case with the management. Helms was not reinstated. He was a weaver. During the period of his application large numbers of persons were hired in the weaving department.

We think that it is clear that the above employees were refused reinstatement because they were specially active (or were thought to have been so) in prosecuting the strike or in Union affairs prior to the strike, and that by discriminating against them in respect to hire and tenure of employment because of such activity, respondent thereby discouraged membership in the Union, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Respondent seeks to absolve itself of the complaint that it discriminated against striking employees by pointing out that it took back large numbers of strikers and that if the employees in question were not taken back it was because their jobs were filled. But respondent at the same time maintains that it kept the jobs open for

four weeks. At least three of these employees applied for reinstatement within the four week period, and a fourth received an eviction notice within that period. Respondent thus stands convicted, on its own premises, of discrimination with respect to reinstatement. We cannot accept in any of these cases the claim that the job was filled. At the end of the fourth week only 900 persons were at work. At the time of the hearing there were 2,000. Hiring proceeded constantly down, at least, to March 14 (the last date shown in the exhibit). Under these circumstances respondent should be aware how absurd is the contention that it had no available work for the three or four persons here in question who applied after the fourth week. Furthermore, in practically every case there was positive evidence of hostility based on Union activity of the applicant. Respondent's witness, Summers, rebuts some—though not all—of that evidence. But it seems unlikely that all of these witnesses have perjured themselves. Their evidence receives support from surrounding circumstance because it explains conduct of respondent which would be otherwise entirely capricious.

Respondent maintains that since the Union has never called off the strike it cannot complain of a refusal to reinstate some of its members. This complaint has been instituted by the Board, not by the Union. The persons in question—not all of them, by the way, were members of the Union—sought reinstatement despite the strike. These persons were denied reinstatement because of their organizational activity. The Act forbids such discrimination, and it is our duty to order that respondent cease and desist from such practices and that the victims be given appropriate relief. We shall order that they be offered reinstatement to their former positions with back pay from the date of their applications for reinstatement.

#### V. EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The cotton textile industry is one which is singularly characterized by constantly recurring labor strife. Vicious competition has brought low wages and long working hours to the workers employed in that industry. To improve their wages and working conditions employees have attempted to organize but their efforts have frequently proved unsuccessful. Interference with organization activities by employers, and the failure of employers to recognize the organizations of employees, have been a constant source of unrest. Such unrest in the industry has in the past led to strikes and lockouts which have had a disastrous effect on commerce. Board Exhibit No. 16, under the title "Strikes and Lockouts in the Cotton Textile Industry in 1934, and in January to July, inclusive, 1935, by Major Issues Involved", reveals that during the year 1934 and

the first seven months of the year 1935, 94 strikes and lockouts took place in the cotton textile industry. These strikes and lockouts involved issues similar to those involved in the strike in the present case. These labor controversies involved 290,154 men, and resulted in a total of 3,958,951 man-days of idleness. The enormous economic loss incident to such controversies, caused in a great measure by conduct similar to that which gave rise to the strike in this case, and the resultant disastrous effects on commerce, are made apparent by the foregoing statistics.

During the textile strike of 1934 respondent's plant was shut down for a period of three weeks. During this period it purchased no raw materials and shipments of merchandise from its plant were materially reduced. Such failure of production, of purchase of raw materials, and of shipments of merchandise is inherent in respondent's business in the event of any labor trouble in its plant. This is apparent from the testimony of Matheson, respondent's president. At the hearing he testified:

"Q. Do you have any contract business?"

"A. Yes, sir.

"Q. Do contracts contain any provision for the suspension of deliveries in the event of labor trouble? . . . .

"A. There is a provision in all contracts that I know of on cloth that in the event of shutdowns due to strikes or unavoidable and unanticipated reasons that the mill is not liable for delivery during that particular period of time, but, almost in every event where anything like that falls the cancellation follows."

The activities of respondent, set forth in Section IV 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.

#### CONCLUSIONS OF LAW

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

1. The Union is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.
2. The strike, commencing on September 23, 1935, is a labor dispute, within the meaning of Section 2, subdivision (9) of the Act.
3. John Brown, R. M. Waugh, Van Benfield, A. J. Helms, Van Helms, C. E. Rogers, H. M. Hardy, and Mrs. C. W. Sherrill, striking employees of respondent, had not obtained regular and substantially

equivalent employment elsewhere at the time of respondent's refusal to reinstate them.

4. John Brown, R. M. Waugh, Van Benfield, A. J. Helms, Van Helms, C. E. Rogers, H. M. Hardy, and Mrs. C. W. Sherrill were employees of respondent, within the meaning of Section 2, subdivision (3) of the Act, at the time of the latter's refusal to reinstate them.

5. By its refusal to reinstate John Brown, R. M. Waugh, Van Benfield, A. J. Helms, Van Helms, C. E. Rogers, H. M. Hardy, and Mrs. C. W. Sherrill, respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

6. By its refusal to reinstate John Brown, R. M. Waugh, Van Benfield, A. J. Helms, Van Helms, C. E. Rogers, H. M. Hardy, and Mrs. C. W. Sherrill, respondent discriminated against them in respect to hire and tenure of employment, thereby discouraging membership in the Union, and has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

7. 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 respondent, Mooresville Cotton Mills, its officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From discouraging membership in Local 1221, United Textile Workers of America, or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment;

(b) From in any other manner, interfering with, restraining, or coercing its employees in the exercise of the 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 or other mutual aid or protection.

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

(a) Offer to John Brown, R. M. Waugh, Van Benfield, A. J. Helms, Van Helms, C. E. Rogers, H. M. Hardy, and Mrs. C. W. Sherrill, immediate and full reinstatement to their respective former positions without prejudice to any rights and privileges previously enjoyed by them;

(b) Make whole John Brown, R. M. Waugh, Van Benfield, A. J. Helms, Van Helms, C. E. Rogers, H. M. Hardy, and Mrs. C. W. Sherrill, and each of them, for any losses of pay they have suffered by reason of respondent's refusal to reinstate each of them on the date when each applied for reinstatement, by payment to each of them respectively of a sum of money equal to that which each would normally have earned as wages from the date of the application for reinstatement by each of them to the date of offer of reinstatement as required above, less any amount earned by each during such period;

(c) Post notices immediately in conspicuous places throughout the plant, 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;

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

The allegations of the complaint under Section 8, subdivisions (1) and (5) of the Act, insofar as they are based on respondent's refusal to discuss grievances with the Union committee, are hereby dismissed.