In the Matter of ATLAS MILLS, INC. *and* TEXTILE HOUSE WORKERS UNION No. 2269, UNITED TEXTILE WORKERS OF AMERICA

Case No. C-107.—Decided July 14, 1937

Silk and Rayon Jobbing Business—Interference, Restraint or Coercion: expressed opposition to labor organization, threats of retaliatory action; discrediting union; attempts to persuade employees to resign from union; denial of right of employees to be represented by non-employees; attempt to interfere with right to strike; during strike: soliciting and inducing individual strikers to return to work—*Discrimination:* discharge; non-reinstatement of discharged employees on strike—*Condition of Employment:* non-membership in union—*Strike:* provoked by employer's unfair labor practices—*Employee Status:* during strike—*Unit Appropriate for Collective Bargaining:* organization of business; occupational differences—*Representatives:* proof of choice: membership in union—*Collective Bargaining:* refusal to negotiate with representatives; employer's duty as affected by strike; dilatory tactics, using negotiating process as strike-breaking device; meeting with representatives but with no *bona fide* intent to reach an agreement—*Reinstatement Ordered:* employees discharged and denied reinstatement following strike—*Back Pay:* awarded.

Mr. Lester Levin for the Board.

Mr. Philip S. Birnbaum, of New York City, for the respondent.

Mr. Ralph T. Seward and *Mr. Hyman A. Schulson*, of counsel to the Board.

DECISION

STATEMENT OF CASE

Upon charges duly filed by the Textile House Workers Union No. 2269, United Textile Workers of America, herein called Local 2269, the National Labor Relations Board, herein called the Board, by Elinore Morehouse Herrick, Regional Director for the Second Region (New York, New York), issued its complaint dated May 1, 1936, against Atlas Mills, Inc., New York City, herein called the respondent. The complaint, a notice of hearing, and an amended notice of hearing were duly served on all parties. The respondent filed no answer or other pleading.

In substance the complaint alleged that on about April 10, 1936, the respondent, a New York corporation engaged at a place of business in New York City in the sale and shipment of rayons and silks in interstate commerce, had refused to bargain collectively with Local 2269, although at that time Local 2269 by its organizer, David M. Livingston, had been designated by a majority of the employees in the respondent's shipping department as their representative for the

purposes of collective bargaining, and although the shipping department constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint further alleged that on about April 10, 1936, the respondent, by its officers and agents, discharged and had since refused to reinstate, Nat Hoffman, Sidney Micheloff,[1] Tom De La Curti,[2] Marvin Glay, Eddie Fernandez, Milton Schwartz, Rudy Graff, Jack Silver, Al Goldwasser, Al Schneider, Lou Malecki, Arthur Greenberg, Harold Spielman, Morton Goldberg, and Ben Richman for the reason that they had joined and assisted Local 2269. By these and by other acts, the respondent was alleged to have engaged in unfair labor practices within the meaning of Section 8, subdivisions (1), (3), and (5) and Section 2, subdivisions (6) and (7) of the Act.

On May 25 and 26, 1936, a hearing was held in New York City before Emmett P. Delaney, the Trial Examiner duly designated by the Board. The respondent appeared and took part in the hearing. During the course of the hearing counsel for the Board moved to dismiss the complaint as to Nat Hoffman, Sidney Micheloff, Marvin Glay, Eddie Fernandez, and Al Schneider, it being shown that these employees had been reinstated by the respondent. The motion was granted. At the close of the hearing, counsel for the respondent moved to dismiss the complaint upon the ground that the allegations had not been proved. The motion was denied. Counsel for the Board then moved to conform the pleadings to the proof. The motion was granted.

Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties.

On June 6, 1936, the Trial Examiner filed his Intermediate Report finding that the respondent had engaged in and was engaging in the unfair labor practices alleged in the complaint and recommending in substance that the respondent cease and desist therefrom, offer to reinstate the ten remaining discharged employees with back pay, and upon request proceed to bargain collectively with Local 2269. Exceptions to the Intermediate Report were thereafter filed by the respondent.

The Board has reviewed all the rulings made by the Trial Examiner on motions and objections and other matters and finds that no prejudicial errors were committed. The rulings are hereby affirmed. We have further considered the exceptions to the Intermediate Report and find no merit in them. They are hereby overruled.

[1] Referred to in the complaint as Syd Michaeloff.
[2] Referred to in the complaint as Tom Dellecurti

On June 27, 1936, an order was made in the United States District Court for the Southern District of New York approving the filing of the respondent's petition for relief under the provisions of Section 77–B of the Bankruptcy Act, and continuing the respondent in possession of its assets and properties. Thereafter, notice of the pendency of this proceeding and the proposed issuance of the decision, findings of fact, conclusions of law, and order herein was duly given by the Board to said Court, which declined to interfere therewith.

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

Findings of Fact

I. THE RESPONDENT AND ITS BUSINESS

The respondent, Atlas Mills, Inc., is a New York corporation, having its principal place of business at 1441 Broadway, New York City, where it is engaged in the purchase, reception, sale, and shipment of rayons and silks. All the stock of the respondent is held by its president and vice-president, Charles Goldman and O. S. Goldman, respectively. They hold identical offices and all the stock in the Atlas Silk Mills of Virginia and the Stuart Silk Mills, corporations whose plants are located respectively in Martinsville and Stuart, Virginia.

The respondent, in the vernacular of the trade, is a "jobber"; it purchases rayons and silks in the yarn or woven form, has the material shipped to various spinning, weaving, dyeing, and finishing plants to be converted at its order into finished goods, receives these goods at its New York office, and sells and ships them to its customers throughout the United States. It does no manufacturing itself, but confines its activities to directing the transfer of its goods from plant to plant, specifying the processes to which they are to be subjected, securing orders for them when finished, and in New York inspecting, measuring, and shipping them.

The respondent's entire supply of raw silk is shipped to it from Japan, the respondent receiving it in New York and sending it on to various mills which in turn weave, dye, and finish it. Silk is also purchased by the respondent in the form of "gray" woven cloth and sent at its order to various dyeing and finishing plants. From 25 per cent to 50 per cent (or in slack times as much as 90 per cent) of the silk handled by the respondent is woven by the Atlas Silk Mills of Virginia and the Stuart Silk Mills. Less than three per cent is woven at mills located within the State of New York.

More than 75 per cent of the rayon yarn purchased by the respondent comes from States other than New York, most of it from Tennessee, but portions also from Virginia, New Hampshire, and Rhode Island. As in the case of silk, the rayon yarn is woven into cloth

at the respondent's direction; 70 per cent of the respondent's rayon cloth, however, is purchased already woven. No rayon cloth used by the respondent is woven in the State of New York.

The dyeing plants for both the respondent's silk and rayon are located in New Jersey and Rhode Island. When they are shipped from the dyers to the respondent's plant at New York, the goods are completely finished and ready for sale.

The respondent employs 15 salesmen, who operate throughout the United States soliciting orders for the respondent's rayons and silks. These orders are filled at the respondent's office in New York. If the goods ordered are already in stock, as is usual, the order is filled and the goods are sent out the same day. If the goods are not in stock, but must be dyed and finished to order, a week or ten days may elapse before the order is filled. About 85 per cent of the respondent's materials are shipped to States other than New York.

II. THE UNION

Textile House Workers Union No. 2269, United Textile Workers of America, affiliated with the American Federation of Labor, is a labor organization which admits to membership any person actually working in a textile mill. Its membership also includes employees in a number of textile wholesale houses in the New York metropolitan area.

III. THE APPROPRIATE UNIT

The respondent's employees at its New York office fall naturally into four classifications: (a) clerical employees; (b) salesmen; (c) shipping employees; and (d) miscellaneous or "general" employees. The salesmen are a distinct group, operating for the most part out of the office, and returning only to turn in their orders to be filled. The clerical staff attends to the bookkeeping, the receiving and tabulating of orders, the drafting of instructions for the shipping of goods and of bills to accompany them, etc. The actual handling of the goods is done by the employees in the shipping department. Various groups of employees in this department receive incoming materials and place it in stock; fill orders by removing goods from stock for shipment; measure the goods; cut pieces of the desired lengths; charge them to customers; and wrap, weigh, and ship them. The respondent employs one or two employees in addition to those in the above classifications who do odd jobs and general work.

A unit composed of the employees in the shipping department of the Atlas Mills, Inc., consisting of the employees engaged in receiving incoming merchandise, filling orders, measuring, cutting, charging, packing, and shipping the goods, and excluding all clerical, sales, supervisory, and general employees, 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 constitute 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.

IV. REPRESENTATION BY LOCAL 2269 OF THE MAJORITY IN THE APPROPRIATE UNIT

On the evening of April 3, 1936, 13 employees in the shipping department of the respondent met with David M. Livingston, an organizer for Local 2269, to discuss working conditions at the respondent's plant. At that meeting these 13 employees signified their desire to join Local 2269, filled out application cards, and paid all or part of their initiation fee. Subsequently, on April 8, 1936, at least two more employees from the shipping department applied for admission to Local 2269. In due course, membership cards and books were issued to all of these 15 employees, who are those named in the complaint as having been discharged for joining and assisting Local 2269. There is evidence that two other employees applied for membership at the meeting on April 8, 1936, but their identity is not made clear in the record.

At the meeting on April 8, 1936, it was decided, by the unanimous vote of the employees who had applied for membership in Local 2269, that David M. Livingston should represent them in collective bargaining with the respondent and should forthwith approach Charles Goldman, the respondent's president, to open negotiations. At the same time a committee was appointed consisting of Nat Hoffman, Sidney Micheloff, and T. De La Curti, to see Goldman and ask him to negotiate with Livingston, as representative of Local 2269. These instructions to the committee were repeated at a meeting on April 9, 1936. During the succeeding weeks of negotiation until May 6, 1936, Livingston reported back to the membership frequently.

As set forth below, Livingston, a representative of the respondent, and the Regional Director for the Second Region met on April 16, 1936, and compared the membership records of Local 2269 with a payroll of the week of April 9, 1936, submitted by the respondent. A classification of all the employees in the respondent's shipping department made by Elinore Morehouse Herrick, Regional Director, in the presence of a representative of the respondent and without any objection on his part, discloses a total of 21 employees in the respondent's shipping department. Two letters submitted to the Board's Regional Attorney by the respondent, dated August 19, 1936, and October 29, 1936, listing the employees in the respondent's shipping department as of the time of the hearing before the Trial Examiner show that, after giving the respondent all benefits of doubt,

there was at most a total of 25 employees in that department, and that the 15 members of Local 2269 constituted a clear majority. There was no evidence that there had been any change in the shipping department since Livingston first attempted to bargain with the respondent on April 9, 1936. As a result, the Regional Director advised the respondent in writing that Local 2269 represented a majority of the employees in the respondent's shipping department.

We therefore find that from April 9, 1936 to May 6, 1936, Local 2269 was the duly designated representative of the majority of the employees in the appropriate unit, and, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

V. THE UNFAIR LABOR PRACTICES

A. *The discharges*

On April 9, 1936, pursuant to the instructions voted the preceding evening, Livingston called at the respondent's office, stated that he came as representative of those of the respondent's employees who had joined Local 2269, and asked to see Charles Goldman, to open negotiations concerning working conditions. He was told that Goldman was out, but when he insisted on waiting he was finally received by Harry Goldman, head of the shipping department, and Joseph G. Eichenbaum, the respondent's certified public accountant. Asked by them for his credentials and for evidence that the respondent's employees were members of the Union, he produced what he stated to be a written list of the names of the employees who had joined Local 2269. He had no personal credentials, but stated that Nat Hoffman, Tom De La Curti, and Sidney Micheloff had been appointed a committee to ask Charles Goldman to negotiate with him. Harry Goldman and Eichenbaum replied that as he was without credentials they did not know that he was a representative of Local 2269, that the list of names could have been prepared by anyone and was no evidence that their employees had joined Local 2269, and that if their employees were dissatisfied they could confer with the officers of the Company at any time and did not need outsiders to speak for them. Livingston asked if they would see him if the committee told them that he was their representative. They replied that that could be discussed when the committee so informed them. With that the conversation terminated.

On the same day, Nat Hoffman, Sidney Micheloff and Tom De La Curti were called into Charles Goldman's office. Harry Goldman and Eichenbaum were there. Charles Goldman asked the three

employees whether they had not just received raises in pay, whether they were dissatisfied, and if they were, why they did not come in themselves to discuss the matter instead of sending someone else to talk for them. They replied that they were satisfied with their own wages, but that lay-offs were frequent and that they were afraid that if they approached the management themselves they would lose their jobs. Goldman asked them whether, if he promised that they would not lose their jobs, they would promise not to go out on strike. They agreed. Sidney Micheloff, a hostile witness testifying for the Board under subpoena, stated that at Goldman's request they also promised to give up all connection with Local 2269. Despite their instructions, the committee did not ask Goldman to see Livingston.

That evening Livingston and the committee reported their conversations to a meeting of Local 2269. It was decided to send the committee back to Charles Goldman with the same instructions as before: i. e., to ask him to negotiate with Livingston as representative of Local 2269. It was voted, furthermore, that if Goldman refused to see Livingston, the union members would strike.

Early in the morning of the next day, April 10, 1936, the committee approached Harry Goldman and told him that they had been instructed to ask him to see their representative, Livingston, and that if he refused to see him the employees would strike. Harry Goldman replied that as Charles Goldman had stepped in and received their promise to do nothing without consulting him, he himself had no authority to make a decision at that time. Thereupon the committee left.

At about noon on the same day, the committee returned to Harry Goldman and told him that they had reported their conversation to the other union members who had demanded an immediate and definite answer. Harry Goldman at once called all the employees in the shipping department into his office. He addressed them briefly, stating, according to his own testimony, that they were all getting along satisfactorily, that he did not want to see any of them leave, and that he hoped they would reconsider their decision. He then asked them whether they wanted to remain with the company or go out on strike, and went down the list of employees asking each whether he desired to go or stay. All the employees named in the complaint left.

There is evidence in the record that Harry Goldman went a great deal further in his address than he admitted at the hearing; that, referring to the efforts of an outside organization to unionize the plant, he stated that they could not have anything like that there; and that the choice he presented the employees was expressed substantially as follows: "Those who want to stay with us without any

outsider, all right; the others leave, go and get your pay." In the setting of this case and the totality of its circumstances, we are inclined to give credence to this testimony. The occasion for the meeting was the effort of Local 2269 to open negotiations with the respondent as representative of its employees. As part of that effort a strike had been threatened. It would be strange indeed if Harry Goldman had discussed this situation without referring to the union which caused it. But we do not need to find that any specific language was used, or that the choice presented to the employees was phrased in any particular way. The real alternative, inherent in the situation itself, was clear: either to give up connection with Local 2269 and abandon their legitimate weapon, the strike, or leave the respondent's employ. To condition employment upon the abandonment by the employees of the rights guaranteed them by the Act is equivalent to discharging them outright for union activities.

The discharged members of Local 2269 immediately declared themselves on strike and commenced picketing the respondent's premises. Though the picketing was discontinued on or about May 5th, all but five of the employees were still on strike at the time of the hearing.

It must be remembered that by striking, the employees did not sever their status as such. Here the strike was caused by the respondent's discriminatory discharges and hence the employees ceased work as a consequence of an unfair labor practice on the part of the respondent. Since they have not obtained any other regular and substantially equivalent employment, and since their work has ceased because of an unfair labor practice, the discharged employees have been since April 10, 1936, and still are "employees" of the respondent within the meaning of Section 2, subdivision (3) of the Act.

We find that the respondent, by discharging Tom De La Curti, Milton Schwartz, Rudy Graff, Jack Silver, Al Goldwasser, Lou Malecki, Arthur Greenberg, Harold Spielman, Morton Goldberg, and Ben Richman for the reason that they joined and assisted Local 2269, discriminated against them in regard to hire and tenure of employment, thereby discouraging membership in a labor organization. We further find that by such discrimination, the respondent has interfered with, restrained, and coerced 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 purposes of collective bargaining and other mutual aid and protection, as guaranteed in Section 7 of the Act. We also find that the strike, commencing on April 10, 1936, is a labor dispute.

B. *The refusal to bargain collectively*

As stated above, it is clear that both Harry and Charles Goldman refused to negotiate with the representatives of its employees on April 9 and 10, 1936. To answer a request for collective bargaining from a duly authorized labor organization by the discharge of all employees who refuse to give up their affiliation with it is, taken by itself, a conclusive and effective refusal to bargain. The respondent, therefore, must be found to have refused to bargain collectively with Local 2269 on April 10, 1936, and the only question before us is whether that refusal was continued during the subsequent weeks of negotiation.

On April 13, 1936, Philip S. Birnbaum, the respondent's attorney, arranged a meeting with Livingston and the committee. At that meeting Birnbaum stated that he had no authority to represent the respondent. He urged the employees to go back to work, however, and promised that if they did so, he would do everything in his power to adjust the difficulties between the striking employees and the respondent. Livingston and the committee rejected this proposal on the ground that they could not recommend the abandonment of the strike before negotiations for a settlement had been even begun. Though they reported the offer to the members of Local 2269, no employees returned to work.

On April 16, 1936, Birnbaum, Livingston, and the committee met with the Regional Director for the Second Region at the Board's Regional office. At that meeting, the membership records of Local 2269 were compared with a payroll submitted by the respondent. On the basis of this comparison, the Regional Director sent a letter to the respondent stating that Local 2269 represented a majority of the employees in the shipping department of the respondent, an appropriate unit for the purpose of collective bargaining. On April 16, 1936, Birnbaum addressed a letter to the Regional Director stating that he had full authority to represent the respondent in the controversy with its employees, that since April 13, 1936, the respondent had been willing to have the employees return to their regular employment, that based upon her certification he would recognize Local 2269 as the representative of the employees in the shipping department, but that he was writing the letter without prejudice to the rights of either the respondent or its employees on strike on April 16,1936.[3] According to Livingston's uncontradicted testimony, Livingston was anxious to begin negotiations for a settlement at once, but Birnbaum refused and would make no appointment earlier than April 21, 1936.

[3] Respondent's Exhibit No 1.

On April 21, Birnbaum, Livingston, and the Committee met at Birnbaum's office. Livingston put forward the demands of Local 2269. They included a 40 hour week, an $18 a week minimum wage, back pay for strikers, and a two weeks' vacation, the agreement to be in writing. Birnbaum repeated that he had full authority to represent the respondent and would deal with Local 2269 since he was required to by law. He stated, however, that before giving a final answer on any proposal he would have to consult Charles Goldman and that Goldman would not consent to placing any agreement in writing. They agreed to meet again the following day, but at Birnbaum's request the meeting was later postponed to April 23, 1936.

There followed a series of meetings between Livingston and Birnbaum at each of which Birnbaum brought forward at least one entirely new proposal, important enough to alter the entire basis of negotiations, the terms of each being further removed from the demands of Local 2269 than that which preceded it. On April 23, at Birnbaum's suggestion, they took as a basis for settlement an agreement recently concluded between Livingston, as representative of Local 2269, and the Benrose Silk Corporation. An understanding was reached which provided in substance for a $15.00 minimum wage, for a 44 hour week, a week's vacation with pay for employees working more than one year, a $2.00 increase for six employees, regular pay for overtime and during certain legal holidays, the sharing of work during slack periods, $10.00 back pay for strikers returning to work, and recognition of Local 2269 as long as it represented a majority of the employees. These typewritten provisions Birnbaum stated he would have to take back to Charles Goldman for his approval.

On the following day, Birnbaum returned from Goldman with word that the respondent would insist upon a 48 hour week and would accept a minimum wage only for employees who had worked for more than one year. Other employees were to be paid at any rate the respondent desired for the first two months and at $12.00 minimum for the remainder of their first year. Though the proposals regarding vacations, holidays, and union recognition were accepted, the provisions for back pay and for increases for certain employees were rejected outright. Livingston would not accept the new hour and minimum wage provisions, stating that he could not consent to the creation of an apprentice class for unskilled employees. Birnbaum agreed to take this decision back to Goldman and a further meeting was arranged for April 27th.

When they met on April 27th, Birnbaum informed Livingston that Goldman had decided that since many of the striking employees had been taken on during the rush season which was coming to an end, he would no longer consider them his employees and would

reinstate only seven. When Livingston objected, Birnbaum threw up his hands, stated he could not settle the matter and suggested that Livingston see Charles Goldman himself. Livingston agreed and put forward the final proposal that a majority of the employees be taken back at once, the rest within a month, at $15.00 minimum wage, the agreement to be in writing. Birnbaum agreed to arrange a meeting with Goldman.

On the next day, Birnbaum called Livingston and said Goldman was out of town and would not be back until sometime in the following week. On Tuesday of that week, before negotiations could be continued, five of the striking employees went back to work, the strike as an effective bargaining weapon was broken, and any prospect of securing agreement vanished.

Between two and three weeks after the discharges, while the respondent was in the midst of the prolonged negotiations with Livingston above-described, Neron, one of its salesmen, sought out Sidney Micheloff, a member of the negotiating committee of Local 2269, and took him to lunch. It was apparently unusual for the respondent's salesmen thus to fraternize with the employees in the shipping department; and Micheloff testified that he had never before had lunch with Neron and was not very friendly with him. During lunch Neron asked Micheloff if he did not want to come back to work. Micheloff said he did and stated that he would be willing to relinquish his membership in the Union. The same salesman later approached Al Schneider and Nat Hoffman. These three employees were among the oldest and highest paid employees in the shipping department; Micheloff testifying that he had received as much as $18.00 a week and that after talking with Neron he had concluded that he was foolish to continue in a strike to better the $11.00 or $12.00 paid to other shipping employees.

On May 4, 1936, shortly before Livingston was to open direct negotiations with Goldman, a friend called Micheloff and told him Harry Goldman would give him a job if he wanted it. Thereupon Micheloff, together with Al Schneider and Nat Hoffman, called on Harry Goldman and asked for their jobs. All three were reinstated after they stated that they would give up their connection with Local 2269. Fernandez and Glay were reinstated the following day after making a similar promise. Micheloff testified that it was understood that if the other employees applied for reinstatement seven or eight would be taken back at once and the rest as soon as possible. Though all or most of the others have applied for reinstatement they have been refused.

That renunciation of affiliation with Local 2269 was a condition precedent to reinstatement is clear on the face of the record. A definite promise to withdraw from Local 2269 was given by all of the

five individuals reinstated. Though Micheloff, a most unwilling witness testifying under subpoena, stated that he was not explicitly requested to make such a promise, he nevertheless admitted that he felt called upon to offer it whenever his reinstatement was discussed, either with Neron or with Goldman. The discharge of April 10, 1936, moreover, resulted from a refusal of these employees to make this very promise which they made at the time of their reinstatement. Only one inference from such facts can be drawn. We find that the respondent conditioned the reinstatement of five of its employees in the shipping department upon their abandonment of their right to join or assist Local 2269, thereby interfering with, restraining, and 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 purposes of collective bargaining and other mutual aid and protection, as guaranteed in Section 7 of the Act.

The respondent asserts that throughout the period of the above described negotiations it fulfilled its obligation under the Act to bargain collectively with representatives of its employees and was and is ready to continue to fulfill that obligation. There is no doubt that the respondent negotiated with the representatives of Local 2269, meeting with them, receiving proposals, and putting forward counter-proposals of its own. But there is equally little doubt that if the obligation of the Act is to produce more than a series of empty discussions, bargaining must mean more than mere negotiation. It must mean negotiation with a *bona fide* intent to reach an agreement if agreement is possible. Negotiations with an intent only to delay and postpone a settlement until a strike can be broken is not collective bargaining within the meaning of Section 8, subdivision (5) of the Act. As we said in *Matter of S. L. Allen & Company, Inc., a corporation, and Federal Labor Union Local No. 18526*, Case No. C–60. Decided May 13, 1936:[4]

> To meet with the representatives of his employees, however frequently, does not necessarily fulfill an employer's obligations under this Section. A construction of the collective bargaining provision which overlooked the requirement that a *bona fide* attempt to come to terms must be made, would substitute for non-recognition of the employees' representatives the incentive simply to hamstring the union with endless and profitless "negotiations." In the absence of an attempt to bargain in good faith on the employer's part, it is obvious that such "negotiations" can do nothing to prevent resort to industrial warfare where a dispute of this nature arises.

[4] I N. L. R. B. 714.

The present record persuades us that the respondent did not bargain in good faith with Local 2269. The discharges which met the first request to bargain; the delays and postponements, always at the instance of the respondent's representative, that characterized the negotiations once they were begun; the refusal to sign a written agreement; the constant changes in the basis of negotiations, each time further away from the desires of Local 2269; the efforts made by one of the respondent's agents while the negotiations were still going on to win the higher paid leaders away from Local 2269, break the strike, and avoid the necessity to bargain at all; these are not indicia of a *bona fide* effort to reach an agreement. Rather they suggest a design, facilitated by the youth and inexperience of the striking employees, to use the negotiating process as a strike-breaking device.

We find that on about April 10, 1936, and thereafter, the respondent refused to bargain collectively with Local 2269 as the representative of the employees in its shipping department.

VI. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

The respondent ordinarily ships goods from its New York office the same day that the order for them is received. This rapid shipment is one of the important facilities which it supplies to its customers. Interruption of the smooth functioning of the shipping department inevitably results in lessening this rapidity of shipment. The respondent admitted at the hearing that the discharges and strike on April 10, 1936, interfered with its shipments on that day. The record does not indicate its effect during succeeding days, but it is hard to believe that, with more than two-thirds of its normal staff on strike, including five of the most experienced employees, normal operations were resumed within 24 hours.

We find that the activities of the respondent set forth in Section V above, occurring in connection with the operations of the 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

To repair the damage done by the discharges of April 10, 1936, we will order the respondent to offer to reinstate the ten employees whose names remain in the complaint, with back pay. If the respondent can show, however, that due to the seasonal character of its business, certain of the employees of low seniority would not have been employed full time during the entire period which has elapsed since the discharges, we will order the payment to them of only that amount

of back pay which they would in fact have earned under normal conditions.

We will also order the respondent to bargain collectively with Local 2269 as representative of the employees in its shipping department. That at the time of the hearing five members of Local 2269 had renounced their union affiliation is immaterial under the circumstances of this case. We have found that such renunciation was the condition upon which these five were reinstated and that the imposition of such a condition was an unfair labor practice within the meaning of Section 8, subdivision (1) of the Act. We are ordering the respondent to inform these five employees that this condition has been removed. In the presence of such a finding and order, to refrain from ordering the respondent to bargain collectively with Local 2269, would be to hold that the obligation of one subdivision of the Act may be evaded by the successful violation of another; that an original refusal to bargain with the duly chosen representatives of his employees may be cured if only the employer can bring to bear sufficient interference, restraint, and coercion to undermine the representatives' majority support before a hearing under this Act can be held. We can not permit the purposes of the Act to be thus undermined.

Conclusions of Law

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

1. Textile House Workers Union No. 2269, United Textile Workers of America, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The strike, commencing on April 10, 1936, is a labor dispute, within the meaning of Section 2, subdivision (9) of the Act.

3. The respondent's employees who were discriminatorily discharged on April 10, 1936, were employees of the respondent at the time of their discharge, and are still employees of the respondent, within the meaning of Section 2, subdivision (3) of the Act.

4. The employees in the shipping department of Atlas Mills, Inc., excluding all clerical, sales, supervisory, and general employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

5. By virtue of Section 9 (a) of the Act, Textile House Workers Union No. 2269, United Textile Workers of America, having been designated as their respresentative by a majority of the employees in an appropriate unit, was on April 10, 1936, and at all times thereafter has been, the exclusive representative of all employees in such unit for the purpose of collective bargaining.

6. By refusing and continuing to refuse to bargain collectively with Textile House Workers Union No. 2269, United Textile Workers of America, as the exclusive representative of the employees in its shipping department, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (5) of the Act.

7. By discriminating in regard to the hire and tenure of employment of Tom De La Curti, Milton Schwartz, Rudy Graff, Jack Silver, Al Goldwasser, Lou Malecki, Arthur Greenberg, Harold Spielman, Morton Goldberg, and Ben Richman, thereby discouraging membership in Textile House Workers Union No. 2269, United Textile Workers of America, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

8. By conditioning the reinstatement of Nat Hoffman, Sidney Micheloff, Al Schneider, Marvin Glay, and Eddie Fernandez, upon the abandonment of their right to join or assist Textile House Workers Union No. 2269, United Textile Workers of America, by refusing and continuing to refuse to bargain collectively with Textile House Workers Union No. 2269, United Textile Workers of America, and by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

9. 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 foregoing 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 Atlas Mills, Inc., as the respondent herein, and as debtor in possession pursuant to Section 77–B of the Bankruptcy Act, and its successors in bankruptcy, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of their rights of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act;

(b) Discouraging membership in Textile House Workers Union No. 2269, United Textile Workers of America, or in any other labor organization of its employees, by discharging, refusing to reinstate employees, or otherwise discriminating in regard to hire or tenure of

employment or any term or condition of employment, or by threats of such discrimination against employees who have joined or assisted Textile House Workers Union No. 2269, United Textile Workers of America, or any other labor organization of its employees;

(c) Refusing to bargain collectively with Textile House Workers Union No. 2269, United Textile Workers of America, as the exclusive representative of the employees in its shipping department.

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

(a) Upon request bargain collectively with Textile House Workers Union No. 2269, United Textile Workers of America, as the exclusive representative of its employees in the shipping department in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Offer to Tom De La Curti, Milton Schwartz, Rudy Graff, Jack Silver, Al Goldwasser, Lou Malecki, Arthur Greenberg, Harold Spielman, Morton Goldberg, and Ben Richman immediate and full reinstatement to their former positions without prejudice to any rights and privileges;

(c) Make whole said Tom De La Curti, Milton Schwartz, Rudy Graff, Jack Silver, Al Goldwasser, Lou Malecki, Arthur Greenberg, Harold Spielman, Morton Goldberg, and Ben Richman for any loss of pay they have suffered by reason of their discharge by payment to each of them, respectively, of a sum of money equal to that which each of them, respectively, would normally have earned as wages during the period from the date of their discharge to the date of such offer of reinstatement, less any amount earned by each of them, respectively, during said period;

(d) Inform Nat Hoffman, Sidney Micheloff, Al Schneider, Marvin Glay, and Eddie Fernandez in writing that they are free to join or assist Textile House Workers Union No. 2269, United Textile Workers of America, or any other labor organization of its employees, and that their status as employees of Atlas Mills, Inc., will not be affected by such action on their part;

(e) Post notices in conspicuous places in the plant stating: (1) that the respondent will cease and desist in the manner aforesaid; (2) that its employees are free to join or assist Textile House Workers Union No. 2269, United Textile Workers of America, or any other labor organization of its employees and that their status as employees of Atlas Mills, Inc., will not be affected by such action on their part; and (3) that such notices will remain posted for a period of thirty (30) consecutive days;

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