

In the Matter of MEMPHIS FURNITURE MANUFACTURING COMPANY and  
FURNITURE WORKERS LOCAL UNION No. 1174, UNITED BROTHERHOOD  
OF CARPENTERS & JOINERS OF AMERICA

*Cases Nos. C-118 and R-35.—Decided July 15, 1937*

*Furniture Industry—Interference, Restraint or Coercion.* expressed opposition to labor organization, threats of retaliatory action; surveillance of union meetings; questioning employees regarding union affiliation; attempts to persuade employees not to join or to resign from union; refusal to recognize or negotiate with union representatives—*Strike:* averted by filing of charges with Board—*Discrimination:* discharge—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. Walter G. Cooper, Jr.,* for the Board.

*Canale, Glankler, Loch & Little,* by *Mr. Phil M. Canale,* of Memphis, Tenn., for the respondent.

*Mr. N. Fowler,* of Memphis, Tenn., for the Union.

*Hilda Droshnicop* and *Mr. Hyman A. Schulson,* of counsel to the Board.

## DECISION

### STATEMENT OF CASE

Upon charges duly filed by the Furniture Workers Local Union No. 1174, United Brotherhood of Carpenters and Joiners of America, herein called the Union, the National Labor Relations Board, herein called the Board, by Charles N. Feidelson, Regional Director for the Tenth Region (Atlanta, Georgia), issued its complaint dated May 9, 1936, against the Memphis Furniture Manufacturing Company, Memphis, Tennessee, herein called the respondent. The complaint and notice of hearing thereon were duly served upon the respondent and the Union.

The complaint alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, in violation of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. In reference to the unfair labor practices the complaint alleged in substance that the respondent discharged the following 13 employees upon the dates set forth: W. O. Sullivan, A. U. Barmer, B. A. Mauldin, and Troy Pugh, on April 7, 1936; C. B. Forester, W. E. Jordan, J. E. Choate, H. F. Hoppes, and M. Kay on April 8, 1936; R. R. Jordan on April 10, 1936; James Western on April 11, 1936; Alonzo Dabney on April 13, 1936, and N. W. Bowers

on April 16, 1936, for joining and assisting the Union and for engaging in concerted activities for the purpose of collective bargaining and other mutual aid and protection, and that the respondent discharged Mrs. Barmer on April 8, 1936, because of the union activities of her husband.

The respondent filed an answer to the complaint alleging that it had not discharged the employees named in the complaint, other than Mrs. Barmer, or refused to reinstate them, but that they were temporarily laid off in due course of business and would be reinstated when their employment was needed. As to Mrs. Barmer, the respondent admitted that she was discharged but denied the reasons therefor alleged in the complaint.

At the same time that the charge was filed, the Union also petitioned the Board for an investigation and certification of representatives pursuant to Section 9 (c) of the Act. On May 9, 1936, the Board directed the Regional Director to conduct an investigation and provide for an appropriate hearing upon due notice, pursuant to Section 9 (c) of the Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended. Pursuant to notice, a joint hearing on the complaint and petition was held in Memphis, Tennessee, on May 21, 22, 25, 26, and 27, 1936, before Walter Wilbur, the Trial Examiner duly designated by the Board. The Board, the Union, and the respondent were represented by counsel.

At the hearing, the respondent, appearing specially, interposed a motion to dismiss on the ground (1) that the Act is unconstitutional in that it violates the Fifth and Tenth Amendments to the Constitution, and (2) that the authority granted by the Act, even if constitutional, does not extend to jurisdiction over the respondent. The respondent further moved to dismiss the complaint for insufficiency. The Trial Examiner denied the motion. The respondent's motion to make the complaint more specific in respect to the allegations of paragraph 12 thereof was granted and paragraph 12 was thereupon stricken from the complaint on motion of the regional attorney. A similar motion with respect to the general allegations respecting the interstate commerce character of the respondent's business was denied. At the hearing the motion of counsel for the Board to consolidate the hearings in both the complaint and representation cases was granted.

Full opportunity to be heard, to cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties. Counsel for the Board and counsel for the respondent filed briefs to which we have given due consideration.

Subsequently, the Trial Examiner filed his Intermediate Report, finding that the discharge of all those named in the complaint, with

the exception of Troy Pugh, was in violation of the Act, and recommending their reinstatement with back pay. Exceptions to the Intermediate Report were thereafter filed by the respondent.

On July 9, 1937, counsel for the respondent, pursuant to his request, orally argued the cause upon the record before the Board in Washington, D. C.

On July 13, 1937, the Board granted the Union permission to withdraw its petition.

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 fully considered the exceptions to the Intermediate Report and find no merit in them. They are hereby overruled.

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

### FINDINGS OF FACT

#### I. THE RESPONDENT AND ITS BUSINESS

The respondent is a corporation organized under the laws of the State of Tennessee and is engaged in the production, sale, and distribution of furniture. Its sole plant and place of business is located in Memphis, Tennessee.

For the year ending April 30, 1936, the respondent employed an average of 446 employees with a pay roll for the year of \$347,697.77. The value of its manufactured product during the same period amounted to \$1,231,784.61. The respondent maintains an average stock of manufactured products in its plant warehouse of the value of \$100,000 to \$200,000.<sup>1</sup>

The respondent purchases its raw materials, consisting of lumber, glass, varnish, hardware, and other materials both within and without the State of Tennessee; purchases from other states amount to approximately 50 to 60 per cent. Machinery and manufactured parts are purchased in about equal proportions within and without the State.

Somewhat more than half of the respondent's products are sold outside of Tennessee, principally within the States of Arkansas, Texas, Mississippi, Missouri, Kentucky, Georgia, Alabama, and Louisiana.

#### II. THE UNION

Furniture Workers Local Union No. 1174, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, is a labor organization which was chartered in 1934.

<sup>1</sup>Board's Exhibit No. 31.

## III. THE UNFAIR LABOR PRACTICES

The Union remained small and inactive until February, 1936, when it began a membership drive. Negroes, formerly excluded by the Union, were urged to join, and tentative overtures were made to the management for a collective agreement. By the end of March, interest in the Union had greatly increased. At about this time the management, which had been passive in its attitude toward union labor, initiated its own campaign. On April 4, a Saturday, C. A. Robbins, Jr., the respondent's superintendent, cautiously felt out N. W. Bowers, a union employee, on the subject. He closed the conversation with the statement: "I like you and believe you have reason. You have worked here a good while. I advise you not to have anything to do with the Union—it would be best for you not to." On Monday, April 6, the superintendent called in H. F. Hoppes, the recording secretary of the Union. Although again no overt threats were made the respondent's anxiety concerning the organization of the shop was revealed in the statement that should "labor trouble" arise the plant would shut down. On Tuesday, April 7, a foreman made a similar attempt to persuade Forester, the Union president, to abandon the Union: "Don't you think your job is worth more to you than that union, \* \* \* it is interfering with your job. \* \* \* I am sorry, but I thought you would be the last man to join the union."

Within a few minutes after the last conversation on April 7, three union men were discharged: Barmer, Sullivan, and Mauldin. Barmer<sup>2</sup> was a trustee of the Union and an aggressive solicitor of new members. Sullivan,<sup>3</sup> too, was an active union man. Mauldin<sup>4</sup> had joined the Union the night before. When informing Mauldin of his discharge, his foreman remonstrated with him: "What in the name of God do you mean by getting mixed up with that Union \* \* \* I hate to see my men get fired, but I am afraid they will \* \* \*. Well, if you go down and talk right to him you won't get fired." In the office Mauldin requested an explanation, but none was given, and his discharge was allowed to stand. To Barmer, the foreman said that he did not know the reason for the "lay-off." "Not dull business \* \* \* your work is perfect \* \* \* can't tell why. Have orders from the superintendent to lay you off." Sullivan likewise asked for and was refused an explanation.

That night Barmer, Hoppes, Kay, Choate, and W. E. Jordan gathered at the Labor Temple in Memphis. Hoppes, who was ordinarily the spokesman, telephoned Robbins and requested a conference on the

<sup>2</sup> Barmer earned \$13.20 a week as a cabinet maker.

<sup>3</sup> Sullivan earned \$13.20 as a top-out man in the cabinet room.

<sup>4</sup> Mauldin had been employed by the respondent as its patch man and repairer since 1920, except at intervals spent at farming, amounting to about two years. He had been earning \$15.00 a week.

subject of the dismissals. Robbins refused to see or to speak to the men.

This point-blank refusal was followed the next morning by the summary discharge of Hoppes, Kay, Choate, and W. E. Jordan. Hoppes,<sup>5</sup> charter member of the Union, recording secretary and member of the Executive Committee, who in his three years' service for the respondent had never been laid off before while the shop was in operation except during the usual semi-annual inventory shut-downs, found his time card removed when he reported for work. This meant discharge. Kay, conductor and an active union man, also found his card out of the rack and was given his money by Robbins without explanation.<sup>6</sup> Choate, first president of the Union and its present financial secretary, was also given no explanation, but was told that there was nothing wrong with his work.<sup>7</sup> He was given a written recommendation. When W. E. Jordan, vice-president of the Union, reported for work his time card was also out of the rack.<sup>8</sup>

During the same morning, Forester, the president of the Union, was told by Robbins that he was being laid off. A few minutes later his foreman said to him: "If you pull out of the Union, I will put you back to work. If you don't do it, I can't put you back. The Union won't get you anything \* \* \*. If you will pull out of the Union, you can get back."<sup>9</sup>

During the day, Mrs. Barmer, whose husband had been discharged on the preceding day, was discharged. She had been employed at \$15.00 to \$16.50 a week as a cutter in the upholstery department for 14 years and had never been laid off. She was not a union member. Her foreman replied in answer to her inquiries: "They want you fired \* \* \*. I am not firing you myself \* \* \*. I have nothing to fire you for. As far as I know, your work is satisfactory, but at the office they want you fired \* \* \*. Is your husband a member of the Union? \* \* \* Is he president? \* \* \*. The reason you are being fired is because your husband is."

<sup>5</sup> At the time of his discharge Hoppes was earning \$19 80 a week in the respondent's machine room.

<sup>6</sup> Kay had worked steadily for the respondent for nine years. For eight and one half years he was hand-saw operator; at the time of his discharge he was earning \$22 00 a week. Kay had been a union member for two years; he had been vice-president.

<sup>7</sup> At the time of his discharge Choate was earning \$15 40 a week as a skilled-route operator. Since his original employment by the respondent three years before, he had been laid off only during inventory periods. At the time of his discharge, Choates had enough work on hand to keep him busy for six weeks.

<sup>8</sup> W. E. Jordan, described by his foreman as one of the best mechanics he had ever known, was earning \$22 00 a week as a set-up man on a lathe, a skilled job. At the time of his discharge he had sufficient work on hand to last two weeks.

<sup>9</sup> Forester was a highly skilled cabinet repairman receiving \$25 00 a week, the top scale of wages. He had worked steadily whenever the cabinet room was in operation, on occasion he had been the only man in his department to be kept at work. Twice within the previous 18 months he had been offered higher pay by a rival concern, but each time the respondent met the competition by raising Forester's wages. In April, 1936 Forester's department was running practically full time with its normal complement of 30 men.

On the same day, R. R. Jordan, a brother of W. E. Jordan, was questioned by Robbins: "Where do you stand? \* \* \* I advise you not to attend the meeting tonight. If you do, why, I will know it \* \* \*. I have no personal grudge against your brother. I like him and think he is a nice man, but he just got mired too deep and got caught like the rest."

That night, R. R. Jordan joined the Union. As good as his word, the superintendent took steps to discover what transpired at the union meeting. In a dark alley across the street from Carpenter's Hall, Memphis, in an automobile parked without lights, the respondent's time-keeper kept watch. Accosted by W. E. Jordan, the time-keeper admitted that he had been directed to spy on the meeting and remarked that Janes, president of the respondent, had suggested that he go into the meeting himself.

More discharges followed: R. R. Jordan<sup>10</sup> and James Western,<sup>11</sup> who had joined the Union on March 30 and who immediately became very active, were dismissed on April 10. Alonzo Dabney,<sup>12</sup> who made a speech on April 11 urging other Negroes to join, was told to leave on April 13, the next working day. N. B. Bowers,<sup>13</sup> who disregarded two warnings to desert the Union, was discharged on April 16.

Jack Denton had been employed by the respondent for two weeks on February 28, 1936. On April 1 he reapplied for work and was told there was nothing for him. On April 7, the day on which the first of the above discharges were made, Robbins sent for him and hired him with the warning: "I will give you your job back provided you play ball with me. I don't want you in here if you are going to play ball with them and I want that understood." On April 18 Denton joined the Union. On the 22nd he was discharged.

In the meantime, on Tuesday, April 14, a committee from the Union called upon Janes, president of the respondent. Janes summed up his position in the following terms: "I have no intention of recognizing any union. I am firing whom I please and hiring whom I please. I have always done it and will continue to do it as long as I operate the business. And as for your being fired, you were not fired, you just quit. The minute you joined the Union you were automatically fired." A second conference on Tuesday, April 21, attended by C. L. Richardson, Commissioner of Conciliation of the United States Department of Labor, was similarly unproductive of results. On Friday, April 24, the union committee submitted a draft

<sup>10</sup> R. R. Jordan was an expert drum sander. When he was discharged he had two or three weeks' work on hand.

<sup>11</sup> Western worked on lathe work at a wage of \$8.80 a week. There had been no complaints about his work.

<sup>12</sup> Dabney was an unskilled laborer earning \$7.90 a week. He joined the Union on April 4.

<sup>13</sup> Bowers, an employee of approximately eight years' standing, had worked steadily for three years except during the semi-annual inventory period. He operated the Dado saw and a chucking machine at \$15.40 a week.

of a contract. Janes categorically refused to consider any agreement proposed by the Union.

After the three conferences had brought no results, the Union prepared for a strike. It was prevailed upon, however, to withhold the contemplated strike and instead filed the charges with the Board.

At the hearing the respondent offered no witnesses. The only materials submitted by it were the work histories of the discharged employees in an effort to show by their occasional lapses in employment that the lay-offs which frequently occurred in the plant did not necessarily connote discharge. It further put in evidence a list of lay-offs for the period from April 1 to May 15, 1936, indicating that 152 employees out of approximately 450 had lost some time during this period. The respondent pointed out that some of the discharged employees had been with the respondent only a short time and would normally have been selected for lay-offs when any reduction of force was necessary.

Standing alone, this defense would deserve consideration. In the light of the total situation as revealed by the record its persuasiveness is quickly dissipated. The employment records of the discharged employees show that when they were laid off it was usually during the semi-annual inventory in June and December. The list of lay-offs submitted by the respondent points to no general lay-offs for any cause in the early part of April; it was not the time for inventory. Passing this point, the usual method of lay-off was to post a notice upon the bulletin board. The foremen then explained the reason for suspension and the probable time of resumption of work. In this case no forewarning was given. Instead, the procedure ordinarily used for discharge was followed; the time cards were summarily removed from the rack. Explanation was denied some of the men named in the complaint; others were plainly told that their membership in the Union was the reason. No estimate was offered when they might expect to return to work. There is no evidence of unsatisfactory work records as against the employees here involved. The record is affirmatively to the contrary. Some of them had been in the employ of the respondent for years. Many were in key positions with plenty of work ahead. New men, non-union, replaced those discharged during this period. The failure to reinstate the men here involved contrasts suggestively with the fact that several weeks later when, on April 24, the respondent laid off some 92 men for ten days it took back practically all of them upon the resumption of operations on May 4. Particularly difficult to reconcile with the respondent's contention that these were routine temporary lay-offs is the evidence that 13 new employees were hired between April 8 and May 11.

Uncontradicted testimony in the record thus establishes that, at a period when few or none of the non-union force was being laid off,

one after another of the Union's officials and most active members were told to go. Janes, president of the respondent, and C. A. Robbins, Jr., superintendent, were at no pains to obscure their opinion that union activity was incompatible with loyalty to the respondent. Failing in its attempt to persuade its workers that this conflict of loyalties required their abandonment of the Union, the respondent resorted to discharge. Its determination to eliminate the influence of the union leaders from the plant led to the discharge of Mrs. A. U. Barmer, who was herself not a member of the Union. The evidence indicates that the sole reason for her dismissal was that she was the wife of A. U. Barmer, who had been discharged. It is arguable that Mrs. Barmer would have suffered the same fate whatever might have been the reason for the discharge of her husband. However, in this case the cause of the husband's discharge was his connection with the Union. The respondent thus made union membership and activities a bar to the employment not only of the union member himself but of members of his family as well. A more effective mode of discouragement of union affiliation could hardly be found than the knowledge that such activities put not merely the union member's employment but that of those closely related to him in jeopardy. The direct cause of Mrs. Barmer's discharge was the fact that her husband had been discharged, but the indirect and antecedent cause was discrimination against union members in regard to hire and tenure of employment with intent to discourage membership in the Union.

No testimony was offered as to Troy Pugh who was alleged in the complaint to have been in the group discharged on April 7. The allegation as to him will therefore be dismissed without prejudice.

We find that the respondent discharged from employment between April 7 and April 16, 1936, and thereafter refused to reinstate, W. O. Sullivan, A. U. Barmer, B. A. Mauldin, C. B. Forester, W. E. Jordan, J. E. Choate, H. F. Hoppes, M. Kay, Mrs. A. U. Barmer, R. R. Jordan, James Western, Alonzo Dabney, and N. W. Bowers, and that by each of said discharges, the respondent has discriminated in regard to hire and tenure of employment, and has thereby discouraged membership in Furniture Workers Local Union No. 1174, United Brotherhood of Carpenters and Joiners of America.

We find that the respondent, by the acts above set forth, 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 find that W. O. Sullivan, A. U. Barmer, B. A. Mauldin, C. B. Forester, W. E. Jordan, J. E. Choate, H. F. Hoppes, M. Kay, Mrs. A. U. Barmer, R. R. Jordan, James Western, Alonzo Dabney, and N. W. Bowers were at the time of their discharge, and at all times thereafter, employees of the respondent, and ceased work because of the unfair labor practices of the respondent.

We find that the activities of the respondent as above set forth, 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 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 and upon the entire record in the proceeding, the Board finds and concludes as a matter of law:

1. Furniture Workers Local Union No. 1174, United Brotherhood of Carpenters and Joiners of America, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The respondent, by discriminating in regard to the hire and tenure of employment of W. O. Sullivan, A. U. Barmer, B. A. Mauldin, C. B. Forester, W. E. Jordan, J. E. Choate, H. F. Hoppes, M. Kay, Mrs. A. U. Barmer, R. R. Jordan, James Western, Alonzo Dabney, and N. W. Bowers, and each of them, and thereby discouraging 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.

3. W. O. Sullivan, A. U. Barmer, B. A. Mauldin, C. B. Forester, W. E. Jordan, J. E. Choate, H. F. Hoppes, M. Kay, Mrs. A. U. Barmer, R. R. Jordan, James Western, Alonzo Dabney, and N. W. Bowers were, at the time of their discharge, and at all times thereafter, employees of the respondent within the meaning of Section 2, 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

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10, subdivision (c) of the National Labor

Relations Act; the National Labor Relations Board hereby orders that respondent, Memphis Furniture Manufacturing Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist:

(a) From discouraging membership in Furniture Workers Local Union No. 1174, United Brotherhood of Carpenters and Joiners of America, or in any other labor organization of its employees, by discharging or threatening to discharge and refusing to reinstate any of its employees, or otherwise discriminating in regard to hire and tenure of employment or any term or condition of employment, or by threat of such discrimination;

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

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

(a) Offer to W. O. Sullivan, A. U. Barmer, B. A. Mauldin, C. B. Forester, W. E. Jordan, J. E. Choate, H. F. Hoppes, M. Kay, Mrs. A. U. Barmer, R. R. Jordan, James Western, Alonzo Dabney, and N. W. Bowers immediate and full reinstatement, respectively, to their former positions without prejudice to their seniority or other rights and privileges;

(b) Make whole W. O. Sullivan, A. U. Barmer, B. A. Mauldin, C. B. Forester, W. E. Jordan, J. E. Choate, H. F. Hoppes, M. Kay, Mrs. A. U. Barmer, R. R. Jordan, James Western, Alonzo Dabney, and N. W. Bowers for any losses 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 his discharge to the date of such offer of reinstatement, less any amount earned by each of them, respectively, during such period;

(c) Post notices in conspicuous places in its plant, stating (1) that the respondent will cease and desist in the manner aforesaid; and (2) that said 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 the respondent has taken to comply herewith.

The allegations of the complaint referring to Troy Pugh are hereby dismissed without prejudice.