

In the Matter of J. FREEZER & SON, INC. and AMALGAMATED CLOTHING WORKERS OF AMERICA and DAPHENE RIDPATH, SYLVIA RIDPATH, and GRACE RIDPATH

Case No. C-105.—Decided July 26, 1937

Men's Shirt Industry—Company-Dominated Union: domination and interference with formation and administration; sponsorship; financial and other support; soliciting and coercing membership in; disestablished as agency for collective bargaining—*Condition of Employment:* membership in company-dominated union—*Interference, Restraint or Coercion:* questioning employees regarding union affiliation and activity; expressed opposition to labor organization, threats of retaliatory action; discrediting union; engendering fear of loss of employment for union membership or activity; interference by leading citizens and public officials—*Discrimination:* discharge—*Reinstatement Ordered—Back pay:* awarded.

Mr. Jacob Blum for the Board.

Mr. John B. Spiers, of East Radford, Va., and *Brashears, Townsend, O'Brien, and Beasley*, of Washington, D. C., for the respondent.

Mr. Richard J. Hickey, of counsel to the Board.

DECISION

STATEMENT OF CASE

Upon charges duly filed by Amalgamated Clothing Workers of America, herein called the Union, the National Labor Relations Board, herein called the Board, by Bennet F. Schaufier, Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint, dated April 16, 1936, against J. Freezer & Son, Inc., East Radford, Virginia, 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 is engaging in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (2), (3), and (4) and Section 2, subdivisions (6) and (7), of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

Thereafter, the respondent filed a motion to dismiss the complaint, alleging that the Act was unconstitutional in attempting to regulate matters not within the purview of Article I, Paragraph 8, Clause 3, of the Constitution of the United States, and was an unconstitutional delegation of power to the Federal Government; and that the alleged acts of the respondent do not affect interstate commerce. The motion was denied on May 6, 1936.

The respondent filed an answer to the complaint admitting that a substantial portion of its raw materials, machinery, and equipment used in the manufacture of its product is purchased outside of the State of Virginia and is transported from and through States of the United States other than the State of Virginia, and that its product is sold in states other than Virginia; and that Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath were discharged. The answer further alleges that the respondent is a New York corporation, having its office and place of business in Radford, Virginia, and that the Board is without jurisdiction. The answer denies the remaining allegations of the complaint.

Pursuant to notice, a hearing was held in East Radford, Virginia, on May 7, 1936, before Emmett P. Delaney, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel.

Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties. The parties were offered an opportunity for argument at the close of the hearing, which was declined. The right to file briefs was also granted, but none was filed.

On June 3, 1936, the Trial Examiner filed an Intermediate Report, finding that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3), and Section 2, subdivisions (6) and (7), of the Act as alleged in the complaint, and further finding that the respondent had not committed unfair labor practices within the meaning of Section 8, subdivision (4) of the Act. The respondent duly filed exceptions to the Intermediate Report.

Pursuant to notice, a hearing was held before the Board on June 4, 1937, in Washington, D. C. for the purpose of oral argument. The Board and the respondent were represented by counsel.

The Board has reviewed the rulings made by the Trial Examiner in the course of the hearing and finds that no prejudicial errors were committed. We have fully considered the exceptions to the rulings made by the Trial Examiner on the motion to dismiss the complaint and 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. RESPONDENT AND ITS BUSINESS

The respondent, J. Freezer & Son, Inc., is a New York corporation having its principal place of business in Radford, Virginia, and a sales office located at 1150 Broadway, New York, New York. Irving

Freezer is secretary and treasurer of the respondent. The respondent is engaged in the manufacture, sale, and distribution of men's shirts.

The principal raw materials used by the respondent in the manufacture of its finished products are cotton piece goods, cotton thread, buttons, trimming, boxes, cartons, cases, shipping supplies (cellophane), and machinery supplies. About 80 per cent of the raw materials purchased by the respondent comes from states other than the State of Virginia.

All of its products are manufactured in Virginia, sold through its New York office, and shipped to customers. Practically all of its products are shipped outside the State of Virginia; five per cent by parcel post, 15 per cent by express, and 80 per cent by freight. The respondent's products are sold under the trademarks of "Traymore", "Radford", and "Kayewood", which are registered in the United States Patent Office for use in interstate and foreign commerce. The respondent's sales in 1933 were \$663,086.57; in 1934, \$1,267,791.99; and in 1935, \$847,164. The respondent employed on an average about 450 persons in 1936.¹

II. THE UNION

The Amalgamated Clothing Workers of America is a labor organization which admits to membership persons working in the clothing trade.

III. THE UNFAIR LABOR PRACTICES

A. Domination and interference with Employees Association

During the existence of the National Industrial Recovery Act, the plant of the respondent was working on a 40-hour per week basis and the employees were receiving a minimum wage of \$12 weekly. After the invalidation of the National Industrial Recovery Act, Irving Freezer² called a meeting of the employees and told them that unless they agreed to work longer hours, he would be compelled to close the plant due to the fact that it was operating at a loss. As a result, the employees voted in favor of working increased hours, and thereafter the plant worked 50 hours per week and the wages were reduced to a minimum of six dollars for certain employees and nine to 11 dollars for other employees.

Dissatisfaction soon arose among the employees, and, apparently,

¹ All of the above facts concerning the respondent's business are taken from a stipulation which was introduced in evidence at the hearing.

² Although Jacob Freezer and Rose Freezer are also officers and directors of the respondent, we assume, on the basis of all the evidence in the record, that Irving Freezer is meant whenever reference is made to "Freezer."

the idea of an employees' association was formulated at this time for the purpose of canalizing the employees' interest in collective action.

Miss Lila Nelson, a timekeeper in the plant, testified that she suggested the idea of the association to Miss Harmon, the superintendent of the plant, in October 1935, and received her permission to speak to the employees on the subject. She thought that, since the employees frequently contributed money for the purchase of flowers and donations for various occasions, they should form an association and pay dues, out of which the various purchases, donations, and other expenses would come.

A committee of the employees called upon J. B. Spiers, who was and is counsel for the respondent. He advised them to have the employees sign a petition requesting that he prepare and obtain a charter for their proposed association. When the petition was presented for their signatures, a great number of them refused to sign it, but were coerced into signing the petition when Tony Caruso, the foreman, threatened them with the loss of their jobs. Finally, sufficient signatures were affixed to the petition and it was presented to Spiers. He drew up the articles of incorporation and on November 22, 1935, secured a charter for the association, which was called J. Freezer & Son Inc. Employees' Association. The testimony discloses that Spiers neither sought nor received any fees for legal services rendered to the Association, although its by-laws provide for payment for services of a solicitor.

The purpose of the Association, as set forth in the by-laws, is as follows:

(3) To foster, protect and encourage social intercourse and activities, friendship, loyalty and good will among the employees of the Redford plant of J. Freezer & Son, Inc.

Article III, Section 9, reads as follows:

The shop committee shall consist of four members, two from the sewing department, one from the cutting department and one from the finishing department. It shall be the duty of this committee to confer with the management and to settle all controversies that may arise. * * *

Thus, while the purpose and objectives of the Association are stated to be those of a social organization, a shop committee is also provided for. Such a committee was in fact appointed, although there is no evidence to show that it ever functioned.

We find that the Association is a labor organization.

During November and December 1935 and January 1936, during working hours, Caruso distributed application cards for membership in the Association to the employees and asked them to sign. Five witnesses testified to the effect that after the first attempt to obtain the employees' signatures to the application cards failed, Caruso, during working hours, took the application cards to the employees who had not signed and compelled them to sign under threats of discharge. During this period it was a common rumor in the plant that membership in the Association was required of employees for the retention of their jobs. Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath testified that they and other employees were told by the foreman that they would be unable to work unless they became members of the Association.

Athlyn Hypes, another employee of the respondent, testified that a "paper"³ was given to the employees for their signatures and at first they did not sign, but later signed when they were warned to do so. She stated that in December 1935, application cards were passed around the plant, and that after she and other employees had refused to sign them, Caruso approached her with an application card. When he asked her to sign, she refused to unless it meant the loss of her job. He said that she was not forced to sign it. However, as he left her, she overheard him say that the respondent was to discharge some employees after Christmas. When she returned after Christmas and reported for work, Caruso, upon seeing her, told the forelady to send her home until he called for her. She was never recalled for work.

The testimony of Maxwell Mathena, a former employee, reveals the apparent domination of the Association by the respondent's key employees. In November 1935, he obtained employment in the plant at a weekly wage of six dollars. About a week before Christmas he was approached by Caruso with an application card for membership in the Association. When he told the foreman that he was busy and would see him later, Caruso made slighting comments as to his sanity. The foreman reported the facts to the office of the respondent and Miss Harmon, the superintendent, went to Maxwell Mathena and another employee, Cadell Cooper, and accused them of making remarks about the Association. Again the foreman brought the application cards around and when Maxwell Mathena said that he would sign if forced to do so, the foreman refused to allow him to sign the application card. On December 30, 1935, as Cadell Cooper and he were leaving the plant, Caruso told them not to report for work, but, a few minutes thereafter, asked Cooper to return, telling him that

³ The reference is presumably to the petition which was circulated at Splers' suggestion.

he merely "wanted to get rid of" Mathena. Cooper is still employed in the plant while Mathena is not. Cooper, appearing as a witness for the respondent, admitted part of Mathena's testimony to be true, but denied other parts of it. He indicated that he had been strongly urged to testify on behalf of the respondent. It is significant that, although many witnesses testified regarding Caruso's activities, he was not called as a witness by the respondent to refute the charges of coercion and intimidation.

We find that the respondent has dominated and interfered with the formation and administration of the Association, and has contributed financial and other support to it.

B. *The discharges*

In January 1936, Ethel Coleman, an organizer for the Union, began to organize the employees of the respondent. Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath, sisters, were the first employees at the plant to become interested in the Union. They told Bertha Thompson, an employee, about the Union and she in turn informed Caruso. From that time until March 27, 1936, the date of their discharge from the plant, the three Ridpath sisters were questioned on numerous occasions by Caruso about their union activity and threatened with the loss of their jobs. Caruso also questioned several other employees who had joined the Union and told them that he knew which of the respondent's employees had joined the Union and that they were to be discharged.

Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath were employed in the pressing department of the plant as "pressers", doing piece work ten hours a day, five days a week. They received 15 cents for pressing a dozen shirts of certain types and 18 cents for other types, averaging approximately \$11 per week. Prior to her discharge on March 27, 1936, Daphene Ridpath had been employed by the respondent for three years and as she testified, had never received any criticism or complaint concerning her work. Sylvia Ridpath had been in the employ of the respondent for two and one-half years, and had often been praised for her work. Grace Ridpath testified during the six months of her employment at the factory a few complaints about her work had been made. However, the respondent's own witnesses admitted that it was a common practice to make complaints to employees about their work.

Caruso spoke to Sylvia Ridpath several times about the Union and warned her that she should not join the Union if she desired to keep her job. On one occasion, when he met her on the street, he stopped her, and again advised her not to join the Union. At the same time he complimented her on her work.

During February 1936, J. L. Kirkwood, referred to by a witness for the respondent as a "one man chamber of commerce" in East Radford, heard rumors of trouble brewing at the plant. Kirkwood conferred with the city's leading citizens, R. S. Hopkins, member of the city council, H. Tyler, city attorney, and C. H. Howell, Chief of Police. He urged them to accompany him to the plant for the purpose of advising the employees as to their course of action in union matters.

Kirkwood had been primarily responsible in inducing J. Freezer & Son, the predecessor of the respondent, to erect their factory in Radford, Virginia. His interest in the firm continued through the organization of the respondent, and he was in the habit of visiting the plant about four times weekly in order to aid the respondent "in every way possible". He testified that he did not believe in the Union, and felt that it would be harmful to the town. He also testified that he knew Freezer had "his own organization" at the plant.

On a day of February 1936,⁴ Kirkwood, Howell, Hopkins, and Tyler met at the plant about 2 p. m. Kirkwood testified that he had not given advance notice to Miss Harmon of his intentions and only told her at the time of his arrival there of the rumors of trouble and that he intended to conduct a meeting at the plant.

Before the plant meeting was called, he arranged to have brought into the respondent's private office several employees so that he could question them on the subject of unions. Out of several hundred employees the three Ridpath sisters were summoned to appear in the private office of the respondent where Miss Harmon, the superintendent, Kirkwood, and Howell were present. The three Ridpath sisters were questioned as to their acquaintance with the Union organizer, their membership in the Union, their knowledge as to Union membership cards, and other matters pertaining to the Union. All three denied membership in the Union. Several other employees were questioned privately as to their union interests. Two Shockey sisters admitted their membership in the Union but said that they regretted their act of joining the Union.

After the questioning of certain employees had been completed, the plant meeting was called about 3 p. m. The machinery in the plant was shut down. Kirkwood, Tyler, and Hopkins addressed the employees to the effect that they believed a union would not be beneficial to the welfare of the employees but would be harmful. They advised the employees to consult with them before joining any union. They would be pleased to give the employees the benefit of their business experience. They thought that the employees were well-treated and that the organization of a union might cause the plant to be shut

⁴ The exact date is not shown by the record.

down. The fourth speaker at the plant meeting was Caruso, who condemned unions generally by telling the employees of his alleged experience with them. He indicated in his speech that the plant would be shut down if the employees joined the Union.

Kirkwood's testimony about the rumors of trouble and disturbance at the plant which prompted his action in going to the plant is denied by Chief of Police Howell, a witness for the respondent. In response to a question by the Trial Examiner, the Chief of Police answered that he had not heard of any rumors of trouble, but that he had gone to the plant only because Kirkwood had asked him to do so.

On March 27, 1936, Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath were discharged. At the time Daphene Ridpath received her last pay envelope from Miss Carrico, an office employee of the respondent, she was informed by Miss Carrico that Caruso said she was not to report for work on Monday because the respondent did not need her. Upon questioning the foreman, he told her, "Your work is no good." She tried to talk to him, but he dismissed her by saying, "I am not talking to you." Sylvia Ridpath was given her time card by the forelady upon instructions from Caruso, and told that the shirts she pressed were badly done. Caruso himself discharged Grace Ridpath and said that her work was unsatisfactory.

Inefficiency was not the reason for the discharge of the three sisters. Una Cooper, witness for the respondent and the wife of Cadell Cooper, testified that Caruso had on numerous occasions criticized the work of the Ridpath sisters. However, her testimony was not impressive for her statements were very general in character, and it was apparent that she was an unwilling witness. The dismissal of the three Ridpath sisters was the result of their union membership. The respondent threatened to close the plant if the employees joined the Union. The three Ridpath sisters were the first employees at the plant to become interested in the Union. They were reluctant to join the Association. All three of the Ridpath sisters were questioned at the office interview preceding the plant meeting which was near to the date of their discharge. Prior to their discharge, the three Ridpath sisters had received numerous threats of dismissal if they joined the Union.

We find that the respondent, by the discharge and refusal to employ Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath, has discriminated in regard to hire and tenure of employment, thereby discouraging membership in a labor organization. We further find that the respondent by the acts above set forth, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

We further find there is no evidence that the three Ridpath sisters were discharged because, as alleged in the complaint, they had filed statements which led to the filing of the charge and complaint in this matter. We will, therefore, order that the complaint be dismissed insofar as it alleges that the respondent engaged in unfair labor practices within the meaning of Section 8, subdivision (4) of the Act.

The work of the three Ridpath sisters having ceased as a result of an unfair labor practice, they at all times thereafter retained their status as employees of the respondent within the meaning of Section 2, subdivision (3) of the Act.

IV. EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and 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 Amalgamated Clothing Workers of America is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. J. Freezer & Son, Inc. Employees' Association is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

3. Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath 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 respondent, by dominating and interfering with the formation and administration of J. Freezer & Son, Inc. Employees' Association, and by contributing financial and other support to it, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the Act.

6. The respondent, by discriminating against Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath in regard to hire and tenure of employment and terms and conditions of employment, thereby discouraging membership in the Union, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

7. The respondent, by the discharge of Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath, has not engaged in unfair labor practices within the meaning of Section 8, subdivision (4) of the Act.

ORDER

On the basis of the above findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, J. Freezer & Son, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist:

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

b. From discouraging membership in the Amalgamated Clothing Workers of America, or any other labor organization of its employees, by discriminating against its employees in regard to hire or tenure of employment or any term or condition of employment;

c. From dominating or interfering with the formation or administration of J. Freezer & Son, Inc. Employees' Association, or any other labor organization of its employees, or contributing financial or other support thereto.

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

a. Withdraw all recognition from J. Freezer & Son, Inc. Employees' Association as representative of any of its employees for the purpose of dealing with respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and disestablish J. Freezer & Son, Inc. Employees' Association as such representative;

b. Offer to Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

c. Make whole Daphene Ridpath, Sylvia Ridpath, and Grace Ridpath 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 would have earned as wages from March 27, 1936, to the date of such offer of reinstatement, less any amount earned by each of them, respectively, during such period;

d. Post notices in two conspicuous places in each department of the plant stating: (1) that the respondent will cease and desist in the manner aforesaid; and (2) that said notices will remain posted for at least thirty (30) consecutive days from the date of posting;

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

3. The allegations in the complaint that the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (4) of the Act, are hereby dismissed.