

In the Matter of FASHION PIECE DYE WORKS, INC. and FEDERATION
OF SILK AND RAYON DYERS AND FINISHERS OF AMERICA

Case No. C-22

Mr. Gerhard P. Van Arkel, for the Board.

Mr. Norbury C. Murray, of Newark, N. J., *Mr. William H. Schneller*, of Catasauqua, Pa., and *Mr. Hugh P. McFadden*, of Bethlehem, Pa., for the respondent.

Mr. Frank J. Benti, for the Union.

Mr. Warren L. Sharfman, of counsel to the Board.

SUPPLEMENTAL DECISION

AND

ORDER

March 30, 1938

STATEMENT OF THE CASE

On March 4, 1936, after a hearing, the National Labor Relations Board, herein called the Board, issued a Decision in this case¹ in which it found that Fashion Piece Dye Works, Inc., Easton, Pennsylvania, herein called the respondent, had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The unfair labor practices so found consisted in discrimination against five of the respondent's employees in regard to hire and tenure of employment, thereby discouraging membership in a labor organization known as the Federation of Silk and Rayon Dyers and Finishers of America, herein called the Union, and in the employment of a detective to spy upon its employees in the course of their efforts to exercise the rights guaranteed in Section 7 of the Act. The Board ordered the respondent to cease and desist from such actions, and to reinstate to their former positions, with back pay, the employees found to have been discriminated against.

Pursuant to Section 10 (e) of the Act the Board, on August 27, 1937, petitioned the United States Circuit Court of Appeals for the

¹ 1 N. L. R. B. 285 That Decision contains a detailed statement of the pleadings and proceedings prior thereto.

Third Circuit, herein called the Court, for the enforcement of this order. On October 11, 1937, the respondent filed a petition with the Court alleging that it had failed to call witnesses and introduce any evidence at the hearing before the Board because it was advised that the Act was unconstitutional, and praying leave to adduce additional evidence before the Board in order to establish the falsity of the charges made against it. On October 19, 1937, the Court ordered that the respondent have leave to adduce additional evidence; and that such additional evidence be taken before the Board, its member, agent or agency, and together with any findings thereon, be made a part of the transcript of the record in this case.

Pursuant to notice, duly served upon the respondent and the Union, a hearing was held in Easton, Pennsylvania, on November 18, 19, and 20, 1937, before Alvin J. Rockwell, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to the parties.

During the course of the hearing the Trial Examiner granted the Board's motion to amend the complaint to allege that Rocco Montoro was discharged by the respondent because his brother, Anthony Montoro, had joined the Union, because the respondent believed he had joined the Union, and because he had engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection. The Board's motion to amend the complaint, by substituting Federation of Dyers, Finishers, Printers and Bleachers of America for Federation of Silk and Rayon Dyers and Finishers of America was also granted. The Trial Examiner made several other rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed.

On December 21, 1937, counsel for the respondent presented oral argument before the Board in Washington, D. C. Subsequently a brief was filed on behalf of the respondent.

On January 12, 1938, the Board, acting pursuant to Article II, Section 38, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the Trial Examiner to prepare and file an Intermediate Report.

On February 28, 1938, Trial Examiner Rockwell filed his Intermediate Report on the record in which he found, on the basis of the testimony and evidence taken at both hearings, that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the

Act, in that it had discharged Joseph Regina, Anthony La Rosa, Anthony Montoro, and Antonio Marra because they had joined the Union, and Rocco Montoro, because it believed he had joined the Union, thereby discouraging membership in the Union.

On March 9, 1938, the respondent filed exceptions to the Intermediate Report. The Board has considered these exceptions and finds them to be without merit.

Upon the entire record in the case, as made at both hearings, the Board supersedes the findings of fact made in its original Decision with the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Fashion Piece Dye Works, Inc., a New Jersey corporation organized in 1934, is engaged in the business of dyeing and finishing rayons and acetate yarns belonging to its customers at its plant near Easton, Pennsylvania. The respondent also has a sales representative in New York City.

Approximately 50 to 80 or 90 per cent of the goods to be processed by the respondent are transported to Easton from points outside of Pennsylvania. Ninety per cent of the finished goods are delivered to customers in New York City by the respondent's truck.

II. THE ORGANIZATION INVOLVED

Federation of Silk and Rayon Dyers and Finishers of America, which filed charges in this case, is a labor organization. It is now known as Federation of Dyers, Finishers, Printers and Bleachers of America, a labor organization affiliated with the Committee for Industrial Organization, which admits to membership some of the respondent's employees.

III. THE UNFAIR LABOR PRACTICES

The complaint, as amended, alleged that the respondent discharged Joseph Regina, Anthony La Rosa, and Anthony Montoro on September 18, 1935, because they joined the Union. The respondent admitted the discharges, but alleged that they were made for inefficiency and for interference with the duties of other employees.

Joseph Regina was employed by the respondent early in July 1934. His employment was terminated by the respondent on September 18, 1935. During the course of his employment he worked at various jobs, and was operating the palming machine in the finishing department when discharged. He was replaced by Paul Gruve. Regina earned 45 cents an hour, and worked 12 hours a day, 6 days a week.

He did not work after his discharge until April 1937, when he obtained a job with the Forest Piece Dye Works which was similar to his previous job. His new job pays him 45 cents an hour, but his earnings have only averaged \$15 a week. He would like to return to work for the respondent.

Anthony La Rosa was employed by the respondent on October 31, 1934. He was one of the two operators on a framing machine in the finishing department when he was discharged on September 18, 1935. He was replaced by Dick Shriver. La Rosa earned 45 cents an hour, and worked 12 hours a day, 6 days a week. The first work that he obtained after his discharge was with the City of Easton Highway Department on April 1, 1936. He has worked intermittently on this job. While employed he worked 40 hours a week and received 50 cents an hour. He earned approximately \$700 from the date of his discharge up to the time of the second hearing in this case. He would like to return to work for the respondent.

Anthony Montoro was employed by the respondent on or before December 15, 1934. At the time of his discharge on September 18, 1935, his job consisted of loading and unloading dye boxes in the dyeing department. Nine months after his discharge a man from the night shift took his place, and a new man was hired for the night shift. Anthony Montoro earned 45 cents an hour, and worked 12 hours a day, 6 days a week. After his discharge he worked from July 15 to August 15, 1936, at the National Piece Dye Works. He earned 45 cents an hour, and worked 12 hours a day for 28 days on that job. On January 2, 1937, he obtained a job as a shipping clerk at the Lehr Furniture Store in Easton. Up to the time of the second hearing in this case, he had earned \$948.21 on this job. He would like to return to work for the respondent.

On the evening of September 17, 1935, these three men and Joe Riehl, a fellow employee, met in Easton on the street corner at Fourth and Pine Streets, with Frank Benti, the vice president of the Union, and one Spaviro, an organizer for the Union. The three of them joined the Union at this time. The following morning when they reported for work they were told by either the night watchman or a policeman that Joseph Carroll, the president of the respondent, wanted to see them. Carroll discharged them. La Rosa and Anthony Montoro testified that when Carroll discharged them he told each of them that he had a Pinkerton detective trailing them the previous night. Carroll denied that he made these statements, but did not testify as to what conversations did take place. Carroll did testify as to the conversation he had with Regina when he discharged him. This testimony, which corroborates that given by Regina, shows that he gave Regina no reason for his discharge. Carroll also testified that he had asked the policeman to be present because he was afraid

the men might cause some trouble, but that he had never employed a detective, and that he had no knowledge of the meeting on the corner of Fourth and Pine Streets. Carroll's bare denials do not in our opinion refute the testimony of La Rosa and Anthony Montoro.

The respondent contends that these men were discharged for inefficiency. The testimony of its witnesses in support of this contention is in conflict, and is contradicted by the Board's witnesses. The testimony also indicates that the defective work then prevalent in the plant could equally have been caused by the inefficiency of other employees.

The respondent also contends that these men were discharged because they were responsible for a disturbance in the finishing department. Carroll testified that as he entered the plant shortly after five o'clock on the afternoon of September 17, he saw about 15 men gathered together around Joseph Regina's palming machine. He became very angry as he associated the defective workmanship then prevalent in the plant with gatherings such as this. He called Goodear, the foreman of the finishing department, and told him to find out who was responsible for the gathering. Goodear testified that he questioned the employees and found that Regina, La Rosa, and Anthony Montoro were responsible for the disturbance. Goodear reported this to Carroll. Carroll decided to discharge the men, and in the presence of Goodear made out their checks. Both Carroll and Goodear testified that this happened shortly after 6 o'clock on the afternoon of September 17, the inference being that the decision to discharge the men was made before the Union meeting on the corner of Fourth and Pine Streets took place. Carroll discharged the men the following morning. Six of the respondent's employees corroborated some of the details of the story of the gathering. La Rosa and Regina testified that there was no gathering in the finishing department on the afternoon of September 17.

Although Goodear testified that he determined who was responsible for the gathering by questioning the employees, none of the employees who testified were ever asked any questions by Goodear at the time of the disturbance. Goodear could not remember whom he had questioned, and did not find out the cause of the disturbance or the duration of the disturbance. The 6 employees who corroborated Carroll's story of the disturbance all testified that there were 10 or 15 employees in the gathering, yet with the exception of 3 names, each of which was mentioned once, the only persons they could remember having seen there were the 3 men reported to have caused the disturbance, and only one of the six could place all three in the gathering. Frank Donato, one of the six employees, testified that he was in the group himself, yet no one else who testified remembered seeing him there. As the gathering was by Regina's

machine, which he was operating at the time, he would necessarily be there irrespective of any gathering. He testified that there was no gathering at his machine on the afternoon of September 17, but that the drinking fountain and the entrance to the men's room were next to his machine and that there was a stream of people passing his machine at all times. While Carroll and Goodear testified that Carroll made out the checks to pay these employees on the evening of September 17, the checks are dated September 18. Moreover, Carroll's statement to Rocco Montoro on the morning of September 18 as to the reason for Rocco's discharge—"You ask your brother. He knows what it is about."—is meaningless if Carroll discharged Anthony Montoro for causing a disturbance on the preceding afternoon, for it would not enable Anthony to tell Rocco the reason for Rocco's discharge.

In balancing the conflicting testimony given by the witnesses for the Board and the respondent, it must be remembered that the Board's witnesses testified within 2 months of the events they described, while the respondent's witnesses were relating events which occurred almost 2 years before. Weight must also be accorded to the findings of the Trial Examiner, who from his observation of the demeanor of the witnesses had an opportunity to form a trustworthy opinion of their credibility. With these factors in mind, and noting the gaps and inconsistencies in the respondent's evidence in support of its position, we find that at the time Carroll discharged La Rosa and Anthony Montoro he told them that he had a Pinkerton trailing them the previous night. We also find that neither inefficiency nor the creation of a disturbance on the afternoon of September 17 was the reason motivating the respondent in discharging these employees.

We find that the respondent discharged Joseph Regina, Anthony La Rosa, and Anthony Montoro on September 18 because they joined the Union on September 17, and engaged in other concerted activities for the purposes of collective bargaining and other mutual aid and protection, thereby discriminating against them with respect to hire or tenure of employment for the purpose of discouraging membership in the Union.

Rocco Montoro was employed by the respondent on April 2, 1935, to work in the boil-off room of the dyeing department. He was discharged on September 18, 1935. He earned 45 cents an hour, and worked 12 hours a day, 6 days a week. He has been working at the National Piece Dye Works in Allentown, Pennsylvania, since July or August 1937. He is receiving 60 cents an hour, and had earned between \$300 and \$400 up to the time of the hearing. He would like to return to work for the respondent in Easton.

Rocco Montoro had not joined the Union at the time of his discharge. Carroll testified that he discharged Rocco because he was

afraid that Rocco might commit some sabotage on the goods as a result of the discharge of his brother, Anthony Montoro.

As we have already found that Anthony Montoro was discharged because he joined the Union, we necessarily find that the discharge of Rocco Montoro discriminated against him with respect to hire or tenure of employment, thereby discouraging membership in the Union.

Antonio Marra was employed by the respondent as an operator of the dyeing machine from the time the respondent was organized until he was discharged on October 1, 1935. Several months after his discharge a man from the night shift took his place and a new man was hired for the night shift. Like all of the other employees he earned 45 cents an hour, and worked 12 hours a day, 6 days a week. After his discharge he worked on relief for a period of 8 or 10 months; ending on December 4, 1936. He earned \$60.50 a month on this job. He has had no other employment, and would like to return to work for the respondent.

Marra testified that Willemsen, his foreman, discharged him on October 1, 1935, and said that he could not tell him the reason for his discharge or he would get in trouble, but that Carroll wanted it that way. Marra persisted in learning the reason for his discharge, and finally, he testified, Willemsen said Carroll did not want him because he had a Union meeting at his home. Willemsen denied that he made this statement. La Rosa, another employee, and Spaviro, a Union organizer, did have a meeting at Marra's home several days after the discharges of September 18. At this time Marra was a member of the Union, and his visitors asked that he try to get the discharged men returned to work. The following day Marra, armed with a copy of the Act, told Willemsen that "if it is the law, he should not discharge the three or four men". Willemsen grabbed the Act out of Marra's pocket, and asked what he wanted it for.

The respondent contends that Marra was not discharged for joining and assisting the Union, as alleged in the complaint, but because he gave away the respondent's trade secrets and was inefficient. Willemsen was directly responsible for Marra's discharge, and his testimony is to the effect that although Marra was inefficient he was discharged because he disclosed trade secrets. In spite of this the respondent introduced evidence to show that Marra was discharged for inefficiency. The evidence as to Marra's efficiency is in conflict, but he had worked for 22 or 23 years in the dyeing industry, and even Willemsen admitted that his work was as good as the average man if he kept after him.

The testimony of Willemsen and Carroll would indicate that the immediate reason for Marra's discharge was the disclosure of the respondent's trade secrets. Willemsen testified that shortly before

Marra's discharge he was in Paterson, New Jersey. While there he talked to Jim Strang, the foreman for a competitor of the respondent, now deceased, who asked, "How are you getting along with your spots?" Willemsen was embarrassed, and when he returned to Easton he asked Marra if he had told anyone about the respondent's difficulty with spots. He testified that Marra admitted he had been in Paterson while he was laid off a few weeks before and that he had told Ralph Lembo, a former foreman for the respondent, that the respondent was having difficulty with spots. Willemsen reported this to Carroll, who told him to discharge Marra. Willemsen did so, although he did not tell Marra why he was being discharged. Carroll corroborated Willemsen concerning the part he played in this discharge.

Marra's testimony as to the circumstances of his discharge have been related above. In addition he denied that he ever made any statements about the respondent's business to any one, or that he ever admitted having done so to Willemsen or any one else. Ralph Lembo testified that he had not seen Marra in Paterson before he was discharged or in Easton during the year prior to his discharge, and that Marra had never told him anything about the respondent's business.

The conflicts in the testimony of Marra and Willemsen must be weighed in the light of the findings of the Trial Examiner, who from his observation of the demeanor of the witnesses had an opportunity to form a trustworthy opinion of their credibility. Consideration must also be given to the fact that a period of 2 years elapsed before Willemsen told his story, while Marra testified 2 months after the events occurred.

We find that Willemsen told Marra that the reason for his discharge was that he had a Union meeting at his home. We also find that the alleged inefficiency of Marra was not the reason motivating the respondent in discharging him. We find, further, that Marra never disclosed any of the respondent's trade secrets to Lembo, and that he never admitted having done so to Willemsen. In view of this finding, and in view of the fact that the respondent first advanced this defense at the hearing in November 1937, rather than in its answer to the complaint which was filed on December 23, 1935, we find that the disclosure of trade secrets also was not the reason motivating the respondent in discharging Marra.

We find that the respondent discharged Antonio Marra on October 1, 1935, because he joined the Union and engaged in other concerted activities for the purposes of collective bargaining and other mutual aid and protection; thereby discriminating against him with respect to hire or tenure of employment for the purpose of discouraging membership in the Union.

We also find that the respondent, by its actions set forth above, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed under Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III 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 tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, as made at both hearings, the Board makes the following:

CONCLUSIONS OF LAW

1. Federation of Silk and Rayon Dyers and Finishers of America, was, and Federation of Dyers, Finishers, Printers and Bleachers of America, its successor, is, a labor organization within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to hire or tenure of employment and thereby discouraging membership in a labor organization has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. The respondent, by such action and by otherwise 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 practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Fashion Piece Dye Works, Inc., Easton, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of

collective bargaining, or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act;

(b) Discouraging membership in the Federation of Dyers, Finishers, Printers and Bleachers 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.

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

(a) Offer to Joseph Regina, Anthony La Rosa, Anthony Montoro, Antonio Marra, and Rocco Montoro immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

(b) Make whole Joseph Regina, Anthony La Rosa, Anthony Montoro, Antonio Marra, and Rocco Montoro for any loss of pay they have suffered by reason of the respondent's discrimination in regard to hire and tenure of employment by payment to each of them of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less the amount which each, respectively, has earned during said period;

(c) Post immediately notices in conspicuous places in its plant in Easton, Pennsylvania, stating that the respondent will cease and desist as aforesaid, and keep such notices posted for a period of thirty (30) consecutive days from the date of posting;

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