

In the Matter of EMPIRE WORSTED MILLS, INC. and TEXTILE WORKERS
ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL
ORGANIZATION

Case No. C-326.—Decided April 8, 1938

Woolen Textile Industry—Interference, Restraint or Coercion: expressed opposition to outside labor organization—*Company-Dominated-Union:* suggesting organization of; organization with assistance of supervisory employee; disestablished as agency for collective bargaining—*Discrimination:* discharges; charges of, dismissed as to one employee—*Reinstatement Ordered—Back Pay:* awarded.

Mr. Norman F. Edmonds, for the Board.

Rogerson, Clary & Hewes, by *Mr. J. Russell Rogerson,* of Jamestown, N. Y., for the respondent.

Mr. Joseph E. Brill, Mr. Sidney L. Cahn, and *Mr. Alfred Udoff,* of New York City, for the T. W. O. C.

Van Vlack & Bargar, by *Mr. Allen E. Bargar,* of Jamestown, N. Y., for the Shop Union.

Mr. Victor A. Pascal, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by the Textile Workers Organizing Committee, herein called the T. W. O. C., the National Labor Relations Board, herein called the Board, by Henry J. Winters, Acting Regional Director for the Third Region (Buffalo, New York), issued its complaint, dated August 24, 1937, against Empire Worsted Mills, Inc., Jamestown, New York, herein called the respondent, alleging that the respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint and the notice of hearing were duly served upon the respondent, the T. W. O. C., and the Empire Worsted Mills Shop Union, which is referred to in the complaint and is herein called the Shop Union.¹

Subsequently, the respondent filed an answer to the complainant in which it denied that the Board had jurisdiction over it and denied that it had engaged in the unfair labor practices set forth in the complaint.

¹ The Shop Union is termed in the complaint and its membership cards as stated above. In its bylaws, it is termed "Empire Worsted Shop Union."

Pursuant to the notice, a hearing was held in Jamestown, New York, on September 2, 3, 4, 7, 8, and 9, 1937, before Robert M. Gates, the Trial Examiner duly designated by the Board. The Board, the respondent, the T. W. O. C., and the Shop Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties.

During the hearing, the Board moved to amend the complaint so as to include an allegation stating in substance that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (4) of the Act by discharging James Provenzano for the reason that he had testified as a witness for the Board in the proceeding. At the close of the Board's case, counsel for the Board moved to conform the pleadings to the proof. Both these motions were granted by the Trial Examiner. During the course of the hearing, the Trial Examiner made several rulings on objections to the admission of evidence. The Board has reviewed these rulings and the rulings made with respect to other motions of the parties and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Thereafter, the Trial Examiner filed his Intermediate Report, dated December 14, 1937, in which he found that the respondent had engaged in unfair labor practices affecting commerce as alleged in the complaint except that he found that the two employees, referred to in the complaint, had not been discharged because of the respondent's unfair labor practices and he recommended that the complaint be dismissed in so far as it referred to the respondent's discharge of them.

On December 22, 1937, the T. W. O. C. filed exceptions to portions of the Intermediate Report and requested to be heard in oral argument before the Board. Pursuant to notice served upon counsel for the T. W. O. C., the respondent, and the Shop Union, a hearing was held before the Board on February 9, 1938, in Washington, D. C., for the purpose of such oral argument. Counsel for the T. W. O. C. appeared and participated in the oral argument. In lieu of arguing, the respondent filed a brief, which has been considered by the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The respondent, a New York corporation, is engaged in the manufacture and sale of worsted cloth at its only mill, in Jamestown, New York. When operating to capacity, the mill employs approximately

640 persons, most of whom are engaged in production and maintenance work in a non-supervisory capacity.

In its manufacturing operations, the respondent uses approximately 40,000 pounds of wool a week, at least 95 per cent of which comes from outside the State of New York, \$7,000 worth of dyes every 6 months, approximately 60 per cent of which comes from outside the State of New York, less than 500 pounds of rayon every 6 months, all of which comes from outside the State of New York, and other miscellaneous materials.

During the past 3 years the respondent has sold all its manufactured products to Rittenberg Brothers, a copartnership doing business in New York City. The approximate value of this merchandise during the period from August 1, 1936, to July 31, 1937, was \$1,500,000. Approximately 70 per cent in volume of this merchandise was shipped to Rittenberg in New York City, 5 per cent to other places within the State of New York, and 25 per cent to places outside the State of New York. All the merchandise shipped to Rittenberg in New York City was carried by the Erie Railroad. At the hearing, counsel for the Board and the respondent stipulated that all freight going from Jamestown by way of the Erie Railroad passes through the States of Pennsylvania and New Jersey before arriving at New York City. Approximately 33 $\frac{1}{3}$ per cent of the merchandise shipped from the respondent to Rittenberg in New York City is reshipped by Rittenberg to points outside the State of New York.

II. THE UNIONS

Textile Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership the production and maintenance employees of the respondent, exclusive of supervisory employees.

Empire Worsted Mills Shop Union is an unaffiliated labor organization admitting to membership, according to its bylaws, all wage workers employed by the respondent who have been in its employ more than 30 days. The evidence indicates, however, that foremen are not eligible for membership.

III. THE UNFAIR LABOR PRACTICES

A. Negotiations between the T. W. O. C. and the respondent

The record indicates that the respondent's employees were not represented by any labor organization prior to April 1937, when the T. W. O. C. commenced its organizational activity among them. By the middle of June 1937, approximately 500 employees had become members of the T. W. O. C. Between June 15 and July 1, 1937,

three conferences were had, at which the T. W. O. C. sought to induce the respondent to recognize it as the employees' bargaining agent and to negotiate a contract. According to Charles Rosen, subregional director of the T. W. O. C., at the conference held on July 1, 1937, J. Russell Rogerson, one of the respondent's directors and attorneys, questioned whether the T. W. O. C. represented a majority of the employees and stated that "people have a right to change their mind." The negotiations were discontinued when the respondent discharged Angelina Conti and the T. W. O. C. filed charges with the Regional Director alleging that she had been discharged because of her union activity.

B. The Shop Union

While the respondent appeared to be negotiating with the T. W. O. C., its mill was the scene of unusual activity which was intended to compel the employees to renounce their affiliation with the T. W. O. C. and become members of the Shop Union.

Shortly after the second conference between the representatives of the T. W. O. C. and the respondent, a petition was circulated through the mill by William Beck, foreman of the combing department, and by other supervisory and non-supervisory employees, which all the employees were asked to sign. Beck testified that the petition had been given to him by John Greenwood, the respondent's departmental superintendent, who had instructed him to circulate it through the mill. At the hearing, one of the witnesses testified that the petition read as follows: "I the undersigned wish to take this opportunity to express my complete confidence in Mr. Hjalmar Swanson and those associated with him in the management of the mill." Beck testified, in part, as follows:

- Q. What was meant by the petition?
- A. To stand by the company.
- Q. In the face of what?
- A. I don't know.

In view of the pending efforts of the T. W. O. C. to organize the respondent's employees and to enter into a contract with the respondent, it is apparent that the petition was intended to inform the employees that the respondent considered the activities of the T. W. O. C. to be adverse to its own interests.

Although there is testimony in the record to the effect that, in the early part of June 1937, some of the wool sorters had spoken among themselves about organizing a shop union, no such plan was suggested to the employees generally until Rogerson spoke to them at meetings held about June 19 or 21, 1937, when the respondent summoned the entire day and night shifts to separate meetings at the mill during

working hours. Such general meetings had been held at no time in at least 5 years and probably never before. The programs of both meetings were substantially alike and consisted of speeches by the respondent's officers, including Rogerson. There is considerable conflict of testimony as to what Rogerson said. However, Rogerson testified that his speech included statements to the effect that the respondent was burdened with a great debt and that any substantial loss would result in the mill closing, that the respondent's officers had been visited by four men who claimed to represent the employees and the C. I. O., that none of these men were employees of the mill or identified with its operations, that the respondent did not know whether these men represented the employees "and yet they have seen fit to tell Mr. Swanson the conditions under which you will work in the plant," that the employees were free to join any labor union or not to join one, that the respondent would fully comply with the Act, and that "you may, if you so desire, organize your own union consisting solely of employees of this company." There is testimony that Rogerson emphasized his gratuitous suggestion that the employees might organize their own union.

Other petitions were circulated among the employees. Two petitions were for the signatures of the employees who desired to become members of a shop union, which was then being organized. The record clearly indicates that they were circulated during working hours, in the presence and with the consent of foremen, and, according to Beck, in some instances, at his direction.

Within a short time Shop Union membership cards appeared at the mill. They were circulated among the employees in the various departments by foremen and by other employees, often at the direction of foremen. In some instances, the membership cards were returned to the foremen's desks, examined by them, and then collected by representatives of the Shop Union.

Clement Showler, foreman of the spinning, winding, and twisting departments, testified that he had caused the cards to be distributed in his departments because the foremen had been instructed by a Shop Union committee to do this. He further testified that he caused the cards to be distributed twice because not all the girls had time to sign them when they had been first distributed.

Beck testified that he called groups of employees in various departments away from their work and spoke to each group separately, urging them to assist in the organization of the Shop Union and in recruiting members.

Other supervisory employees, in addition to those referred to above, also urged the employees to renounce their affiliation with the T. W. O. C. and become members of the Shop Union.

Norman Campbell, who was elected president of the Shop Union, was employed by the respondent as a carpenter, maintenance man, and occasionally as a watchman. It appears that, during working hours, he went through the various departments of the mill distributing and collecting Shop Union cards and otherwise assisting the Shop Union. In June 1937, his hours of work were changed so that, instead of remaining on the day shift, he alternated between the day and night shifts, changing every 2 weeks. After his activity in behalf of the Shop Union commenced, he visited the various departments in the mill during working hours without the tools which he formerly had usually carried and dressed in his street attire instead of his customary working clothes.

As a result of these activities the Shop Union secured approximately 565 members, 520 of whom paid dues.

Elections to select representatives to the Shop Union committee and the committee meetings were held at the mill during working hours.

In contrast to its long negotiations with the T. W. O. C., the respondent recognized the Shop Union as the representative of the employees within 2 days after the Shop Union requested it to do so. About 2 or 3 weeks later the respondent announced a general increase in wages of 10 per cent.

James Provenzano testified that Beck had told him that he had gone to Swanson and had secured permission to "break up the C. I. O." and start another union. Beck denied that he had said this and Swanson testified that he had instructed the foremen "to watch their step and mind their own business and don't mix up with the union". It is unnecessary to resolve this apparent conflict in testimony as it is obvious that, regardless of whether or not Beck and other employees had been specifically instructed by the respondent to "break up the C. I. O." and compel the employees to join the Shop Union, the respondent's supervisory employees waged an intense campaign to attain this result and openly assisted other employees in their efforts in behalf of the Shop Union.

We find that the respondent has participated in, dominated, and interfered with the formation and administration of the Shop Union and has contributed support to it.

We find that, by the acts above set forth, 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.

C. The discharges

James Provenzano had been employed by the respondent for 2 years as a noils packer in the combing department. On September 2, 1937, he testified in support of the allegations in the complaint. Provenzano subsequently testified that, when he returned to the mill on September 3, 1937, he found that another man was working in his stead and that his card had been removed from the rack, indicating that he had been discharged. He further testified that his foreman, Beck, told him that he did not know when he would be needed again and that he should stay at home until Beck called for him. As indicated above, the complaint was thereupon amended to include allegations to the effect that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (4) of the Act by discharging Provenzano for the reason that he had testified as a witness for the Board in the proceeding. Beck testified, however, that, as Provenzano had been subpoenaed to testify at the hearing and, as he did not know how long Provenzano would be away, he had engaged another man temporarily and that Provenzano was working again on September 8, 1937, when the mill reopened after having been closed for the Labor Day week end. This testimony was not contradicted at the hearing.

The evidence concerning Provenzano does not establish that he was discharged or otherwise discriminated against because he had given testimony under the Act. The complaint with respect to him will therefore be dismissed.

Angelina Conti had been employed by the respondent in its spinning department for about 6 years. Mrs. Conti joined the T. W. O. C. on May 11, 1937, and openly wore a T. W. O. C. button at the mill. She spoke with the women in her department about the T. W. O. C., distributed its membership cards, and secured about 15 members. According to Mrs. Conti, her foreman, Showler, became antagonistic to her shortly after the T. W. O. C. commenced its activity at the mill. Since about June 21, 1937, the respondent had known that her husband, who was also employed at the mill, was a member of the T. W. O. C. shop committee.

On July 13, 1937, Clara Van Derwark, a Shop Union member, and Mrs. Conti had an argument during working hours. There is a conflict of testimony as to which of them first employed profanity. The record indicates, however, that it was not unusual for women in this and in other departments of the mill to use profanity, and it appears that no woman had been discharged before for that reason. Mrs. Van Derwark complained to Showler that Mrs. Conti had called her indecent names. Making no investigation of the complaint and relying solely upon Mrs. Van Derwark's version of the incident, Showler

discharged Mrs. Conti on July 14, 1937. Mrs. Conti saw Greenwood at Showler's suggestion, but was told that "if she used those words she was through." Greenwood testified that he had made no investigation of the incident other than to speak with Showler and that, regardless of what facts might come or might have come to his attention, the decision of Mrs. Conti's discharge would not be changed. Mrs. Conti also appealed to Swanson for reinstatement, but she received no satisfactory answer.

The respondent argued that, as Showler had told Mrs. Conti that if she was going to swear at people she was to get her things and "get out", he did not actually discharge her. It overlooked the following testimony of Showler:

Q. You went over and told Angeline Conti if she was going to use that language she could get out?

A. I told her that if she used that language she would have to take her things and get out.

Q. In other words, you discharged her?

A. Yes.

It is apparent that Mrs. Conti was discharged for the reason that she was a member of and assisted the T. W. O. C. and not because of her use of indecent language, as the respondent claimed. Despite their frequent use of indecent language, none of the other women in the department had been discharged for this reason. Showler, who was openly hostile to Mrs. Conti because of her union activity, readily seized upon her altercation with Mrs. Van Derwark as an opportunity to be rid of an enthusiastic worker for the T. W. O. C. and to deter other employees from engaging in like activity.

We find that Angeline Conti was discharged for the reason that she had joined and assisted the T. W. O. C., and that the respondent has thus discriminated with respect to her hire and tenure of employment, thereby discouraging membership in the T. W. O. C.

We find that, by the acts above set forth, the respondent has interfered with, restrained, and otherwise coerced its employees in the exercise of the right to self-organization, 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.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that activities of the respondent set forth in Section III B and C 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.

THE REMEDY

The Shop Union, having secured its members largely as a result of the respondent's unfair labor practices, has been designated as the bargaining agent of the respondent's employees because of the respondent's, and not because of the employees', free choice. We shall therefore order the respondent to withdraw all recognition from the Shop Union and disestablish it as representative of its employees for the purposes of collective bargaining.

As we have found that Angeline Conti was discharged for the reason that she had joined and assisted the T. W. O. C., we shall order the respondent to offer to reinstate her to her former position and to pay her a sum of money equal to that which she would have received as wages from the date of her discharge to the date of the Intermediate Report and from the date of this order to the date of such offer of reinstatement, less any sum which she has earned during said periods. As the Intermediate Report recommended the dismissal of the complaint as to Angeline Conti, the respondent should not be required to pay her back pay for the period between the date of the Intermediate Report and the date of this order.

We shall also order the respondent to cease and desist from the unfair labor practices in which it has been engaged.

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following:

CONCLUSIONS OF LAW

1. Textile Workers Organizing Committee and Empire Worsted Mills Shop Union are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Empire Worsted Mills Shop Union and by lending support to it, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

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

4. By interfering with, restraining, and coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

5. The aforesaid 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 findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Empire Worsted Mills, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Textile Workers Organizing Committee or any other labor organization of its employees by discriminating in regard to hire or tenure of employment or any term or condition of employment;

(b) Dominating or interfering with the administration of Empire Worsted Mills Shop Union or dominating or interfering with the formation or administration of any other labor organization of its employees, or contributing support to Empire Worsted Mills Shop Union or any other labor organization of its employees;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and 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 Angeline Conti immediate and full reinstatement to her former position without prejudice to her seniority and other rights and privileges;

(b) Make whole Angeline Conti for any loss of pay she may have suffered by reason of her discharge, by the payment to her of a sum of money equal to that which she normally would have earned as wages from July 14, 1937, the date of her discharge, to December 14, 1937, and from the date of this order to the date of such offer of reinstatement, less the amount which she has earned during said periods;

(c) Withdraw all recognition from Empire Worsted Mills Shop Union as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish said Shop Union as such representative;

(d) Immediately post notices to its employees in conspicuous places throughout its mill and maintain such notices for a period of thirty (30) consecutive days stating (1) that the respondent will cease and desist in the manner aforesaid; and (2) that the respondent has with-

drawn and will refrain from all recognition of Empire Worsted Mills Shop Union as a representative of its employees and completely disestablishes it as such representative;

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

And it is further ordered that the complaint be, and it hereby is, dismissed to the extent that it concerns the discharge of James Provenzano.