In the Matter of TUPELO GARMENT COMPANY *and* KATHLEEN PATEY, BONNIE GRAHAM, BLANCHE BRASSFIELD, JIMMIE CLARK, BESSIE GANN, MAGGIE MARTIN, MINNIE RECTOR, and GARDNER MCCAFFEY

Case No. C-240.—Decided May 24, 1938

Men's Clothing Manufacturing Industry—Settlement: agreement to comply with act—*Order:* entered, upon basis of stipulation—*Discrimination:* discharges: charges of, not sustained as to two employees.

Mr. Samuel Lang and *Mr. G. P. Van Arkel*, for the Board.

Mr. F. G. Thomas and *Mr. J. A. Cunningham*, of Tupelo, Miss., for the respondent.

Mr. Walter T. Nolte, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a charge duly filed by Kathleen Patey, for and on behalf of herself and seven other individuals, herein called the employees, the National Labor Relations Board, herein called the Board, by Charles H. Logan, Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued its complaint dated June 18, 1937, against Tupelo Garment Company, Tupelo, Mississippi, herein called the respondent, alleging that the respondent had engaged in and was engaging 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 complaint alleged specifically that the respondent had discharged the employees and had refused to reinstate them because of their concerted activities for the purpose of collective bargaining and other mutual aid and protection. It also alleged that, on or about March 1, 1937, the respondent, through its officers, agents, and employees, had, by threats and intimidation, made an attempt to discourage and had discouraged the affiliation of its employees with or their membership in any labor organization.

The complaint and accompanying notice of hearing were duly served upon the parties. On June 26, 1937, the respondent filed a

special appearance, plea to the jurisdiction, and answer to the complaint in which it admitted having discharged the employees and having refused reinstatement to such of them as had requested reemployment. The other allegations of the complaint were severally denied, including those going to the jurisdiction of the Board.

Pursuant to the notice, a hearing was held in Tupelo, Mississippi, July 6 and 7, 1937, before D. Lacy McBryde, 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 to cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties.

At the conclusion of the Board's case the respondent moved to dismiss the complaint in so far as it related to Minnie Lee Rector, since she had failed to appear. Counsel for the Board raised no objection, and the Trial Examiner granted the motion.

During the course of the hearing the Trial Examiner made numerous other rulings on motions and on objections to the admission of evidence. The Board has reviewed all rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On August 27, 1937, counsel for the respondent filed with the Regional Director a formal Petition to Dismiss, asking that the charge be withdrawn and the complaint dismissed. This petition was signed by Kathleen Patey and acknowledged before the respondent's attorney, acting as a notary public.

On September 8, 1937, the Trial Examiner duly filed his Intermediate Report, copies of which were served upon the parties. The Trial Examiner found that the operations of the respondent affect commerce within the meaning of Section 2 (6) and (7), of the Act, that the discharges of all of the women other than Minnie Lee Rector constituted unfair labor practices within the meaning of Section 8 (1) and (3), of the Act, that the discharge of Gardner McCaffey did not constitute an unfair labor practice within the meaning of Section 8 (1) and (3), as charged, that the Company should cease and desist from its unfair labor practices, that it should post notices of intention to comply with the Act in all of its plants, and that the women found to be unlawfully discharged should be offered reinstatement with back pay from the date of their discharge to the date of offer of reinstatement.

The respondent filed exceptions to the Intermediate Report on September 27, 1937. In addition to taking exception to nearly all matters in the Intermediate Report and several rulings made in the course of the hearing, the respondent made a request for an opportunity to file briefs and present oral argument before the Board.

On November 24, 1937, Kathleen Patey wrote to the Board, asking reinstatement of the charge and repudiating her previous action in signing the formal Petition to Dismiss. The Board took no action upon this request or upon the Petition to Dismiss which had preceded it.

The Board granted the respondent's request for oral argument and opportunity to file briefs. Notice of a hearing to be held before the Board on January 21, 1938, was sent to the parties. The hearing was later advanced to January 20, 1938. On January 14, 1938, counsel for the respondent and the six women for whom the Trial Examiner had recommended reinstatement entered into a stipulation for the purpose of settling the issues in the case and the scheduled hearing was indefinitely postponed pending consideration of the stipulation by the Board.

The Board approved the stipulation subject to the condition, recited in paragraph 4 (c) thereof, that suitable employment would be made available to the six women within ten (10) days from the date of the stipulation. On January 21, 1937, the respondent notified the Regional Director that it had complied or was complying with all affirmative provisions and conditions of the stipulation, including paragraph 4 (c) thereof. As evidence of payment of certain sums required by paragraph 4 (b) of the stipulation and of compliance with said paragraph 4 (c), the respondent furnished a receipt and release signed by each of the six women on January 21, 1937. Although by such receipt and release the six women have released and discharged the respondent from all "matters and things set forth in the charge," the Board is of the opinion that the policies of the Act can be most fully effectuated by the issuance of a formal Decision and Order and has, in pursuance of the option given to it in paragraph 5 of the stipulation, chosen to issue this Decision and Order.

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

Findings of Fact

I. THE BUSINESS OF THE RESPONDENT

The respondent, a Delaware corporation licensed to do business in Mississippi, owns and operates two plants within a single building at Tupelo, and single plants at Booneville, New Albany, Baldwin, and Fulton, all in the State of Mississippi. The principal office of the Company is located in Tupelo in the same building occupied by the two plants, which are the oldest and largest of the six.

The respondent is engaged in the manufacture of men's work shirts. It employs approximately 1,400 workers at its 6 plants and produces between 700,000 and 800,000 dozen shirts annually, amounting in value to 2 or 2¼ million dollars.

The principal raw materials used are cotton cloth (chambrays and khakis), buttons, labels, and shipping supplies. All cloth used by the respondent is finished material purchased in the piece. Orders for cloth are placed in New York City and shipments are made direct to the respondent from cotton mills in North and South Carolina, Georgia, and Alabama. Not more than 5 per cent of the cotton cloth is obtained in Mississippi. Twenty-five to 30 per cent of the respondent's business involves the use of cloth purchased directly by it. Seventy to 75 per cent of the business is done on what is known in the industry as a "cut, make, and trim" basis. In "cut, make, and trim" work the respondent's customer furnishes the cloth, while the respondent receives the shipment of the customer's cloth directly from the cotton mill, manufactures the shirts, stores them, and finally delivers them to the customer. The value of all raw materials used is approximately 1 million dollars per year.

J. C. Penney Company, Sears, Roebuck & Company, and S. H. Kress Company are the respondent's principal customers. Bids for orders are placed with these customers at their Chicago and New York offices. Deliveries are made by the respondent to the individual stores of the purchasing concerns all over the United States, chiefly by rail. Ninety per cent of the respondent's business is transacted with the above-named customers. Eight to 8½ per cent is done with other firms located outside of the State of Mississippi. Only 1½ to 2 per cent is done with customers located within that State.

Electric energy for all the respondent's plants is secured through sources supplied by the Tennessee Valley Authority. At the Tupelo plants, the approximate average consumption is 37,000 kilowatt hours per month.

II. THE UNFAIR LABOR PRACTICES

A. *Kathleen Patey, Bonnie Graham, Blanche Brassfield, Jimmie Clark, Bessie Gann and Maggie Martin.*

It is unnecessary to consider the evidence with respect to the discharges of Kathleen Patey, Bonnie Graham, Blanche Brassfield, Jimmie Clark, Bessie Gann, and Maggie Martin in view of the stipulation which has been entered into, as stated above. The stipulation provides as follows:

> The immediate parties to this proceeding, the Tupelo Garment Company, Tupelo, Mississippi, and Mrs. Bonnie Graham, Mrs. Kathleen Patey, Mrs. Jimmie Clark Strange (known heretofore in these proceedings as Mrs. Jimmie Clark), Mrs. Maggie Martin, Mrs. Blanche Brassfield and Mrs. Bessie Gann do hereby respectfully submit to the National Labor Relations Board the following agreement for possible action by the said Board. It is the desire

of the above-mentioned parties that the Board approve this agreement for the purpose of disposing of the above-captioned proceeding and the issues therein involved. In making this request of the Board, the parties herein have taken into consideration future relations between and among the said parties toward the end that good feeling shall be restored and harmony shall prevail.

In order to effectuate the purposes and policies of the National Labor Relations Act, it is hereby agreed:

1. That the said Tupelo Garment Company shall cease and desist from in any manner interfering with the rights of its employees to form, join or assist any labor organization of their own choosing for purposes of collective bargaining or other mutual aid or protection as set forth in Section 7 of the said National Labor Relations Act; and from discouraging membership of its employees in any labor organization by discrimination with regard to hire or tenure of employment.

2. That the said Tupelo Garment Company shall personally inform its supervisory officials that they are not to interfere with the said rights of its employees as set forth in paragraph one above.

3. That the said Tupelo Garment Company shall post a notice in its plant at Tupelo, Mississippi, to remain there posted for thirty days after this stipulation shall become effective or, if the plant is not then in normal operation, from the date the said plant resumes normal operation, as follows:

NOTICE: The Tupelo Garment Company recognizes the rights of its employees to form, join or assist any labor organization of their own choosing for purposes of collective bargaining or other mutual aid or protection; and the said Tupelo Garment Company hereby advises all who may be concerned that it will cease and desist from any activity, through its supervisory or other officials or otherwise, which is contrary to the principles herein set forth or to the rights stated in Section 7 of the National Labor Relations Act.

4. The Tupelo Garment Company, within seven days after approval of this stipulation by the National Labor Relations Board, shall take the following affirmative action:

(a) Post the notice stated in paragraph three above in the manner therein stated.

(b) Pay to Mrs. Bonnie Graham, Mrs. Kathleen Patey, Mrs. Jimmie Clark Strange, Mrs. Maggie Martin, Mrs. Blanche Brassfield and Mrs. Bessie Gann amounts which they would have earned had they remained in the employ of the said Tupelo

Garment Company since the date of their discharge, April 12, 1937, which amounts have been determined and are agreed to be as follows:

Mrs. Bonnie Graham	$450.12
Mrs. Kathleen Patey	336.05
Mrs. Blanche Brassfield	345 15
Mrs. Jimmie Clark Strange	441.02
Mrs. Bessie Gann	417.95
Mrs. Maggie Martin	453.70

(c) That in order to dispose of the question of reinstatement, satisfactory tentative arrangements have been made looking to the employment of said parties, Mrs. Bonnie Graham, Mrs. Kathleen Patey, Mrs. Blanche Brassfield, Mrs. Jimmie Clark Strange, Mrs. Bessie Gann, and Mrs. Maggie Martin within the next ten days (but not employment with Tupelo Garment Company, as said parties do not at this time desire such employment with the Tupelo Garment Company), and this agreement is made in all respects contingent upon such employment being made available to said parties.

5. The National Labor Relations Board may enter an order based upon this stipulation, or may dispose of this matter on the basis of this stipulation without the formal entry of an order.

In the event the National Labor Relations Board makes application to the United States Courts for enforcement of an order based upon this stipulation, the Tupelo Garment Company will not contest the entry of such an order by the court.

The said Tupelo Garment Company shall notify the said National Labor Relations Board through its regional director for the fifteenth region at New Orleans, Louisiana, within seven days after approval of this stipulation by the said National Labor Relations Board that it has complied with the terms thereof.

B. *Gardner McCaffey*

Gardner McCaffey was employed by the respondent as a cuff and pocket creaser at its plant No. 1 in Tupelo from September 1936, to April 13, 1937. On the latter date he was told by the forelady in charge of the division in which he worked to "get his time." McCaffey testified that, while this statement was clearly understood by him as amounting to a discharge, no explanation of the action was offered by the supervisor and no request for an explanation was made by him.

McCaffey's discharge did not coincide in point of time with the discharges of the women involved in the complaint, and he was in

no way directly or openly identified with the events which led up to those discharges. The women were all discharged at the close of business on April 12, 1937. McCaffey was discharged in the evening on the following day, April 13, 1937, when he reported for night duty. He had worked on the night of April 12, subsequent to the discharges of the women. While McCaffey testified that he had identified himself with the organizational activities in which the women were the active leaders prior to April 12, by talking favorably concerning such activities with other employees, he admittedly took no prominent part in the proceedings and was not closely associated with the women in furthering their plans. In fact, he did not attend any of the meetings held by the women within the plant for the purpose of discussing their proposed organization. The activity of the women led up to an attempted strike at 9 o'clock on the morning of April 12. McCaffey took no part in this event, since he had been dismissed from duty at about 8:30 o'clock that morning and instructed to return in the evening for night work. However, he remained at the plant until shortly after 9 o'clock in anticipation of what he knew was about to take place. But his position was that of an interested spectator rather than a participant and his presence evidently failed to attract the attention of either the management or the other employees. When it became apparent, within a few minutes after the strike signal was given, that the attempt to strike had failed, McCaffey left the plant by a side door, apparently unnoticed. Upon reporting for work on the evening of the same day, McCaffey talked with his forelady about an increase in wages. She told him she would have to speak to the superintendent, whereupon McCaffey went on to work and put in 7 hours that night. When he reported for work in the evening of the following day, April 13, the same forelady told him to "get his time."

There is nothing to indicate that the respondent knew of McCaffey's support of the proposed organization prior to his discharge or that any of the respondent's supervisory employees or agents had questioned him concerning any possible connection he may have had with the organizers. McCaffey testified that he accepted the discharge without asking for an explanation because he believed that the respondent had learned of his support of the plan of organization. There is nothing to show that his supposition was in fact correct. The respondent's vice president and general superintendent testified that he knew nothing of McCaffey's discharge until some time after it had taken place. Upon making inquiry as to the cause of the discharge, he was informed that it was for inefficiency.

The respondent offered no affirmative evidence to support the statement that McCaffey's discharge resulted from his inefficiency, but McCaffey's own testimony gives some color to such an explana-

tion. His working time was divided between creasing cuffs and creasing pockets. The respondent employed four other cuff and pocket creasers in the plant in which he worked. McCaffey did not equal the production of the others in creasing pockets and did not excel any of them in creasing cuffs. The others had been in the respondent's employ longer than McCaffey, with one possible exception. During the course of his employment McCaffey had received several criticisms from the forelady concerning the quality of his work, the last of which had been received within a week or 10 days of his discharge.

Although McCaffey never made a request for reinstatement, he was interviewed by the respondent's attorney just prior to the hearing for the purpose of determining his attitude toward a possible offer of reinstatement. During the course of this interview, which was apparently brought about through the good offices of one of the respondent's employees, McCaffey was asked whether or not he would be interested in working for the respondent again, if an offer of reinstatement were made. McCaffey at first replied that he would not be interested in any offer and then later amended his answer by saying that he would not be interested in returning to work at his former rate of pay. Nevertheless, he testified at the hearing that he was desirous of returning to work for the respondent. While no offer of reinstatement was ever made subsequent to the above interview, there is nothing in the record to indicate any reason for the withholding of an offer other than McCaffey's negative or qualified response.

On the basis of all the pertinent evidence, we find that the allegations that Gardner McCaffey was discharged by the respondent, and that reinstatement was denied him, because of his activities in connection with the attempt at organization among the respondent's employees were not sustained. The allegations of the complaint with respect to Gardner McCaffey will therefore be dismissed.

Conclusions of Law

1. The operations of the respondent affect commerce, within the meaning of Section 2 (6) and (7), of the Act.

2. The respondent, by discharging Minnie Lee Rector and Gardner McCaffey, has not thereby engaged in unfair labor practices within the meaning of Section 8 (1) and (3), of the Act.

ORDER

On the basis of the above stipulation, 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, Tupelo Garment Company, Tupelo, Mississippi, and its officers, agents, successors, and assigns shall:

1. Cease and desist from in any manner interfering with the rights of its employees to form, join, or assist labor organizations of their own choosing for the purposes of collective bargaining or other mutual aid or protection, as set forth in Section 7 of the Act.

2. Cease and desist from discouraging membership of its employees in any labor organization by discrimination with regard to hire or tenure of employment.

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

(a) Inform its supervisory officials that they are not to interfere with the rights of its employees as set forth in paragraph 1 above;

(b) Post the following notice in its plant at Tupelo, Mississippi, to remain there posted for thirty (30) days from the date of posting or, if the plant is not then in normal operation, from the date the said plant resumes normal operation:

> NOTICE: The Tupelo Garment Company recognizes the rights of its employees to form, join or assist any labor organization of their own choosing for purposes of collective bargaining or other mutual aid or protection; and the said Tupelo Garment Company hereby advises all who may be concerned that it will cease and desist from any activity, through its supervisory or other officials or otherwise, which is contrary to the principles herein set forth or to the rights stated in Section 7 of the National Labor Relations Act.

(c) Pay to Bonnie Graham, Kathleen Patey, Jimmie Clark Strange (known heretofore in this proceeding as Jimmie Clark), Maggie Martin, Blanche Brassfield, and Bessie Gann the following amounts which were determined and agreed upon by the parties in the stipulation hereinabove quoted as equal to the wages the women would have earned had they remained in the employ of the respondent from the date of their discharge, April 12, 1937, until the date of execution of the stipulation, January 14, 1938:

Bonnie Graham	$450.12
Kathleen Patey	336.05
Blanche Brassfield	345.15
Jimmie Clark Strange	441.02
Bessie Gann	417.95
Maggie Martin	453.70