

In the Matter of NATIONAL WEAVING COMPANY, INC. and TEXTILE
WORKERS ORGANIZING COMMITTEE

Case No. C-356.—Decided June 7, 1938

Textile Industry—Interference, Restraint, and Coercion—Discrimination: discharge; for union activity—*Reinstatement Ordered:* discharged employee—*Back Pay:* awarded to discharged employee; not to include period between date of Intermediate Report and date of Decision; discharged employee entitled to employee rates for rent, water, and electricity.

Mr. Reeves R. Hilton, for the Board.

Mr. Emory B. Denny, of Gastonia, N. C., for the respondent.

Mary Lemon Schleifer, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Textile Workers Organizing Committee, herein called T. W. O. C., the National Labor Relations Board, herein called the Board, by the Regional Director for the Fifth Region (Baltimore, Maryland) duly issued a complaint, dated November 18, 1937, against National Weaving Company, Inc., 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. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent and upon T. W. O. C.

On November 24, 1937, the respondent filed an answer denying that it had engaged in or was engaging in the alleged unfair labor practices and requesting that the complaint be dismissed.

Pursuant to notice, a hearing was held in Gastonia, North Carolina, on November 29, 1937, before Lawrence J. Koters, 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 on the issues, was afforded all parties.

At the close of the Board's case, counsel for the Board moved to conform the pleadings to the proof. The motion was granted.¹ The ruling is hereby affirmed. At the close of the hearing, counsel for the respondent again moved to dismiss the complaint. The motion was taken under advisement by the Trial Examiner.

Counsel for the respondent filed a brief after the close of the hearing.

On January 6, 1938, the Trial Examiner filed an Intermediate Report, copies of which were duly served upon all parties, finding that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), and Section 2 (6) and (7) of the Act. In the Intermediate Report, the Trial Examiner denied the respondent's motion to dismiss the complaint except in so far as it alleged that the respondent, by discharging and refusing to reinstate Burgin Taft Lazenby, had engaged in unfair labor practices within the meaning of Section 8 (3) of the Act. In effect, therefore, the Trial Examiner granted the respondent's motion to dismiss as to the allegations setting forth the discriminatory discharge of Lazenby. This ruling of the Trial Examiner is hereby overruled for the reasons set forth below. All other rulings of the Trial Examiner are hereby affirmed.

Exceptions to the Intermediate Report were filed with the Board by the respondent and by T. W. O. C. The respondent also filed a supplemental brief to the Intermediate Report. The Board has considered these exceptions and, as hereinafter indicated, sustains in part the exceptions of both the respondent and of T. W. O. C.

On May 5, 1938, the Board notified the respondent and T. W. O. C. of the right to apply for oral argument or permission to file briefs within 10 days. Neither the respondent nor T. W. O. C. requested argument or the right to file a brief.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

National Weaving Company, Inc., is a North Carolina corporation engaged in the manufacture of dress goods, linings, and other fabrics for women's apparel, at a mill near Lowell, North Carolina. The respondent began operations about January 10, 1937, having purchased shortly prior to that time the property of National Weaving Company from the trustees in bankruptcy of the latter company. In the respondent's mill, which contains 900 looms, raw materials in

¹ Pursuant to this motion the name of the respondent has been changed in the caption of the case from National Weaving Company to National Weaving Company, Inc.

the form of thread are woven into gray unfinished fabric. The capacity of the mill is 400,000 yards of cloth per week. Six to seven hundred persons are normally employed.

The principal raw material used by the respondent is rayon, which is purchased from rayon producers outside the State of North Carolina. Silk, cotton, and similar materials are also used. A. C. Lineberger, Jr., vice president of the respondent, estimated that approximately 90 per cent of the raw materials used by the respondent come from points outside the State of North Carolina and that at least 90 per cent of the products manufactured at its mill are shipped outside the State of North Carolina. Most of the products of the respondent are shipped to New York City, where the respondent maintains sales offices.

II. THE LABOR ORGANIZATION INVOLVED

Textile Workers Organizing Committee is a labor organization affiliated with the Committee for Industrial Organization. T. W. O. C. admits to membership all textile workers engaged in production and maintenance, except foremen and executives.

III. THE UNFAIR LABOR PRACTICES

A. *Background of the unfair labor practices*

The respondent's property consists of about 80 acres of land on which are situated the mill and its appurtenances, 146 residences in which some of the employees live, a general store, and a ball park. It is approximately 1 mile from the respondent's property to Lowell, the nearest town. Due to the location of the mill and the fact that many of the employees live in its immediate vicinity, T. W. O. C. meetings, which began in May 1937, have been held on company property, generally at the ball park or in front of the general store. There has been no attempt by the employees to conceal the purpose of these meetings, nor, apparently, has there been any objection by the respondent to the use of company property for this purpose.

Since meetings were conducted in this manner, it was inevitable that the community was well aware of the organizational activities of T. W. O. C. It was admitted by Jackson, superintendent of the mill, and by Lineberger, vice president of the respondent, that the respondent was aware of these activities and knew also both the approximate number of persons who attended the meetings and the identity of at least some of those who attended. Various members of T. W. O. C. testified that McAlister, Harris, Russell, and Dellinger, all foremen or assistant foremen, and other supervisory officials of the respondent had appeared as spectators at some of these meetings.

McAlister and Harris denied they had so attended; Russell was not questioned concerning the matter; and the other supervisors named were not called as witnesses. Jackson admitted, however, that he had heard that supervisory officials had been present at some of the meetings and both Jackson and Lineberger admitted that they had received their information concerning the number and identity of persons attending T. W. O. C. meetings from foremen or assistant foremen.

The number of persons who attended these meetings during the period from May to August 1937, did not exceed 12 to 24 persons and no local organization had been perfected. However, Burgin Taft Lazenby, an employee, had been appointed one of the local organizers for T. W. O. C. and solicitation for members was being carried on by Lazenby and other employees. On July 30, 1937, the respondent discharged Lazenby, allegedly for unsatisfactory work. One or two T. W. O. C. meetings were held on company property after Lazenby's discharge, but thereafter they were held in Lowell or Charlotte, North Carolina.

B. The discharge of Lazenby

Burgin Taft Lazenby was employed by the respondent soon after operations were begun in January 1937. There is evidence that prior to that time, Lazenby had worked for the respondent's predecessor, National Weaving Company, but the record does not show the capacity in which he was employed, the length of his employment, or his record for satisfactory work during that period. Lazenby became a member of T. W. O. C. on May 25, 1937.

Lazenby was classed as a "smash hand." The duties of a smash hand consisted of inspecting warps for defects, including loose ends, broken or crooked threads, and of repairing such defects. The respondent normally employs two smash hands on each shift. The smash hands go from loom to loom inspecting and making repairs as required, sometimes working together, at other times apart. Lazenby worked on the second shift, which began at 3 p. m. and ended at 11 p. m. E. W. Harris, an assistant foreman or second hand, directly supervised Lazenby's work. L. A. McAlister, a foreman or overseer, was in charge of the entire weaving room, in which Lazenby worked, during the second shift. E. L. Autry was the other smash hand employed on the same shift as Lazenby.

According to the testimony of Lazenby, he had never been reprimanded by the respondent or told that his work was unsatisfactory until July 30, 1937, when Harris discharged him, stating as the reason that Lazenby had been leaving out too many loose ends. Lazenby is alleged to have stated to Harris that it was not part of his

job to take care of these loose ends and Harris to have replied that he had to let him go. Lazenby applied for reinstatement on August 2, 1937, and was told by Harris that the respondent had no work for him.

Four employees, members of T. W. O. C., employed in the same division and on the same shift as Lazenby, testified that Lazenby had the reputation of being a very efficient workman and that they had never heard any complaints about his work. One of these witnesses further testified that Henderson, a foreman on the third shift, had frequently requested the witness and Lazenby to work overtime on the third shift. McAlister testified that Lazenby's work had been satisfactory until May or June 1937, but had been unsatisfactory from that time until the time of his discharge.

Harris testified that about 6 or 8 weeks before Lazenby was discharged, he had warned both Lazenby and Autry that they had been missing a great many defects, thereby causing "seconds," and that unless their work improved, Harris would have to discharge them. It appears that about this time Autry, who was not a member of T. W. O. C., complained to Harris that he was receiving the blame for all defective work, and asked to be assigned to work which would separate him from Lazenby. Autry made the same complaint and request to McAlister, further stating to McAlister that Lazenby was a member of T. W. O. C. and that Lazenby had been annoying him to join T. W. O. C. Harris and McAlister both admitted that after these occurrences no specific check was made on the work done by Lazenby and Autry to discover who was responsible for the defective work. They stated, however, that about the same time Russell, foreman of an adjoining department, complained that Lazenby was interfering with employees in his department by talking with them while they were at work and that Lazenby spent too much time in the water house. McAlister testified that he watched Lazenby and found him away from his department frequently and that he told Harris he would either have to keep him on the job or discharge him. Harris testified that after frequent admonitions to Lazenby concerning both defective work and absence from the department had resulted in no improvement on Lazenby's part, he finally discharged Lazenby.

Harris never testified directly as to why he discharged Lazenby. The record indicates that the respondent relies on two grounds, namely, imperfect work and frequent absence from his department. As to the first ground, the respondent introduced no evidence to prove that Lazenby and Autry had not performed their jobs in a workman-like manner. The record indicates that after the cloth has been inspected, at least some of the employees are notified of defects attributable to their errors. It is a reasonable conclusion that the respondent

ent could have produced some record of defective work if in fact it had been defective.

Assuming without admitting that the work of the smash hands on the second shift was unsatisfactory, it is significant that the respondent admitted it had made no check to determine whether Lazenby rather than Autry was responsible for the defective work. Autry, who has not been discharged, has acted alone as a smash hand since Lazenby's dismissal, except during rush periods when employees in the department have helped him for temporary periods. Harris testified that the work done by Autry alone was satisfactory and as good as when both smash hands were employed, but did not testify that there had been any improvement since Lazenby's dismissal. The failure of the respondent to check the work of the two employees or to produce any evidence to show that Lazenby was the person responsible, coupled with Harris' admission that both smash hands had been responsible for defective work and the retention of Autry in the respondent's employ, clearly indicates that the respondent did not discharge Lazenby for the reason that he was responsible for defective work. We find that the respondent did not discharge Lazenby because his work was defective.

The testimony concerning the respondent's second reason for the dismissal is also unconvincing. Russell testified that every time he entered the water house to check on employees, which he stated was 15 to 20 times a day, he found Lazenby talking to a group of employees. We are inclined to doubt the accuracy of such a statement. However, Russell further testified that the respondent had had a good deal of trouble in this regard. In response to the question, "Were there any of your own men that were there, say nearly every time Lazenby was there?" he replied, "I had one particular fellow that was bad to be caught with him. I caught him with him several times." The record does not indicate that the "particular fellow" had been discharged or, despite constant trouble in this respect, that any other employee had ever been discharged for spending too much time in the water house.

The testimony concerning Lazenby's presence in other departments in the mill is equally unspecific and unconvincing. Russell testified that one employee in his department had complained about Lazenby being in the department. Neither the time nor the specific grounds of the complaint appear in the record. Harris and McAlister both testified that they had frequently seen Lazenby in departments other than his own. The record shows that, in addition to his duties as a smash hand, Lazenby at the beginning and end of his shift gave out and collected towels, not only in his own department but also at 48 looms in Russell's department and that he was further required to read "pick clocks" at the end of the shift. McAlister admitted that

at no time when he saw Lazenby out of his own department did he attempt to find out whether Lazenby was performing some duty in connection with his employment. We find that the respondent did not discharge Lazenby because of improper absence from his department.

As previously stated, up to July 30, 1937, the organizational activities of T. W. O. C. had not progressed to an extent sufficient to justify the formation of a local union. Of the respondent's employees, Lazenby was the most prominent in T. W. O. C. activities. Under these circumstances, his discharge on the asserted ground that his work which hitherto had been satisfactory, suddenly became unsatisfactory upon his joining T. W. O. C., must be subjected to the severest scrutiny. We have found that the respondent did not discharge Lazenby for the reasons asserted by it. In weighing what testimony was introduced by the respondent, we are influenced by obvious misstatements in the testimony of some of the witnesses for the respondent. Harris, in an attempt to prove that he had not discharged Lazenby for union activity, denied that he knew Lazenby was a member of T. W. O. C. prior to the discharge. The manner in which T. W. O. C. meetings were held and the testimony of witnesses that Harris had attended T. W. O. C. meetings make it clear beyond question that Harris as well as all other persons in the community knew that Lazenby was active in T. W. O. C. affairs. Jackson at first denied that he knew of Lazenby's union activities at the time of the discharge but finally admitted that he had heard of them through general talk in the village and from reports he received from the foremen. Since Lazenby, to the knowledge of the respondent, was prominent in union activities and since the evidence does not sustain the reasons asserted by the respondent for his discharge, we find that Lazenby was discharged because of his union activities.

We find that the respondent in discharging Lazenby discriminated in regard to his tenure of employment, thereby discouraging membership in T. W. O. C. and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that 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.

V. THE REMEDY

The respondent has taken the position that we have no power to reinstate Lazenby, since he secured employment at the Highland Park Mill, Charlotte, North Carolina, shortly after his discharge by the respondent. Between his discharge and the time of the hearing, Lazenby had worked only 3 weeks and 2 days in the Highland Park Mill, having been laid off after that time because of lack of work. Lazenby was not working at the time of the hearing. Although Lazenby testified that he is subject to recall at the Highland Park Mill, he desires reemployment by the respondent. Accordingly, we shall order the respondent to reinstate him with back pay. Since the Trial Examiner dismissed the complaint in so far as it alleged that Lazenby's discharge constituted an unfair labor practice, we shall exclude from the computation of his back pay the period from the date of the Intermediate Report, January 6, 1938, to the date of the order herein.

In addition to the monetary wages received by Lazenby from the respondent during his employment, Lazenby lived in a company house for a charge of \$1.40 per week, and received water and 30 kilowatt hours of electricity without charge,² being required to pay 7 cents a kilowatt hour only for electricity used in excess of 30 hours. A short time after Lazenby's discharge, the respondent brought a suit in ejectment to secure possession of the house in which Lazenby was living, but a bond posted by T. W. O. C. has allowed Lazenby to retain possession of the house pending final adjudication of the suit. Lazenby has not paid any rent or paid for electricity or water during this time. Since the respondent's discharge of Lazenby was in violation of the Act, total reimbursement to Lazenby must include his rights to rent, water, and electricity at the rates at which he would have received them, had he been employed by the respondent.

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

CONCLUSIONS OF LAW

1. Textile Workers Organizing Committee is a labor organization, within the meaning of Section 2 (5) of the National Labor Relations Act.
2. The respondent, by discriminating in regard to hire and tenure of employment and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor prac-

² It is not clear from the record within what period this was furnished.

tices, within the meaning of Section 8 (3) of the National Labor Relations Act.

3. 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 (1) of the National Labor Relations Act.

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

ORDER

Upon the basis of the above 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, National Weaving Company, Inc., and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From discouraging membership in T. W. O. C. or in 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) From 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 purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Offer reinstatement to Burgin Taft Lazenby without prejudice to his seniority rights and other rights and privileges;

(b) Make Burgin Taft Lazenby whole for any loss he has suffered by reason of his discharge by payment to him of a sum equal to that which he would normally have earned from the date of his discharge to the date of the Intermediate Report (January 6, 1938) and from the date of this order to the date of the offer of reinstatement, less the amounts he has earned elsewhere during said periods, and by granting to him rent, water, and electricity at the rates he would have paid had he been employed by the respondent during said periods;

(c) Post immediately, and keep posted for a period of at least thirty (30) consecutive days from the date of posting, in conspicuous

places throughout the mill, notices stating that the respondent will cease and desist in the manner set forth in 1 (a) and (b) above;

(d) 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.