

In the Matter of WARE SHOALS MANUFACTURING COMPANY and THE  
MACHINE PRINTERS BENEFICIAL ASSOCIATION

*Case No. C-337.—Decided July 6, 1938*

*Textile Industry—Interference, Restraint, and Coercion: charges of, not sustained—Discrimination: charges of, not sustained.*

*Mr. John T. Mahoney, for the Board:*

*Mr. M. G. McDonald, of Greenwood, S. C., for the respondent.*

*Mr. Eric W. Lindberg, of Cranston, R. I., for the Association.*

*Mr. Melvin S. Frazier, of counsel to the Board.*

DECISION

AND

ORDER

STATEMENT OF THE CASE

Charges and amended charges having been duly filed by Machine Printers' Beneficial Association,<sup>1</sup> herein called the Association, the National Labor Relations Board, herein called the Board, by Charles N. Feidelson, Regional Director for the Tenth Region (Atlanta, Georgia), issued and duly served its complaint dated November 6, 1937, against Ware Shoals Manufacturing Company, herein called the respondent. The complaint alleges 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 respondent, subject to a reservation of its legal right to object to the Board's jurisdiction, filed an answer in which it denied it had engaged in or was engaging in any of the unfair labor practices alleged in the complaint.

Pursuant to notice duly given, a hearing was held in Greenville, South Carolina, on November 18 and 19, 1937, before D. Lacy McBryde, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel.

<sup>1</sup> Incorrectly designated "The Machine Printers Beneficial Association" in the caption of the complaint.

The Association was represented by its secretary. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. During the course of the hearing and in his Intermediate Report the Trial Examiner made several rulings on motions and on objections to the introduction of evidence. The Board has reviewed such rulings and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On December 16, 1937, the Trial Examiner issued his Intermediate Report in which he found that the respondent had engaged in and was engaging in the unfair labor practices alleged in the complaint. Thereafter the respondent filed exceptions to the Intermediate Report and requested an opportunity to argue the exceptions before the Board. On May 19, 1938, counsel for the respondent and the Association argued the exceptions before the Board in Washington, D. C. The respondent also submitted a brief in support of its exceptions.

The Board has fully considered the exceptions to the Intermediate Report and sustains them, except as indicated below.

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

#### FINDINGS OF FACT

##### I. THE RESPONDENT'S BUSINESS

The respondent, a corporation organized under the laws of the State of South Carolina with its principal place of business and manufacturing plant in Ware Shoals, South Carolina, employs approximately 2,500 people.

It manufactures sheets, pillow cases, handkerchiefs, and similar products. It also does finishing work for other manufacturers. The respondent purchases approximately \$700,000 of raw cotton annually. Approximately 65 per cent of such cotton comes from States other than South Carolina. It also purchases starch, dye, tallow, and gum. Practically all of such materials originate in States other than the State of South Carolina.

Approximately 90 per cent of the respondent's total sales, which are in excess of \$5,000,000 annually and are made through Reigel Textile Corporation, a New York corporation, are to customers outside the State of South Carolina.

##### II. THE LABOR ORGANIZATIONS INVOLVED

Machine Printers' Beneficial Association is a labor organization which admits to membership all of the respondent's printers and apprentice printers.

Associated Workers of Printing, Finishing and Allied Industries is a labor organization affiliated with Machine Printers' Beneficial Association. It admits to membership all of the respondent's employees who assist in printing or finishing cloth except employees under the jurisdiction of the Association.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that the respondent discharged Frank Cook, C. V. Jester, W. E. Fore, and Frank Montgomery because of their membership in and activities on behalf of the Association; that it discharged Lee Simpson because he joined the Associated Workers of Printing, Finishing and Allied Industries, herein called the Associated; and that the respondent has, by the discriminatory discharge of such employees and by certain statements alleged to have been made to such employees, interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act.

*Frank Cook* joined the Association about May 2, 1936, but did not take an active part in its affairs prior to May 18, 1936. On May 18, 1936, two of the respondent's supervisory employees, Harvey Ferguson, superintendent of the printing room, and C. S. Powell, superintendent of the bleacheries and Ferguson's superior, called Cook into Ferguson's office and asked him certain questions.

It appears that 6 of the respondent's 13 printers had left the respondent's employ during the preceding week to accept positions at a neighboring textile mill where a strike was in progress. Powell testified, and it is undisputed, that it was, therefore, necessary to reorganize the printing department. Consequently, he said, he called each of the remaining printers, including Cook, into Ferguson's office and questioned them individually.

According to Cook, the questions Powell propounded concerned only his union affiliation, and when he admitted his membership, Powell attempted to induce him to withdraw from the Association. Cook also claimed that when he refused to resign from the Association, Powell told him that the respondent could not employ members of the Association.

On the other hand Powell, whose testimony in this respect is corroborated by Ferguson, testified that Cook was not questioned regarding his union affiliation. Instead, according to Powell, Cook was asked whether it was his intention to continue with the respondent or go to the other mill. Powell further claimed that when Cook indicated he intended to accept employment at the other mill, Cook was told that he had better go at that time as it was necessary to reorganize the printing department.

Unquestionably the resignation of almost 50 per cent of the printers created a serious crisis in the respondent's printing department. Under such circumstances we believe it likely that the management did endeavor to ascertain how many more of its printers intended to leave the respondent's employ so that plans could be made to replace them and that Powell did, as he claimed, question Cook regarding his intentions. As Cook claimed he was questioned only regarding his union affiliation we believe his testimony regarding the incident is not entitled to credence, particularly in view of the fact that on the same date Cook's services were terminated, allegedly because of his membership in the Association, one Frank Montgomery, a printer who had told Ferguson he was a member of the Association a few days before, was promoted to be foreman of the printers. If the respondent had been ruthlessly discharging printers because of their membership in the Association we believe Montgomery would also have been discharged. Furthermore, some of the other printers Powell questioned on that date were members of the Association, but none of them were discharged.

Under the circumstances we find that the respondent has not discriminated in regard to the tenure of employment of Frank Cook for the purpose of discouraging membership in a labor organization.

*C. V. Jester*, who had had only 2 or 3 months' previous experience, was employed as a printer on January 25, 1937. On February 20, 1937, Jester joined the Association at Greenville, South Carolina. The following Monday, February 22, 1937, Ferguson called him into his office and discharged him.

Jester claimed that Ferguson told him on that occasion that his work had not been satisfactory and then asked him if Montgomery had been talking to him about the Association, to which he replied that Montgomery had not. Jester claimed that Ferguson then asked him if he was a member, and, upon receiving an affirmative reply, discharged him. Jester further testified that his time card was gone from the card rack at the time he went into Ferguson's office and admitted that that was unusual.

Ferguson testified that Jester was unable to operate properly either of the two printing machines to which he had been assigned and that he was discharged for that reason. He claimed that Jester then asked him whether his membership in the Association was the cause of his discharge and that he told him it was not.

Although Jester's discharge occurred only 2 days after he joined the Association, there is no evidence which shows that the respondent knew of Jester's interest or membership in the organization before Jester entered Ferguson's office. The removal of Jester's time card from the card rack prior to the time he was called

into Ferguson's office is significant as it indicates that the respondent had decided to terminate Jester's services before he was actually called in, which was, so far as appears, before the respondent knew of Jester's membership in the Association.

Furthermore, the weight which should be accorded Jester's testimony regarding his conversation with Ferguson must be viewed in the light of all of his testimony. Jester emphatically denied that he had received any money from the Association after he was discharged and claimed that he had "barely been existing." However, he subsequently admitted, after he was recalled to the stand by the Board's counsel, that he had been receiving unemployment benefit payments from the Association in the amount of \$20 per week, a sum almost equal to his salary while working. This indicates that Jester was not averse to coloring his testimony, and we will, therefore, accept Ferguson's version of the conference.

The respondent's position is further supported by evidence that Jester was an inefficient printer. Thus, not only did Ferguson testify that Jester was inefficient, but John Madden, present foreman of the printers, testified that he was frequently called upon to help Jester set the blades in his machine, an operation a printer should be able to perform. Furthermore, Powell testified that Ferguson told him, prior to the time Jester was discharged, that Jester was unable to perform his work satisfactorily.

We find that the respondent has not discriminated in regard to the tenure of employment of C. V. Jester for the purpose of discouraging membership in a labor organization.

*Lee Simpson* had worked for the respondent about 2½ years. He was first employed as an inspector for about 3 months. He was then transferred to washing "gray cloth." He was again transferred about November 1, 1936, to a position as "back tender" on one of the printing machines. He joined the Associated on March 21, 1937. At the same time he joined the Associated about 14 other employees also joined the organization. He was discharged on March 23, 1937.

Simpson testified that on March 22, 1937, Ferguson asked him if Montgomery had been talking to him about the union and he replied that he had not. He further testified that the next day Ferguson called him into his office and told him that "if I wasn't true to him and the Company it was his business to find it out." He claimed that Ferguson then asked him with whom he had talked after their conversation on the preceding day and, when he refused to tell, discharged him.

Ferguson and Powell testified that Simpson had been transferred from his previous positions because he did not attend strictly to his duties but would "wander around" the plant talking to the other

employees. They further testified that despite repeated warnings, including one lay-off, Simpson continued to absent himself from his machine and that he was discharged for that reason. Ferguson also denied he had asked Simpson whether he had talked to Montgomery or anyone else regarding unions and claimed, on the contrary, that he did not know until some months after Simpson's discharge that he was a member of a union.

Simpson's testimony is replete with contradictions and is, therefore, not entitled to full credence. For example he claimed that he had never been reprimanded but later admitted that he had been laid off for 2 weeks when he was an inspector for not attending to his work, and that he had been warned on other occasions. On the other hand, Ferguson's testimony is straightforward and is, in our opinion, credible. We will, therefore, accept Ferguson's testimony as the correct version of what happened between Simpson and himself.

We are satisfied that Simpson did not attend strictly to his duties. This is evidenced by the frequent warnings which had been given him and the lay-off which he had received. That his discharge was not due to his union affiliation is, we believe, established by the fact that not one of the other 14 employees who joined the Associated on the same day Simpson joined it was discharged.

We find that the respondent has not discriminated in regard to the tenure of employment of Lee Simpson for the purpose of discouraging membership in a labor organization.

*W. E. Fore* was hired as a printer in May 1936. He joined the Association in February 1937, and was appointed to the "shop committee." As one of the members of the shop committee he collected dues and attempted to induce other eligible employees to become members of the Association and the Associated. He was discharged on April 8, 1937.

Fore testified that the day before his discharge a fellow employee named Bolt asked him for an application card, telling him that Ferguson wanted it. He told Bolt to tell Ferguson that if he (Ferguson) wanted a card, he could come to Fore's house and get it. He further testified that the following day, Powell called him into his office and, after showing him a piece of cloth, asked him if he had printed it. When Fore admitted that he had, Powell asked him if he knew that 6,000 yards of the combination were improperly printed and thereupon discharged him. Fore claimed that there were not more than 500 yards in that particular combination and that, therefore, he could not have incorrectly printed 6,000 yards of the cloth.

Powell testified—and his testimony is corroborated by Ferguson's—that Fore printed about 10,000 yards of the combination in

question and that more than 3,500 yards of it was unfit to sell, even as seconds. Although employees are not usually discharged for printing 500 yards of "bad cloth," incorrectly printing 3,500 yards is unquestionably considered good and sufficient cause for discharge, and other printers have been discharged for faultily printing even less yardage.

Fore's claim that he printed only 500 yards of the combination is not persuasive in view of his failure to remember the predominant color of the combination. Furthermore, at the oral argument before the Board, the Association's counsel did not question the Trial Examiner's finding that Fore had incorrectly printed approximately 3,500 yards of cloth.

Strong proof that Fore's membership in or activities on behalf of the Association were responsible for his discharge was necessary to rebut the presumption that he was discharged for a reason which had always been considered a sufficient cause to discharge an employee. Satisfactory proof that the respondent was arbitrarily and discriminatorily discharging union members was not presented.

We therefore find that the respondent has not discriminated in regard to the tenure of employment of W. E. Fore for the purpose of discouraging membership in a labor organization.

*Frank Montgomery* was hired by the respondent in 1934. He joined the Association about May 2, 1936. On May 18, 1936, he was promoted to the position of foreman of the printers over printers who had been longer in the respondent's employ, although he had told Ferguson several days before that he had joined the Association. In February 1937, he was relieved of his foreman's position, according to Powell and Ferguson, because the printing was not coming up to standard.

A short time later Montgomery had a conference with W. A. Sibley, general manager of the plant. Powell and another supervisory employee named Jackson were also present. Montgomery testified that Sibley called him into the office and questioned him for over an hour regarding the Association and the benefits which employees would receive from membership therein. He also claimed that Sibley asked him whether he had "talked union" and upon receiving an affirmative reply, told him that "they could not have a union there."

Sibley testified that pursuant to Montgomery's request he was granted an audience and that when Montgomery came into the room he complained that he was being discriminated against and "couldn't get anywhere" because he was a member of the Association. Sibley claimed that he assured Montgomery that although the respondent pursued an open-shop policy it did not discriminate

in any way against union men. He admitted that he did tell Montgomery not to talk about union matters in the plant but denied that he had said anything to Montgomery regarding not having a union in the mill.

As the conference was unquestionably at Montgomery's request and no doubt he did feel his demotion was undeserved, we feel satisfied that Montgomery did, as Sibley testified, open the conversation, by implying that his demotion was due to his union affiliation. Furthermore, Sibley's testimony is corroborated by Powell's. We will accept Sibley's testimony as to what was said on this occasion.

On June 28, 1937, almost a month after the original charges had been filed, Montgomery was discharged. The respondent contends that Montgomery was discharged because he was "irregular" in that he had failed to come to work 8 different times during the preceding 4 months and that on several of those occasions he had failed to report his intended absence prior to the starting hour in accordance with the respondent's custom. Ferguson testified that on each of such occasions he reprimanded Montgomery. He admitted that Montgomery told him each time that he had been absent because he was ill. Ferguson claimed, however, that Montgomery always appeared to be in good health the day following such absences. Montgomery admitted that he had been absent as alleged by Ferguson and did not deny that on several occasions he had failed to report his intended absence but contended that he was ill and taking medical treatment. However, no other evidence to substantiate his testimony was introduced.<sup>2</sup>

In view of the respondent's previous preferential treatment of Montgomery at a time when it knew he was a member of the Association, we find it difficult to believe that the respondent discriminatorily discharged him, particularly as it knew that charges that it had discriminatorily discharged Cook, Jester, Simpson, and Fore were then pending before the Board.

Furthermore the numerous warnings the respondent had given Montgomery prior to his discharge indicate clearly that the respondent believed that Montgomery was not telling the truth about the reason for his absences and was deliberately laying off from work. Such an inference the respondent was not unjustified in making in view of the fact that the absences were, in the main, of but 1 day's duration and that Montgomery did not furnish a doctor's certificate although he knew Ferguson doubted his word.

Under the circumstances we find that the respondent has not discriminated in regard to the tenure of employment of Frank Mont-

<sup>2</sup> A doctor's certificate was introduced in evidence, apparently to substantiate Montgomery's testimony that he was ill, but such certificate does not cover the period here involved.

gomery for the purpose of discouraging membership in a labor organization.

We have not found that any of the employees named in the complaint were discriminatorily discharged and, as we have heretofore pointed out, we do not believe that the coercive statements attributed to the respondent's supervisory employees were in fact made. We will, therefore, dismiss the complaint.

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

#### CONCLUSIONS OF LAW

1. The operations of the respondent, Ware Shoals Manufacturing Company, Ware Shoals, South Carolina, occur in commerce, within the meaning of Section 2 (6) of the Act.

2. Machine Printers' Beneficial Association and Associated Workers of Printing, Finishing and Allied Industries are labor organizations, within the meaning of Section 2 (5) of the Act.

3. The respondent has not, by discharging Frank Cook, Lee Simpson, W. E. Fore, C. V. Jester, and Frank Montgomery, discouraged membership in a labor organization, thereby engaging in an unfair labor practice, within the meaning of Section 8 (3) of the Act.

4. The respondent has not interfered with, restrained, or coerced its employees in the exercise of the rights guaranteed by Section 7, thereby engaging in an unfair labor practice, within the meaning of Section 8 (1) of the Act.

#### ORDER

Upon the basis of the foregoing 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 complaint against Ware Shoals Manufacturing Company be, and it is hereby, dismissed.