

In the Matter of SPECIALTY MATTRESS COMPANY AND ITS SUBSIDIARY AND AFFILIATE, THE TERRE HAUTE NATIONAL MATTRESS CO., INC. and TEXTILE WORKERS LOCAL NO. 169'

*Case No. C-575.—Decided July 9, 1938*

*Mattress Manufacturing Industry—Settlement:* on basis of stipulation providing for reinstatement of two employees and payment of back pay to one of them. *Order:* entered on stipulation.

*Mr. Colonel C. Sawyer,* for the Board.

*Mr. Paul R. Shafer,* of Terre Haute, Ind., for the respondent.

*Mr. Jacob Gerson,* of Terre Haute, Ind., for the Textile Workers Local No. 169.

*Mr. George Rose,* of counsel to the Board.

## DECISION

AND

## ORDER

### STATEMENT OF THE CASE

Upon amended charges duly filed by the Textile Workers Local No. 169, herein called the Union, affiliated with the Textile Workers Organizing Committee, the National Labor Relations Board, herein called the Board, by Robert H. Cowdrill, Regional Director for the Eleventh Region (Indianapolis, Indiana), issued its complaint dated April 8, 1938, against Specialty Mattress Company of Huntington, West Virginia, herein called the Huntington respondent, and its subsidiary and affiliate, The Terre Haute National Mattress Company, Inc., Terre Haute, Indiana, herein called the Terre Haute respondent, alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The complaint alleged in substance that the respondents had discharged Wayne King on November 11, 1937, B. H. King and Harold Ferguson on November 22, 1937, and refused to reinstate them because of their membership in and their affiliation with the Union and refused to bargain collectively on October 6, 1937, and there-

after with the Union as the representative of the employees within an appropriate unit. A copy of the complaint, accompanied by a notice of hearing, was duly served upon the respondents and the Union. On April 25, 1938, the respondents filed their answers in which they denied the material allegations of the complaint.

Pursuant to notice, a hearing was held on April 25, 1938, at Terre Haute, Indiana, before Horace A. Ruckel, the Trial Examiner duly designated by the Board. At the hearing the Board and the respondents were represented by counsel, and the Union by its representative. Counsel for the Board and the respondent and the representative for the Union entered into a stipulation. During the hearing motions to withdraw their answers, conditioned upon the acceptance by the Board of the stipulation, were duly filed and served upon the Board and the Union by the respondents. No objections having been made, the Trial Examiner granted the motions. The ruling of the Trial Examiner is hereby affirmed. Thereupon new answers were filed on behalf of the respondents in which the respondents admitted all the material allegations of the complaint, but denied that such acts constituted unfair labor practices, also denying that the Huntington respondent controlled the operations of the Terre Haute respondent, but admitting that C. F. Edwards controlled the policies of each. Counsel for the Board filed the following stipulation, agreed to by the respondents and the Union.

It is hereby stipulated and agreed by and between the Specialty Mattress Company of Huntington, West Virginia (hereinafter called the Huntington Respondent), The Terre Haute National Mattress Company, Inc. (hereinafter referred to as the Terre Haute Respondent), by Paul R. Shafer, Attorney at Law, 801 Sycamore Building, Terre Haute, Indiana, representing the said Respondents herein, and by F. B. Adkins, Secretary of the two above named Respondents, and the Textile Workers Local No. 169 by Jake Gerson, International Representative and Otho Brown, organizer, respectively representing the said Local No. 169, and Colonel Sawyer, Attorney for the Eleventh Region of the National Labor Relations Board as follows:

1. The Huntington Respondent is now and has for a number of years been a West Virginia Corporation with its principal office in the City of Huntington, West Virginia, and its one and only plant and principal place of business being located in Saginaw, Michigan, and for a number of years has been engaged at its said Saginaw, Michigan, plant in the manufacture, sale and distribution of mattresses, box springs and studio couches. That the Terre Haute Respondent is an Indiana Corporation, incorporated November 12, 1929, and has since said date been engaged

in the place of business in Terre Haute and in the manufacture, sale and distribution of mattresses, box springs and studio couches.

That said C. F. Edwards of Huntington, West Virginia is the principal stockholder in each of the above named corporations and is the President of each of the above named corporations.

That the said C. F. Edwards is also the principal stockholder and the President of numerous other mattress factories, most of them going under the name of National Mattress Companies and located in the States of Ohio, Illinois, Michigan, New York, Pennsylvania. That the said C. F. Edwards, as President of each of these corporations receives reports from each of them in the office of the Specialty Mattress Company at Huntington, West Virginia, and from his said office and as President of each of the various corporations in each instance, controls the general policies of said corporations. That the said C. F. Edwards as President of The Terre Haute National Mattress Company, receives reports periodically therefrom, and controls and directs not only the general policies, but also labor policies of the said Terre Haute National Mattress Company.

2. That the Terre Haute Respondent purchased ninety-five per cent (95%) of all raw material used during the past year in the manufacture and assembling of mattresses, box springs and studio couches from outside the State of Indiana. That the cost of the total raw materials used by the Respondent during the last year was approximately \$100,000.00. The greater portion of the cotton piece goods are purchased and shipped from manufacturing points in the New England States, while the cotton, cotton linters and other cotton products are purchased and shipped from the Southern States. That the raw materials used by the Respondent consist of cotton, cotton linters, cotton waste materials or picker, cotton piece goods, innerspring unit assemblies, kapok, etc.

3. Approximately forty percent (40%) of the manufactured articles are shipped to points in Kentucky, Illinois and Tennessee and approximately sixty per cent (60%) of the manufactured articles of the Terre Haute Respondent is delivered to dealers by the Respondent's trucks, while approximately thirty per cent (30%) is shipped by way of truck lines and approximately ten percent (10%) by rail. Sales are made by salesmen selling directly to customers, such as retail furniture stores and dealers, said salesmen personally contacting virtually all customers once a month. No advertising medium is used by the Terre Haute Respondent, with the exception of circular letters.

4. The gross sales of the Terre Haute Respondent for the year 1937 was approximately \$165,000.00.

It is stipulated and agreed by all the parties hereto that none of the parties to this stipulation are to be precluded from proving or introducing evidence as to other or additional facts concerning any and all matters relating to commerce hereinabove stipulated.

It is further stipulated and agreed by all the parties hereto that for the purpose of this proceeding, the Terre Haute Respondent admits that it is engaged in interstate commerce.

It is further stipulated by all the parties hereto that the following facts may be taken as proven in regard to the discharge of Harold Ferguson and Wayne King as set out in the complaint herein. That Harold Ferguson left the employ of the company on the date set out in the complaint herein, to wit: November 22, 1937, and immediately thereafter leased a filling station in the City of Terre Haute and has continuously ever since been engaged in the business of selling gasoline and oils and by reason of his said employment has not suffered any loss of pay because of his ceasing to be employed by the Terre Haute Respondent. That the said Harold Ferguson makes no claim and is not desirous of being reinstated by the Terre Haute Respondent, and has received substantially equivalent employment.

That the said Wayne King was laid off by the Terre Haute Respondent on November 11, 1937. That there has been no other employee engaged by the company to do the work of the said Wayne King for the reason that at the time of the said lay-off, the job which the said Wayne King did was abolished, and that since said date there has been no new employee engaged by the company at any other work which the said Wayne King is capable of doing, and that because of said facts, there is no back pay due and owing to said Wayne King from the Terre Haute Respondent at this time.

If approved by the National Labor Relations Board, the Respondents, the complaining Union herein and the Attorney for the Eleventh Region above named, consent upon the pleadings to the making of finding and entry of an order thereupon as hereinafter set out.

It is further stipulated and agreed by all the parties hereto, subject to the approval of the National Labor Relations Board may enter its cease and desist order in the above entitled case in the following form:

I. That the Terre Haute Respondent shall:

- I. Cease and desist from refusing to bargain collectively with the Textile Workers Local No. 169 as the exclusive representative of all their employees, exclusive of supervisory and clerical employees.
2. Cease and desist from interfering with, restraining or coercing its employees in the exercise of their rights to form, join or assist labor organizations of their own choosing, and in particular, the Textile Workers Local No. 169, to bargain collectively and to engage in other concerted activities with their employees at their Terre Haute plant.
3. Cease and desist from discharging, or laying off, or in any other manner penalizing its employees for the reason that such employees have joined or assisted the Textile Workers Local No. 169, or any other labor organization of its employees, or from in any manner discriminating in regard to hire or tenure of employment of any of its employees, in order to encourage or discourage membership of their employees in, or their affiliation with, any labor organization of their employees.

II. Take the following affirmative action in order to effectuate the policies of the National Labor Relations Act:

1. (a) Upon request, bargain collectively with the Textile Workers Local No. 169, as the exclusive representative of its employees at its Terre Haute plant, exclusive of supervisory and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached on any such matters, embody such understanding in a signed agreement for a definite term, to be agreed upon, if requested to do so by said Local No. 169.
- (b) Offer to Wayne King and B. H. King immediately their full reinstatement to employment in their former positions without prejudice to their former seniority, rights or privileges.
- (c) Make whole the said B. H. King for any losses of pay he may have suffered by reason of the Respondent's discriminatory acts, by paying to him the sum of \$38.00, this being calculated by deducting \$66.00 earned by King from \$104.00, money due him from Respondent.

- (d) Cease and desist from in any manner discouraging the membership of its employees in, or their affiliation with any labor organization of its employees and from in any manner discriminating in regard to hire, tenure of employment, or any term or condition of employment of their employees because of their membership in, or their affiliation with the Textile Workers Local No. 169.
- (e) Within five days from the receipt of notice that the National Labor Relations Board has accepted this stipulation, post in two conspicuous places in the Terre Haute plant, notices stating:
  - (1) That the Terre Haute Respondent will cease and desist in the manner aforesaid;
  - (2) That the Respondent's employees are free to join in or assist any labor organization for the purposes of collective bargaining with the Respondent;
  - (3) That the Respondent will not discriminate against members of any labor organization of its employees, or any person assisting such organizations by reason of such membership or assistance.
  - (4) That such notices shall remain posted for a period of at least thirty consecutive days from date of posting.
- (f) File with the Regional Director of the Eleventh Region within ten days from the date of acceptance of this stipulation by the National Labor Relations Board, a report in writing, setting forth in detail, the manner and form in which the Respondents have complied with the foregoing requirements.

All parties hereto expressly consent to the entry by the appropriate Circuit Court of Appeals, of an enforcement order, embodying the terms of the Board's order to be entered herein by consent, pursuant to the terms of this stipulation.

The Board hereby approves the above stipulation.

By order of the Board dated May 4, 1937, the proceeding was transferred and continued before the Board in accordance with Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, for action pursuant to Article II, Section 38, of said Rules and Regulations.

Upon the stipulation above, the pleadings and the entire record in the case, the Board makes the following:

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENTS

The Specialty Mattress Company of Huntington, West Virginia, is a West Virginia corporation, with its principal office in the city of Huntington, West Virginia, and its one and only plant and principal place of business located in Saginaw, Michigan. The Terre Haute National Mattress Company, Inc., is an Indiana corporation incorporated November 12, 1929, and since that date has been engaged in business in Terre Haute. The respondents are engaged in the manufacture, sale, and distribution of mattresses, box springs, and studio couches. The Terre Haute respondent purchased from outside the State of Indiana 95 per cent of all raw materials, valued at approximately \$100,000, used during the past year in the manufacture and assembling of its products. The raw materials used by the Terre Haute respondent consist of cotton, cotton linters, cotton waste materials or picker, cotton piece goods, innerspring assemblies, kapok. Approximately 40 per cent of the manufactured articles are shipped to points in Kentucky, Illinois, and Tennessee.

C. F. Edwards of Huntington, West Virginia, is the principal stockholder in each of the respondent corporations and is the president of each. He is also principal stockholder and president of a number of other corporations manufacturing similar products, and as such president he receives reports from each of them, and controls the general policies of these corporations, and the labor policies of the Terre Haute respondent.

We find that the above-described operations of the respondents constitute a continuous flow of trade, traffic, and commerce among the several States.

## II. THE APPROPRIATE UNIT

We find that all of the Terre Haute respondent's employees, exclusive of clerical and supervisory employees, constitute an appropriate unit for the purposes of collective bargaining in the Terre Haute respondent's plant and that such a unit insures to the employees the full benefit of their right to collective bargaining and otherwise effectuates the policies of the Act.

## III. REPRESENTATION BY THE UNION OF A MAJORITY IN THE APPROPRIATE UNIT

We find that on or about August 29, 1937, and at all times thereafter, the Union was the representative of the majority of the Terre Haute respondent's employees in the appropriate bargaining unit, and by virtue of Section 9 (a) of the Act was the exclusive repre-

sentative of the employees in the unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

### ORDER

On the basis of the above findings of fact and stipulation and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that The Terre Haute National Mattress Company, Inc., and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From refusing to bargain collectively with the Textile Workers Local No. 169 as the exclusive representative of all its employees, exclusive of supervisory and clerical employees;

(b) From interfering with, restraining, or coercing its employees in the exercise of their rights to form, join, or assist labor organizations of their own choosing, and in particular, the Textile Workers Local No. 169, to bargain collectively and to engage in other concerted activities with its employees at its Terre Haute plant;

(c) From discharging, or laying off, or in any other manner penalizing its employees for the reason that such employees have joined or assisted the Textile Workers Local No. 169, or any other labor organization of its employees, or from in any manner discriminating in regard to hire and tenure of employment of any of its employees, in order to encourage or discourage membership of their employees in, or their affiliation with, any labor organization of its employees.

2. Take the following affirmative action in order to effectuate the policies of the National Labor Relations Act:

(a) Upon request, bargain collectively with the Textile Workers Local No. 169, as the exclusive representative of its employees at its Terre Haute plant, exclusive of supervisory and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached on any such matters, embody such understanding in a signed agreement for a definite term, to be agreed upon, if requested to do so by said Local No. 169;

(b) Offer to Wayne King and B. H. King immediately their full reinstatement to employment in their former positions without prejudice to their former seniority, rights or privileges;

(c) Make whole the said B. H. King for any losses of pay he may have suffered by reason of the respondent's discriminatory acts, by paying to him the sum of \$38, this being calculated by deducting \$66 earned by King from \$104, money due him from respondent;

(d) Within five (5) days from the receipt of notice that the National Labor Relations Board has accepted this stipulation, post in two conspicuous places in the Terre Haute plant, notices stating:

(1) That the Terre Haute respondent will cease and desist in the manner aforesaid;

(2) That the respondent's employees are free to join in or assist any labor organization for the purposes of collective bargaining with the respondent;

(3) That the respondent will not discriminate against members of any labor organization of its employees, or any person assisting such organizations by reason of such membership or assistance;

(4) That such notices shall remain posted for a period of at least thirty consecutive days from date of posting;

(e) File with the Regional Director of the Eleventh Region within ten (10) days from the date of acceptance of this stipulation by the National Labor Relations Board, a report in writing, setting forth in detail the manner and form in which the respondent has complied with the foregoing requirements.

It is further ordered that the complaint be, and it hereby is, dismissed without prejudice in so far as it alleges that the respondent has engaged in unfair labor practices by its discharge of Harold Ferguson on November 22, 1937.