

In the Matter of BRADFORD DYEING ASSOCIATION (U. S. A.) (A CORPORATION) and TEXTILE WORKERS' ORGANIZING COMMITTEE OF THE C. I. O.

Case No. C-265

SUPPLEMENTAL FINDINGS OF FACT
AND
RECOMMENDATION

August 30, 1938

On December 22, 1937, the National Labor Relations Board, herein called the Board, issued a Decision and Order¹ in the above-entitled case by which it found that the Bradford Dyeing Association (U. S. A.), Bradford, Rhode Island, herein called the respondent, had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act, and ordered the respondent, inter alia, to (1) offer to Edward Nelson, an employee of the respondent found to have been discriminatorily discharged in violation of Section 8 (3) of the Act, immediate and full reinstatement to his former position without prejudice to his seniority and other rights and privileges, and (2) make whole Edward Nelson for any losses of pay he had suffered by reason of the respondent's discriminatory acts, by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge, April 3, 1937, to the date of the respondent's offer of reinstatement, less any amount earned by Nelson during that period.

On April 4, 1938, the Board, pursuant to Section 10 (e) of the Act, petitioned the United States Circuit Court of Appeals for the First Circuit, herein called the Court, for the enforcement of its order of December 22, 1937, and filed with said Court a transcript of the entire record in the proceedings before the Board. Thereafter, the respondent petitioned the Court for leave to adduce additional evidence with regard to Edward Nelson for the purpose of showing that had Nelson worked for the respondent continuously since April 3, 1937, he would have been laid off on a certain date thereafter as a result of a reduction

¹ 4 N. L. R. B. 604.
8 N. L. R. B., No. 120.

of the respondent's maintenance force. On April 14, 1938, the Court entered an order granting leave to the respondent "to adduce additional evidence before the National Labor Relations Board limited to facts relating to that portion of the order of said National Labor Relations Board of December 22, 1937, directing the reinstatement of Edward Nelson to his former position."

Thereafter the attorneys for the Board and for the respondent entered into a stipulation by which it was agreed that in lieu of a further hearing and such testimony as would be given therein, certain affidavits enumerated in and attached to said stipulation would be made part of the proceeding and of the record, and would have the force and effect of testimony.

Upon such affidavits the Board makes the following:

SUPPLEMENTAL FINDINGS OF FACT

During the week ending April 3, 1937, the respondent had in its employ 12 carpenters of whom Nelson was the eleventh in seniority of service with the respondent. Thereafter, due to a decrease in the volume of business done by the respondent, substantial lay-offs of workers in the production and maintenance departments of the respondent's plant occurred. On or about September 17, 1937, over 50 employees in the production and maintenance departments were laid off, including three carpenters, one of whom was junior to Nelson in point of length of service, and two of whom were senior to Nelson. On December 23, 1937, another carpenter was laid off, leaving seven carpenters in the employ of respondent. Nelson is junior in length of service to each of those seven.

If, upon a decrease in volume of business, the respondent followed the practice of reducing its force strictly in accordance with the seniority of its employees, Nelson would have been laid off by the respondent on September 17, 1937, had he not been discriminatorily discharged on April 3, 1937.

There is no showing, however, that the respondent customarily followed a settled and well-defined principle of seniority in lay-offs occasioned by a reduction in force. In fact, no proof was offered concerning the considerations which govern such lay-offs. The respondent has shown merely that Nelson might have been laid off on September 17—a speculative result in the absence of any showing of a settled policy governing lay-offs. Under this state of the proof we cannot find that Nelson would have been laid off on September 17, 1937.

RECOMMENDATION

Upon the basis of the findings of fact, and pursuant to Section 10 (e) of the National Labor Relations Act, the National Labor Relations Board hereby recommends to the United States Circuit Court of Appeals for the First Circuit that the order of the Board, issued by the Board on December 22, 1937, be enforced as so issued and that it be not modified or set aside in whole or in part.

MR. EDWIN S. SMITH took no part in the consideration of the above Supplemental Findings of Fact and Recommendation.