

In the Matter of ALGONQUIN PRINTING COMPANY and UNITED  
TEXTILE WORKERS OF AMERICA, LOCAL NO. 1044

*Case No. C-7.—Decided March 4, 1936*

*Textile Dyeing, Printing and Finishing Industry—Interference, Restraint or Coercion:* expressed opposition to labor organization—*Discrimination:* non-reinstatement following temporary shut-down—*Employee Status:* during temporary shut-down—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. Ralph H. Cahouet* for the Board.

*Mr. Harold S. R. Buffinton* and *Mr. Ray C. Westgate*, of Fall River, Mass., for respondent.

*Mr. Jacob Minkin*, of New Bedford, Mass., for the Union.

*Mr. Louis L. Jaffe*, of counsel to the Board.

DECISION

STATEMENT OF CASE

On October 11, 1935, Local No. 1044, United Textile Workers of America, hereinafter called the Union, filed with the Regional Director for the First Region a charge that the Algonquin Printing Company, located in Fall River, Massachusetts, had engaged in and was engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the National Labor Relations Act, hereinafter called the Act. On November 19, 1935, the Board issued a complaint against the Algonquin Printing Company, hereinafter referred to as the respondent, said complaint being signed by the Regional Director for the First Region and alleging that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act. In respect to the unfair labor practices the complaint alleged in substance that the respondent refused to employ Loretta Rawston and Manuel Madeiros, on August 20, 1935 and August 24, 1935, respectively, for the reason that each of them joined and assisted the Union; that such refusal was intended to discourage membership in the Union; and that such acts constituted unfair labor practices within the meaning of Section 8, subdivisions (1) and (3).

The complaint and accompanying notice of hearing were served on respondent in accordance with Article V of National Labor Relations Board Rules and Regulations—Series 1.

On November 25, 1935, the respondent filed an answer admitting that it had refused to employ Laurretta Rawston on August 20, 1935, and Manuel Madeiros on August 24, 1935, but denying that the refusal was because of their union activity. The respondent alleged that its reason for the refusal was a lack of work.

Commencing on December 9, 1935, a hearing was held at Fall River, Massachusetts, by William R. Walsh, sitting as Trial Examiner, and testimony was taken. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded to all parties. The respondent moved to dismiss the complaint on the grounds that the National Labor Relations Act is not a regulation of commerce under Article I, Section 8, Clause 3 of the Constitution of the United States, and that the Act is in violation of the Tenth Amendment to the Constitution of the United States. The Trial Examiner reserved decision on the motion to dismiss; the motion to dismiss is hereby denied.

Thereafter the Board, acting pursuant to Section 35, Article II of its Rules and Regulations, directed that the proceedings be transferred to and continued before it. A further hearing was held upon due notice on December 21, 1935, at Fall River, Massachusetts, by Daniel M. Lyons, acting as Trial Examiner, at which time and place further evidence was taken.

Upon the record in the case, the stenographic transcript of the hearing, and all the evidence, including oral testimony, documents and other evidence offered and received at the hearing, the Board makes the following:

#### FINDINGS OF FACT

1. *Algonquin Printing Company.* The respondent is a Massachusetts corporation engaged in the printing of cotton cloth and employs approximately 440 persons. Part of the cloth printed by the respondent is printed against immediate order and shipped out when finished; part is held as stock for three or four weeks. Its normal supply of material on hand is sufficient to operate the plant from two to four weeks.

In the first 11 months of 1935 the respondent received for printing 23,786,000 yards of cotton cloth, over 99% of which was from out of state. In the same period it printed and shipped out 20,685,000 yards of cloth, over 83% of which was sent out of state. Of the total amount printed in 1935, 18,498,722 yards were printed for

respondent's own account; the remainder, 2,186,278 yards, was printed for firms located in New York and Chicago; these firms shipped their own materials to the respondent's plant, the respondent printed the cloth and returned it to the firms for whom it had done the printing. This jobbing work is done quickly, the materials being in the plant no more than two or three weeks. The chemicals and bleaches, some \$370,000 per year, are bought in Providence, Rhode Island.

We find that the operations of the respondent constitute a continuous flow of trade, traffic and commerce among the several states.

2. *Relations Between the Respondent and the Union.* The Union is a local of the United Textile Workers of America and is a labor organization of textile workers. The Union was organized in August, 1933. Textile workers in various mills in Fall River are eligible for membership. Very shortly after its formation the Union secured a membership of about 80% of the workers in the respondent's plant and continues to have that membership. The Union and the respondent, through its superintendent, Mr. Harley, came to an oral understanding on the method to be used in adjusting grievances. Under this arrangement the Union was to have a steward in each department of the plant who would take up grievances with the foreman of the department. If the steward was unable to settle a grievance, he would report to the Shop Chairman. The Shop Chairman would talk with the foreman of the department in question. If he did not succeed with the foreman, he would talk with the superintendent. Failing there, he would place the matter in the hands of the Union's business agent.

In April, 1934, there was a strike in the plant. The duration of the strike does not appear from the record. In September, 1934, the plant was closed as a result of the general strike throughout the textile industry. Shortly thereafter the Union members walked out of the plant for one day as a protest against the employment of six or seven workers who had continued working during the general strike. These six or seven men had been led by one Mahoney, who, prior to the general strike, had been a Union member and who shortly thereafter sought to form a union restricted to plant members. This attempt at organization seems to have come to nothing. In January, 1935, Thomas Joyce became superintendent of the Algonquin plant. He refused to deal with the Union officials in respect to the settlement of disputes. In May the Union brought a case of alleged discharge for union activity before the Textile Labor Relations Board. About this time the National Industrial Recovery Act was held unconstitutional, and the Textile Board did not render a decision in that case. Mr. Jennings, the treasurer of the respondent, admitted on cross-examination that he resented the difficulties

caused by union activity, that his attitude toward the Union and its officials was not a friendly one, that he was more friendly toward those workers who had continued at work during the general strike, that the Union officials were more responsible than the rank and file for employee dissatisfaction, that he had expressed resentment to Mr. Bishop, the Union's business agent, both in connection with the Union's appeal to the Textile Labor Relations Board and with other activities of Mr. Bishop among the employees.

3. *Manuel Madeiros*. Mr. Madeiros had worked for the respondent since 1921, with the exception of two three-months intervals. He worked for two years at various jobs, earning at first \$14.00 and later \$16.00 per week, until finally he was promoted to the job of back-tender at increased pay. He worked as back-tender until July 19, 1935. His immediate foreman testified that his work was as satisfactory as that of any other back-tender, and there is no evidence or suggestion to the contrary.

Madeiras was known as a vigorous Union officer. He joined the Union in August, 1933. He became a member of the executive board. In December, 1933, he was made Shop Chairman; he continued in this position as long as he was employed by the respondent. During his incumbency he presented 75 to 100 grievances to the management; many of them he carried to the superintendent. In June, 1935, Madeiros was elected vice-president of the Union to fill an unexpired term; in November he was elected vice-president for a full term. He became thereby the highest ranking Union officer in the plant, the president of the Union being employed in another plant. Madeiros was the spearhead of Union activity in the respondent's plant. He did not limit himself to the formal matter of presenting grievances. When Mahoney began to organize a plant union, Madeiros protested.

On June 17, 1935, the plant was shut down. Final liquidation of the respondent was being seriously considered. The respondent had (and still has) 15 printing machines available for use in its plant. Each machine in use is manned by a printer. Each printer has a back-tender to assist him in the operation of the machine. In addition, nine or more spare hands would be carried if all 15 machines were in use. At the time of the shutdown there were 14 printers, 15 back-tenders (one not working) and 11 spare hands carried on the payrolls. The plant reopened for the two weeks ending July 13 and July 20, 1935. In the first week there were employed 8 printers, 8 back-tenders and 4 spare hands; in the second there were 6 printers, only 5 back-tenders and 4 spare hands. Mr. Madeiros was employed the first week but not the second; he was told that it was his turn to loaf. The plant was reopened again for the week ending August 24, 1935, and at the date of the hearing was still running. In the week of August 24th there were 8 printers, 8

back-tenders and 7 spare hands. In the following week there were 10 printers, 12 back-tenders and 7 spare hands. The 2 extra back-tenders were apparently used as spare hands. The following week there were 12 printers, 13 back-tenders (one was working as a spare hand) and 7 spare hands (exclusive of the back-tender working as such).

Mr. Madeiros applied for work the day of the reopening in August, to Mr. Blake, a sub-foreman in the printing department (known as a second hand) who was taking the applications of the back-tenders and spare hands. Blake told him: "I haven't got you on the list. You had better see the boss." "The boss" was Mr. Snell, foreman of the printing department. Mr. Snell told Madeiros: "I haven't got anything for you, I am carrying out my orders from the office." A week later Madeiros again presented himself to Snell and was given the same answer. About three weeks after the plant reopened, Bishop, the business agent of the Union, spoke to Snell on behalf of Madeiros. Snell told him that he had orders not to reemploy Madeiros. Bishop spoke to Jennings, the respondent's treasurer, requesting him to stagger the work so that Madeiros and Loretta Rawston might be reemployed. Jennings replied that they no longer cared to stagger the work.

Mr. Blake, the second hand, testified that when the plant reopened he employed all of the old back-tenders except Madeiros, ten for the position of back-tender, four as spare hands. When Madeiros arrived, Blake testified, all of the jobs he had to give out had been filled. Later those back-tenders working as spare hands were shifted to their regular positions and he "called back" the regular spare hands to fill the vacancies. Even if Blake's recollection of the facts was correct, it would still cause very real suspicion of discrimination against Madeiros: the respondent employs every available back-tender except Madeiros, even supplanting four of the regular spare hands to make jobs for them; more men are "called back"; Madeiros has, in the interim, again sought employment, but still no work can be found for him; instead the regular spare hands are now used.

The facts, however, as revealed by the respondent's employment records, show a somewhat different situation. In the first week of the reopening only eight of the back-tenders appear on the rolls. They were apparently all used as back-tenders since there were eight printers employed that week. The following week 12 of the back-tenders appear on the rolls, 2 being used, apparently, as spare hands, since there are only 10 printers. Five of these were men not employed in the previous week, one from the previous week having dropped out for one week. In the following week there are 13 back-tenders, one serving as spare hand. One of the regular back-tenders had

been employed elsewhere, but in the week ending October 19 we find him on the payroll, first as a spare hand, then in his regular position. At later periods some one or other of the back-tenders serves as spare hand or truckman.

The situation then is this: Mr. Madeiros presents himself during the week ending August 24th and is told there is no work. He returns the next week; again he is told there is no work. Yet in that week all of the available remaining 5 back-tenders are reemployed, work being made for two or three of them as spare hands. And most significant of all, in that same week there appears on the rolls a new spare hand, J. Robello, who has never appeared there at all. Thus it appears that with the single and persistent exception of Madeiros, the respondent has reemployed all of the old back-tenders, and that when they could not be used as back-tenders, has found other work for them. In a week when Madeiros was applying for employment and when two of his fellow back-tenders were taken on as spare hands, an entirely new spare hand was taken; yet there was no work for Madeiros.

Mr. Madeiros was a good worker. His seniority was superior to at least four of the back-tenders and most of the spare hands. Mr. Jennings testified that he bore no ill feeling against Madeiros. Yet, with respect to employment, the discrimination against him is beyond doubt, and this discrimination is explicable only on the ground of his prominence in Union activity. It has already been shown above that the respondent harbored resentment against the Union. Madeiros, the Shop Chairman, was the constant and visible symbol of the Union and its claims.

The respondent maintains that the work of Madeiros did not cease as a consequence of a current labor dispute but by reason of the closing of the plant due to depressed business conditions. The intended implication is that under those circumstances a refusal to employ him at a later date cannot be a violation of the Act. This defense is in line with the statement which Bishop testified Mr. Jennings made to him, that, "everyone was hired from week to week and that they didn't have to take everyone back". The respondent no doubt has in mind the definition of an employee under Section 2, subdivision (3), providing that the term "employee" shall include one whose work has ceased as a consequence of a current labor dispute. But Section 8, subdivision (3) in forbidding discrimination in employment, is not limited to those who are employees at the time of the discrimination. It forbids discrimination in regard "to hire" generally. The purpose of the provision is, it is true, to protect employees in their right to self-organization. But surely a refusal by an employer to rehire a former employee because of his

union activities which are well known to his former fellow workers discourages the latter and so restrains them in the exercise of their right to self-organization.

4. *Lauretta Rawston.* Mrs. Rawston was a "doubler". Doubling is the process of folding the cloth double and winding it on a cardboard spool for shipping. She had been employed by the respondent for 18 years, off and on. She was out five years because of sickness, and was laid off in 1933 or 1934 by an efficiency expert because she was a married woman. Before the shutdown in June, eight doublers were employed. During the temporary operations in July, Mrs. Rawston was not employed. When the plant was reopened five of the doublers were reemployed. Two did not apply, and Mrs. Rawston on applying was told that she would be sent for when she was wanted. She has never been sent for nor has she been reemployed. Two new doublers have since been employed.

Mrs. Rawston joined the Union in January, 1934. Shortly afterwards she became a shop steward. In the early part of 1935 she was elected financial secretary to fill an unexpired term; and in the fall was elected financial secretary for a full term.

The respondent claims that Mrs. Rawston was refused employment because she was not efficient. On April 1, 1935, the respondent employed Thomas Riley as overseer of packing. Mr. Riley inaugurated a policy of taking day-to-day records of the output of the doublers. He noted the number of "short" and "regular" pieces of cloth handled by each doubler. Pieces vary from 10 to 40 yards. Those between 10 and 20 yards are known as short pieces; over 20 yards as regular pieces. Regular pieces average 30 yards. The short pieces are more easily and quickly handled than the regular pieces.

On the basis of these records, the respondent maintains that Mrs. Rawston was among the three most inefficient of the doublers, and points out that none of these three has been reemployed. This argument is offered to show that the verdict of inefficiency was not devised solely to keep out Mrs. Rawston. The other two girls, however, did not apply for reemployment. Further doubt is cast on this argument by the fact that, even accepting the records at their full value, one of the girls, Dais, has a higher total for the period of the records than at least one of those who was taken back. It thus still remains to be explained that of the whole group of doublers Mrs. Rawston alone was refused reemployment.

We have studied these production records carefully and we have come to the conclusion that they are so inadequate and show a situation so peculiar that the respondent could not from the records have formed any opinion of Mrs. Rawston's efficiency. The respondent's judgment as to her efficiency is based on the fact that she has handled the next to the smallest total number of pieces. The records

cover a period of nine weeks. The number of pieces do not, at least over so short a period, provide a common and constant factor of comparison. The pieces vary from 10 to 40 yards; the amount of time consumed in handling these pieces varies, the shorter the piece, the less the time consumed. The respondent has made no study of the amount or rate of variation. The respondent has made no time analysis of this or any other element of work involved in the doubling process. The respondent has never on the basis of experiment or experience established a standard of expectable performance based on actual elements of work content. Mr. Riley testified that he had decided on a minimum of 400 long or 500 short pieces per day. Yet, during the nine weeks when the records were kept, no worker ever handled anything like that number.

Mr. Riley testified that the existence of these undefined and unanalyzed variations did not impair the usefulness and reliability of the record, because on the average all workers would receive an equal number of short and long pieces. If it is the normal practice in the plant to even up the long and short pieces among all the workers, then the facts shown by the records are surprising indeed; for it appears that of the total pieces done by each of three workers, Mrs. Rawston being one of them, 88%, 88.6% and 88.9%, respectively, were long pieces—the highest percentage is Mrs. Rawston's; whereas the percentage of long pieces for the six other workers is 59, 43.4, 51.2, 46.8, 47.6 and 40.1, respectively. It should be further pointed out that the three workers having the highest percentage of long pieces were on all of the nine weekly record sheets listed first in the order: Wilcox, M. Rogers and Rawston, reading left to right. From these facts it is clear that these three workers were deliberately being given one kind of work, the other six another. Why this was so we do not know. It may be because these were the oldest and most experienced workers and this work was considered more difficult. But what is very clear is that it utterly destroys the usefulness of the records in rating these nine workers. To the already completely inadequate analysis of time factors upon which the record is based, there is added the fact that the nine workers were not even doing the same work. We credit the respondent's officers and foremen with the normal intelligence and experience to be found among those who for many years have been engaged in this industry. We cannot believe that on such a record kept for nine short weeks the respondent concluded that a worker employed by it for 18 years was inefficient to the point that she alone of all those applying for work should be refused.

The pattern of facts in Mrs. Rawston's case is strikingly like that in Mr. Madeiros'. Each had worked many years for the respondent, each had become in 1935 an important Union officer—the only Union

officer reemployed by the respondent was a sergeant-at-arms—each was the only one in his or her group who, applying for reemployment, was refused.

We found that respondent's hostility to the Union, particularly to its officers, accounts for its refusal to reemploy Mr. Madeiros. That consideration is equally relevant in the case of Mrs. Rawston. Standing together the two cases reinforce the conclusion which we have drawn from each case separately: that the respondent by striking at the leadership of the Union was seeking to discourage Union membership and activity. Therefore we find that the respondent has discriminated against Laurretta Rawston and Manuel Madeiros with respect to terms of employment for the purpose of discouraging membership and activity in the Union among its employees and has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

In the past disputes relating to the organizational activities of labor have seriously disrupted operations in the textile dyeing and finishing industry; in 1934, 32,528 men suffered a loss of 755,998 man-days of work with consequent serious injury to industry and commerce. We find that the unfair labor practices in question tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law:

1. Local No. 1044, United Textile Workers of America (the Union), is a labor organization within the meaning of Section 2, subdivision (5) of the Act.

2. By its refusal to employ Laurretta Rawston on August 20, 1935, and Manuel Madeiros on August 24, 1935, and each of them, for the reason that they and each of them joined and assisted the Union, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

3. By its refusal to employ said Laurretta Rawston and Manuel Madeiros, and each of them, as above set forth, and by all of said acts and each of them, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said Laurretta Rawston and Manuel Madeiros, and each of them, and did thus discourage and is thus discouraging membership in the Union, and by all of said acts and each of them did thereby engage in and

is thereby engaging in unfair labor practices within the meaning of Section 8, subdivisioin (3) of said Act.

4. The unfair labor practices in which the respondent has engaged and is engaging, as aforementioned, are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of said Act.

### ORDER

On the basis of the findings and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Algonquin Printing Company:

1. Cease and desist from in any manner interfering with, restraining or coercing their employees in the exercise of their rights 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 purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

2. Cease and desist from discouraging membership in United Textile Workers of America, Local No. 1044, or any other labor organization of their employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment;

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

(a) Offer to Laurette Rawston and Manuel Madeiros employment in the respective positions formerly held by them; and

(b) Make whole said Laurette Rawston and Manuel Madeiros for any losses of pay they have suffered by reason of the refusal to employ them, by payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from the date of her or his application for employment, in the case of Laurette Rawston being August 20, 1935, and in the case of Manuel Madeiros being August 24, 1935, to the date of such offer of employment.