

In the Matter of RADIANT MILLS COMPANY, A CORPORATION and J. R.  
SCARBROUGH AND GEORGE SPISAK

*Case No. C-9.—Decided March 4, 1936*

*Hosiery Industry—Interference, Restraint or Coercion:* propaganda against union—*Discrimination.* lay-off; non-reinstatement following lay-off prior to July 5, 1935—*Reinstatement Ordered—Back Pay:* awarded.

*Mr. Nathan Witt* for the Board.

*Fawver & Fawver*, by *Mr. King Fawver*, of Elyria, Ohio, and *Frankel & Frankel*, by *Mr. Philip Frankel*, of Cleveland, Ohio, for respondent.

*Mr. Charles B. Drake*, of Cleveland, Ohio, for American Federation of Hosiery Workers.

*Mr. Stanley S. Surrey*, of counsel to the Board.

DECISION

STATEMENT OF CASE

In October, 1935, J. R. Scarbrough and George Spisak, hereinafter sometimes referred to as complainants, filed with the Regional Director of the National Labor Relations Board for the Eighth Region a charge that the Radiant Mills Co., Inc. had engaged in and was engaging in unfair labor practices contrary to the National Labor Relations Act. On November 5, 1935 the Board issued a complaint against the Radiant Mills Co., Inc., hereinafter sometimes referred to as the respondent, said complaint being signed by the Regional Director for the Eighth 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 National Labor Relations Act. In respect to the unfair labor practices, the complainant alleged, in substance, that the respondent, by L. B. Iglauer, its secretary, treasurer and manager, on August 26, 1935 discharged J. R. Scarbrough and George Spisak, knitters employed by the respondent at its plant in Elyria, Ohio, for the reason that they had joined and assisted a labor organization known as American Federation of Hosiery Workers, Local No. 114.

The complaint and accompanying Notice of Hearing were served on November 5, 1935, on the complainants and the respondent in accordance with National Labor Relations Board Rules and Regula-

tions—Series 1, Article V. The respondent filed a motion to dismiss the complaint on the ground of the unconstitutionality of the Act as applied to the respondent and on the further ground that the complainants were not employees of the respondent on or after July 5, 1935, the date on which the Act became effective. Without prejudice to its rights under such motion to dismiss, the respondent also filed an answer in which it denied the principal allegations of the complaint and repeated the contentions urged in its motion to dismiss. On November 14 and 15, 1935, a hearing was held at Cleveland, Ohio by William R. Walsh, the Trial Examiner designated by the Board, and testimony was taken. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to the parties. Upon motion of the attorney for the Board, acquiesced in by the attorney for the respondent, the complaint was amended by changing the name of the respondent from "Radiant Mills Co., Inc." to "Radiant Mills Company" so as to make the name conform to that on its charter. During the hearing the respondent again moved to dismiss the complaint and a ruling was reserved by the Trial Examiner. At the conclusion of the hearing, both attorneys presented oral arguments to the Trial Examiner, and later the attorney for the respondent filed a written brief.

On December 16, 1935, the Board, pursuant to Section 35, Article II of its Rules and Regulations—Series 1, directed that the proceeding be transferred to and continued before it.

#### FINDINGS OF FACT

##### I. RADIANT MILLS COMPANY

The Radiant Mills Company is an Ohio corporation which owns and operates at Elyria, Ohio a plant for the manufacture, distribution and sale of ladies' hosiery. The raw materials and other articles used by the respondent in the manufacture of such hosiery—mainly rayon, silk, cotton, paper boxes, paper, dye stuffs, chemicals, needles and machines—are obtained practically entirely from points outside of the state of Ohio. A compilation prepared by the respondent covering the period from January 1, 1935 to October 31, 1935 shows that 87.1% of such materials came from the states of Connecticut, Illinois, Kentucky, Massachusetts, New York, North Carolina, Pennsylvania, Tennessee and Virginia, the specific articles and amounts thereof obtained from each state being indicated in the compilation, whereas only 12.9% was obtained in Ohio. The ladies' seamless hosiery manufactured by the respondent is sold by it locally, through its salesmen on the road, and through a sales agency. The respondent's merchandise is sold by this agency through its New York and

Chicago offices. A compilation prepared by the respondent covering its total sales for the period from January 1, 1935 to October 31, 1935 shows that 82.8% of its products was sold to customers in states other than the state of Ohio, the principal states being Michigan, New York, Pennsylvania, Illinois and Minnesota. In that period the respondent sold \$159,816.95 worth of hosiery. About 60% of the merchandise is marketed under the brand of the respondent and the remainder under the brands of some of its customers. Both the raw materials received and the hosiery sold are delivered on the basis of F. O. B. the plant. About 85 persons are employed by the respondent, its weekly payroll averaging between twelve and fourteen hundred dollars.

## II. THE UNFAIR LABOR PRACTICES

The complaint alleges, and the answer denies, that the respondent on August 26, 1935 discharged J. R. Scarbrough and George Spisak because of their membership in Local No. 114 of the American Federation of Hosiery Workers and their activities in connection with that Union. In order to decide between the opposing contentions, it is necessary to consider the background of events against which the alleged discharges occurred. See *In The Matter of Pennsylvania Greyhound Lines, Inc.*, decided December 7, 1935.

On May 18, 1935 a number of the respondent's employees attended a meeting at which Local No. 114 of the American Federation of Labor was organized. This organization is a labor organization within the meaning of the Act. Practically the entire attendance at the meeting, and consequently the membership of the new Local, was composed of employees working on the night shift. Martin, one of the employees who attended the meeting, that day informed Iglauer, secretary-treasurer and manager of the respondent, of the meeting and of those who had attended. Scarbrough and Spisak attended this meeting and became members of the Local.

On May 20, a Monday and the next working day, Iglauer addressed the night shift. The formation of the Union had clearly disturbed him and he was somewhat excited when he spoke. He said he understood that they had attended the Union meeting and he then spoke in a very deprecatory fashion about the American Federation of Hosiery Workers. The history of that Union, as he viewed it, was described to his employees. He said that it had been very unsuccessful in Pennsylvania, that the Labor Board had decided against it in Indianapolis, that in other areas its activities had forced plants to close, and finally that its organizers were reds and communists and he would not stand for such a Union in his plant. The night shift was then informed that because of a lack of orders it was being laid off temporarily. On the same day a notice was posted on the bulle-

tin board in the plant stating that the plant's policy has always been that of the open shop and that no employee need join a union or pay dues to any organization to hold his job. Scarbrough and Spisak were knitters on the night shift and were laid off with the rest.

The short time elapsing between the formation of the Local and the lay off, the undeniable anti-union tenor of the speech preceding the lay off, and the fact that this was the first union activity at the plant all compel the conclusion that the lay-off was intended to intimidate the night shift and thus discourage union organization. On May 26, a Sunday, Scarbrough and Spisak in the company of organizers for the Union visited some of the employees of the respondent at their homes and attempted to persuade them to join the Union. However, after this date there was apparently little active solicitation since the Union did not want to jeopardize the jobs of its members.

The May 20th lay off lasted for about one to two weeks. When the night shift returned to work and for a number of weeks thereafter they found near the time clock a number of copies of issues of "The Hosiery Examiner", the official bi-weekly publication of the Berks County Hosiery Employees Associations. These contained numerous articles viciously attacking the American Federation of Hosiery Workers and its leaders. The unrestrained anti-union bias and the consequent distortion of facts in these articles are obvious. The copies had been placed near the time clock by Iglauer.

On June 14, 1935, a Friday, the entire night shift was again laid off for the stated reason of a lack of orders. Randolph, the superintendent, so informed Scarbrough, Spisak and Broda, the three knitters on the night shift, stating that there were no orders and that they were therefore being laid off. This lay off was apparently not related to the Union question but was prompted by a shortage of work.

At this point the testimony of Iglauer and the complainants is to some extent contradictory. Iglauer states that he saw Scarbrough and Spisak in his office on June 14 and informed them that the night shift was being discontinued because it was unprofitable and that they were "through" and so "should get other jobs". He accused them of carelessness in the operation of the machines. However, he concluded the conversation by stating that he had been trying to obtain a large rush order and that he might be able to give them more work, so that they should return on Tuesday next. Iglauer's secretary, who stated she was in the office at the time, corroborated this conversation, testifying that Iglauer had informed the two men that "there was nothing for them to depend on there". Both Scarbrough and Spisak deny that they spoke to Iglauer on June 14.

Iglauer testified he again spoke to Spisak on Tuesday of the next week and said that, "You better grab the first thing you can grab, because you have nothing to look forward to here". Spisak did not testify regarding any such meeting. Both Spisak and Scarbrough testified that they spoke to Iglauer in his office on June 21, at which time they asked him if he could inform them when they would return to work and whether they could share the work with the day shift. They stated he said that was impossible. At no point in the conversation, according to their testimony, did he complain of their work. Spisak at this time obtained his pay check for the last week he had worked. Iglauer denies that he saw the men at this time, though his secretary testified Spisak did obtain his check on that day. Scarbrough's check was mailed to him on June 28, the accompanying letter (Board Exhibit 4) reading in part as follows:

"We asked you to come in last Tuesday for further information as to the probability of putting back the night shift. Business has since made a decided turn for the worse and there is no hope now of resuming that operation. We therefore suggest that you immediately take the job you mentioned in the peach orchard".

In the meantime, Scarbrough and Spisak had been elected on June 15, president and vice-president, respectively, of the Local. In the succeeding months they stopped at the plant or spoke to the superintendent or foreman several times to inquire when they would be able to return to work.

At the end of July the respondent decided to resume the operation of the night shift. It accordingly asked the men employed on that shift to return to work. At the time of the lay off there were three knitters working on the night shift—Scarbrough, Spisak and Broda. The last named had obtained a job elsewhere and did not return when the night shift again commenced operations. Scarbrough and Spisak were not recalled by the respondent. Instead the respondent commenced to hire new and inexperienced young men as knitters. Two were hired on July 29. Another was hired some time in August but only remained for a few weeks. A third knitter was hired on August 30 in his place. Two more were employed in the middle of September and another at the end of October, as one of those hired on July 29 had quit. Thus, at the time of the hearing five knitters were employed by the respondent on the night shift.

All of the new knitters were inexperienced young men who had to be trained. Iglauer stated that this was the result of his decision to inaugurate a new policy in regard to the night shift. He believed that young men were more desirable operators, since the older men who had worked long in the trade had become set in their

ways and were prone to be careless and lax in their work. The new knitters each operated about 25 machines as compared to 30 for each of the two complainants. Scarbrough, who was 37 years of age, had been employed as a knitter in other mills before he commenced his employ with the respondent in 1928. He worked for the respondent until 1930, returned in 1932 and had worked steadily until the June 14 lay off. Spisak, who was about 34 or 35 years of age, had entered the employ of the respondent in 1927, worked for a few months and left. He returned in 1931 and was laid off after a few months. He was again employed in 1933 and had worked until the lay off in 1935. The respondent's officials testified that the policy decision stated above was made sometime in June or July. It was limited to the knitters on the night shift and did not extend to the other departments.

Scarbrough and Spisak applied on August 26 to Iglauer to ascertain if there was work for them. Both stated they had not known of the resumption of the night shift until the middle of August. Their testimony as regards this conference is at variance with that of Iglauer's. They stated they asked him why they were not back at work and he replied that they had been too friendly with the Union organizers. Their work was said to be satisfactory and he had no complaint against them on that score. Iglauer testified that they opened the meeting by asking why they had been fired. He replied that their inefficiency and careless work had been the cause and not their connection with the organizers as they supposed. His secretary testified similarly. Scarbrough and Spisak had no further meetings with the respondent. Scarbrough has not worked since that time and has not earned any money.<sup>1</sup> Spisak commenced to work for the Works Progress Administration on November 7 at the rate of \$12.00 a week.

As regards the efficiency of the two complainants, the record contains a large amount of conflicting testimony. Both testified that neither Iglauer nor Randolph, the superintendent, had complained about their work in the past year. Collins, a machine fixer on the night shift who had a status roughly equivalent to that of foreman of the knitters, testified they were "good" workers. True, he in effect testified, they at times performed poor work, but so did the other men and these two were no different from the average in this respect. He had never complained about them to Randolph or Iglauer. Randolph testified that they both had once been "pretty good" workers but that they had steadily become worse in the past

<sup>1</sup> Scarbrough in July, August, September and October received relief from the Soldiers' Relief Commission of Lorain County and the city of Elyria. However, this was not work relief and is therefore not considered.

year. He had complained to Iglauer several times about their careless work. Both he and Iglauer testified to a number of isolated petty infractions of working rules covering a period of over a year of a nature that are committed by practically every worker—at one time changing the yarn on the machine in violation of orders, leaving the machine unattended, going out for a smoke, a practice apparently indulged in by many of the workers on the night shift, and so on. Many of these incidents seemed to have been assiduously culled by Iglauer as *ex post facto* reasons for the discharges. More significant, two of the employees whose duties consisted of inspecting the work of the knitters testified in regard to the work of the complainants. One stated that their work was “very bad” and that she complained to Randolph “every night about it”. The other stated that their work was “terrible”—if a good batch came through she thought “they were sick”. The work had always been “terribly mixed up” for two years and she had complained to Randolph and Iglauer.

The respondent contends that the complainants were discharged on June 14, 1935, and consequently were not its employees on and after July 5, 1935, the date on which the National Labor Relations Act became effective. Such a contention, even if sustained by the facts, would not dispose of the case for aside from the matter of variance with the complaint there would still remain the question of whether the respondent had refused on August 26 and thereafter to employ the complainants because of their union membership or activity. Such a refusal to hire would be unlawful under Section 8, subdivision (3) of the Act. However the respondent's contention is not supported by the record since the evidence clearly points to a lay off on June 14 and not a discharge. It is admitted that all of the other employees on the night shift were laid off. If the respondent intended to single out Scarbrough and Spisak from the others and to discharge them it is reasonable to expect that it would have made its intentions clear, especially since it was at that time free to discharge them even for union activity. But, turning to the evidence, we find that there is nothing to indicate that they were discharged. Randolph, the superintendent, informed them as he informed others on the night shift that they were being laid off because of a lack of orders. Although he took the stand he did not contradict the testimony of the complainants on this point. While contradiction exists as regards the time and content of Iglauer's conversations with the complainants at this period, the contradiction is here of no moment since on his testimony everything that Iglauer said is more consistent with a lay off than with a discharge. He did not once use the word “discharge.” Consequently, on these facts we find that the com-

plainants were not discharged on June 14 but were merely laid off, so that they continued to be employees of the respondent.

The respondent's contention thus being unsound the controlling question in this case is whether the failure of the respondent to recall the complainants to work when the night shift resumed operations and to reinstate them to active employment on August 26 when they themselves applied was caused by their union membership or activity and was therefore an unfair labor practice. The complainants were among the leaders in the development of the Local formed at the respondent's plant. They had attended the meeting of May 18. They were active in the solicitation of members for the Local and had accompanied the Union organizers on their visits to the homes of some of respondent's employees. They held the offices of president and vice-president in the Local. Most of this activity was known to the respondent. So much for the character of the employees who have been discharged. When we turn to the employer who discharged them we find a company obviously possessed of a determined anti-union hostility. Iglauer's speech of May 20 is unmistakable evidence of his fear of union organization in the plant and thus of his antagonism toward the Local which was beginning to take root. His first reaction was to intimidate those who are assisting its growth and he expressed it by immediately laying off the entire night shift. Distorted propaganda was then placed before them in an effort to influence their minds against the Local. These acts were not without some measure of success for the Local ceased its organizing activities in order to protect its members from possible loss of their jobs. However, Scarborough and Spisak still remained—but only for a while. For when the lay off of their shift had ended they were not called back to work and new men were given their jobs. When we consider the union activity of the two men in conjunction with the anti-union hostility of the respondent, the inference is clear that the failure to recall them, and later the failure to reinstate them despite direct request, were due to their union membership and activity and the consequent desire of the respondent to be rid of them in an effort to defeat union organization within its plant.

The respondent claims that the inference is improper and that the men were discharged, if not on June 14 at some later date, partly for inefficiency and partly as a consequence of the institution of a new policy for the night shift, the two reasons being related. We cannot give credence to these claims in the light of the record before us. These two men were considered good workers by their foreman. The assertions of the respondent that their work was so "terrible" and "so very bad" over a long period of time as to cause practically daily complaint is simply incredible of belief when it is remembered that

despite all this these men were retained for over two years. Nor is the asserted change of policy convincing in itself. This change of policy—new and inexperienced young men for old—was not applicable to the entire night shift. Significantly, it was limited to the knitters on that shift, or in other words, it was limited to Scarbrough and Spisak. The most that can be said for the second claim is that it is plausible and under other circumstances might be convincing. The change of policy by itself and participated in by an employer who had an open mind on the question of the organization of his employees would merely be a reasonable exercise of the function of management. But that is not the case before us. "Motive is a persuasive interpreter of equivocal conduct" and the Board may thus properly view the activities of the respondent in the light of the manifest interest and purpose described above.<sup>2</sup> So viewed, we feel that the complainants were discharged in violation of the Act. Consequently, in the exercise of the power conferred upon the Board in Section 10, subdivision (c) and to effectuate the policies of the Act, we order their reinstatement with back pay from August 26, the date of their discharge.

#### CONCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon the record in the case, the stenographic transcript of the hearing, and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, in addition to the above findings of fact, the following concluding findings of fact are made:

1. The respondent, Radiant Mills Company, is an Ohio corporation which owns and operates at Elyria, Ohio, a plant for the manufacture, distribution and sale of ladies' seamless hosiery. The respondent normally employs about 85 employees on two shifts.

2. The respondent purchases and obtains 87.1% of the raw materials and other articles used in its manufacturing operations from states other than the State of Ohio. Of the hosiery manufactured at its plant, 82.8% is sold in states other than the State of Ohio, and the remainder in the State of Ohio.

3. The operations of the respondent, as described above, constitute a continuous flow of trade, traffic and commerce among the several states.

4. The respondent, while engaged in the operations described above, on June 14, 1935, as part of a temporary lay off of the night shift, laid off J. R. Scarbrough and George Spisak, knitters employed by it on that shift.

<sup>2</sup> *Texas and New Orleans Railroad Co. v. Brotherhood of Railway & Steamship Clerks*, 281 U. S. 548 (1930).

5. On August 26, 1935, the respondent, by L. B. Iglauer, its secretary-treasurer and manager, refused to reinstate to employment and discharged J. R. Scarbrough and George Spisak for the reason, individually, that each had joined and assisted a labor organization known as American Federation of Hosiery Workers, Local No. 114.

6. By the discharges described in paragraph 5 the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

7. By the discharges described in paragraph 5 the respondent did discriminate in regard to tenure of employment and has thereby discouraged membership in the labor organization known as American Federation of Hosiery Workers, Local No. 114.

8. The aforesaid acts of respondent occurred in the course and current of commerce among the several states and immediately affect employees engaged in the course and current of such commerce.

9. Interference by employers with the activities of employees in joining or assisting labor organizations leads and tends to lead to labor disputes and other forms of industrial unrest which burden and obstruct commerce among the several states and the free flow thereof.

Upon the basis of the foregoing the Board finds and concludes as a matter of law:

(a) Respondent, by discharging J. R. Scarbrough and George Spisak as above set forth, and each of them, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

(b) Respondent, by discouraging membership in the labor organization known as American Federation of Hosiery Workers, Local No. 114 by discharging J. R. Scarbrough and George Spisak, and each of them, said discharges constituting discrimination in regard to tenure of employment, as above set forth, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

### ORDER

On the basis of the findings of fact 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, Radiant Mills Company, and its officers and agents, shall:

1. Cease and desist (a) from discharging or threatening to discharge any of its employees for the reason that such employees have

joined or assisted American Federation of Hosiery Workers, Local No. 114, and (b) from in any manner interfering with, restraining or coercing its 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. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to J. R. Scarbrough and George Spisak immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said J. R. Scarbrough and George Spisak for any loss of pay they have suffered by reason of their discharge by payment, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from August 26, 1935 to the date of such offer of reinstatement, computed at the wage rate each was paid immediately prior to June 14, 1935, less in the case of George Spisak the amount which he has earned subsequent to August 26, 1935, as shown in the findings of fact;

(c) Post immediately notices to its employees in conspicuous places throughout its plant stating (1) that the respondent will not discharge or in any manner discriminate against members of, or those desiring to become members of, American Federation of Hosiery Workers, Local No. 114, or persons assisting said organization or engaging in union activity, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.