

In the Matter of FASHION PIECE DYE WORKS, INC. and FEDERATION
OF SILK AND RAYON DYERS AND FINISHERS OF AMERICA

Case No. C-22.—Decided March 4, 1936

Textile Dyeing, Printing and Finishing Industry—Interference, Restraint or Coercion: espionage—Discrimination: discharge—Reinstatement Ordered—Back Pay: awarded.

Mr. Gerhard P. Van Arkel for the Board.

Mr. Norbury C. Murray, of Newark, N. J., for respondent.

DECISION

STATEMENT OF CASE

On October 31, 1935, the Federation of Silk and Rayon Dyers and Finishers of America, hereinafter referred to as the union, filed with the Regional Director for the Fourth Region a charge that the Fashion Piece Dye Works, Inc., Easton, Pennsylvania, hereinafter referred to as the respondent, had engaged in 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, approved July 5, 1935. In summary, in respect to the unfair labor practices, the complaint stated:

1. The respondent, by its officers, agents and employees, while engaged at the Easton, Pennsylvania, plant of the respondent, terminated the employment of Rocco Montoro, Anthony La Rossa, Joseph Regina and Anthony Montoro on September 17, 1935, and terminated the employment of Antonio Marra on October 1, 1935, and since those dates has refused to employ these workers for the reason that they joined and assisted a labor organization known as the Federation of Silk and Rayon Dyers and Finishers of America, and had engaged in concerted activities with other employees of the respondent in the Eastern plant for the purpose of collective bargaining and other mutual aid and protection.

2. By reason of such terminations above referred to, the respondent did interfere with, coerce and restrain its employees in the exercise of their rights under Section 7 of the National Labor Relations Act, and discriminated against said employees, and thereby engaged in unfair labor practices as defined by Section 8, subdivisions (1) and (3) of the Act.

The complaint and accompanying notice of hearing were duly served upon the respondent and the union on December 13, 1935. The respondent filed an answer alleging that the Board, or its agent, has no jurisdiction over the respondent for the reason that the National Labor Relations Act is contrary to the provisions of the Constitution of the United States. The respondent, reserving all of its constitutional rights, answered further: (1) by admitting its corporate capacity and that it engages in business in Easton, Pennsylvania, in the business of finishing goods belonging to others and makes a charge for that service; (2) by admitting that some of the goods are brought to the plant from outside of the State of Pennsylvania, and after dyeing, some of the goods are delivered to persons outside of the State of Pennsylvania, but alleging that the respondent does not buy or sell goods which it dyes or finishes, and does not dye or finish goods for its own account; (3) by admitting the discharge of the persons referred to in the complaint, but alleging that they were discharged for inefficiency and for inducing other employees not to attend to their duties.

Pursuant to the notice accompanying the complaint, a hearing was held on December 23, 1935, at Easton, Pennsylvania, before William R. Walsh, a Trial Examiner duly designated, and testimony was taken. Full opportunity to be heard and to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties. The respondent appeared at the hearing, and before testimony was taken, objected to the jurisdiction of the Board on constitutional grounds. The objection was noted on the record without ruling by the Trial Examiner, and the case proceeded to the taking of testimony, in which the respondent participated.

During the progress of the hearing before the Trial Examiner, it developed that Rocco Montoro was not a member of the union at the time of his discharge, although he was discharged by the respondent under the erroneous belief that he had become a member of the union. Thereupon, counsel for the Board moved to amend the complaint with reference to the discharge of Rocco Montoro. Counsel for the respondent objected to the motion to amend, and ruling thereon was reserved for the Board by the Trial Examiner. The Board now considers the motion to amend the complaint and the objection and denies the motion.

At the conclusion of the testimony offered by the Board, counsel for the respondent renewed his motion to dismiss on grounds previously urged, and on the further ground that the evidence presented no cause of action against the respondent, and on other grounds. The objection was noted on the record without ruling by the Trial Examiner. The Board now considers this motion and the motion

made before the testimony was taken, and upon the record both motions are denied.

At the close of the testimony offered by the Board, the respondent rested without offering any evidence.

During the course of the hearing, many objections were made and exceptions taken by the respondent's counsel to the testimony offered by the Board. The Board has reviewed the record and considered the objections and finds that the Trial Examiner committed no prejudicial error in overruling the objections of the respondent's counsel.

Thereafter, on December 26, 1935, pursuant to Article II, Section 35 of National Labor Relations Board Rules and Regulations—Series 1, the Board, deeming it necessary to effectuate the purposes of the Act, transferred to and continued before itself the proceedings in the case.

Upon the record thus made, the oral testimony and the documentary evidence offered, the Board makes the following:

FINDINGS OF FACT

1. The Fashion Piece Dye Works, Inc. was incorporated in the State of New Jersey on October 5, 1934, and is qualified to do and does business in the City of Easton, Pennsylvania. The respondent is engaged in the business of dyeing and finishing acetate, which is a species of rayon made from wood pulp.

Goods do not change in composition while going through respondent's plant. Raw acetate comes in and finished acetate goes out. Only the color is changed and filling added. The material or cloth comes from various places to the respondent's plant, mainly from mills located in the South, in New England, in New York; some may come from Pennsylvania. The normal process of finishing a lot of goods takes about one day and a half. About 90 per cent of the finished goods are shipped outside of the State of Pennsylvania, most going to New York City.

The finished goods are sometimes stored by the respondent, as a convenience to its customers, until ordered shipped by the latter. This is a service to the customers and not for the benefit of the respondent.

The only advertising respondent does is in Davidson's Directory, which is a directory of dye-house manufacturers. The respondent has an office and two salesmen in New York. The respondent employs about 100 people and finishes about 200 pieces of 75 yards each in an eight-hour day, and 300 such pieces in a double shift.

2. All of the aforesaid constitutes trade, traffic and commerce among the several states.

3. The respondent's plant has never been organized and collective bargaining has never been attempted, except that a number of men asked for a raise in December, 1934. While the management promised the raise to avert a walkout, the raise was never effected and in its stead a present of \$5.00 was given to each man at Christmas. According to the testimony of Joseph Regina, "Nobody said anything after that."

4. About September 12, 1935, a petition was placed in the men's room for such of those employees to sign as desired. There is no evidence in the record as to who made up the petition and placed it in the men's room. The object of the petition was to obtain fewer hours and an increase in wages. The petition remained in the men's room all day. That night, Mr. Goodyear, the foreman, found it. On September 13, when Joseph Regina reported for work, Mr. Goodyear threatened to fire him, accusing him of having started the circulation of the petition. This was denied by Regina, and after Mr. Goodyear had him wait for about a half hour, Regina was told to go to work. This closed the incident.

5. The Federation of Silk and Rayon Dyers and Finishers of America is a labor organization organized in 1933 and admits to members only those workers employed in the silk and rayon finishing industry. A number of men employed by the respondent met an organizer for the union in the City of Easton, Pennsylvania on September 16, 1935, at the corner of Fourth and Pine Streets. The men who met the organizer at that time included the employees referred to in the complaint, except Rocco Montoro. At this meeting the men joined the union.

On the morning of September 17, when the men reported to work, they were met by the night watchman, a police officer, and Mr. Carroll, General Manager of the respondent. As the men came in, either the watchman or the police officer told them that Mr. Carroll wanted to see them. The men individually went to the office and were discharged by Mr. Carroll. The statements of Mr. Carroll concerning the discharge of all of the men were substantially the same. When the men asked why they were being discharged, Mr. Carroll replied that he had had a detective watching their movements on September 16 and that he knew they were trying to pull a strike. By innuendo, Mr. Carroll made it clear that each of the men was discharged for joining the union. At the time Mr. Carroll discharged Anthony Montoro, he told him to send his brother, Rocco, back to the plant as he had unjustly discharged the latter. Rocco Montoro reported back to the plant on several occasions, but was unable to secure employment.

6. At the time of the discharge of Rocco Montoro, in response to a question by Rocco Montoro as to why he was being discharged,

Mr. Carroll replied, "Ask your brother; he knows what it is about." He would give no further information to Rocco Montoro, but later admitted to Anthony Montoro that he had unjustly discharged Rocco Montoro.

7. On October 1, 1935, Antonio Marra was laid off by one of the foremen of the dye house who would assign no reason for the lay-off, saying that if he gave the reason, he would get himself in trouble. He, Antonio Marra, was instructed to see Mr. Carroll. Mr. Carroll gave him no satisfactory reason for the lay-off and told him to return in one week. Marra made several attempts to see Mr. Carroll without success. Later, the foreman told Marra that the reason for the discharge was that Marra was a member of the union, held union meetings in his home, and attended other union meetings.

8. The respondent pays all of its employees 45¢ an hour and works 12 hours a day, 6 days a week, while the plants in Paterson, New Jersey, the center of this industry, pay a minimum of 66¢ an hour, 75¢ an hour for color mixers, and 86¢ an hour for maintenance men. The work week in Paterson consists of 5 days, 8 hours per day. These facts were known to the men, and gave rise to their efforts to increase their rate of wages and lessen their hours of work. All of the discharged men were replaced by other workers. None of them has earned any money since the discharges.

9. All of the men testified that they were experienced workmen and that no fault had been found with their work and that there were no claimed inefficiencies.

10. Each of the employees so discharged by the respondent, except Rocco Montoro, was discharged for the reason that each of them had joined and assisted a labor organization known as the Federation of Silk and Rayon Dyers and Finishers of America, and had engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, as guaranteed in Section 7 of the Act.

11. Rocco Montoro was discharged by the respondent for the reason that the respondent believed that Rocco Montoro had joined and assisted a labor organization known as the Federation of Silk and Rayon Dyers and Finishers of America, and had engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, as guaranteed in Section 7 of the Act.

12. By discharging said employees, the respondent discriminated against them in regard to hire and tenure of employment, and did thereby discourage membership in the Federation of Silk and Rayon Dyers and Finishers of America, a labor organization.

13. The aforesaid acts of respondent tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

CONCLUSIONS OF LAW

1. The Federation of Silk and Rayon Dyers and Finishers of America is a labor organization, within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

2. By the discharges above set forth, 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, and has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

3. By employing a detective for the purpose of spying upon its employees in the course of their efforts to exercise the rights guaranteed in Section 7 of the Act and to report to the respondent as to which employees joined the Federation of Silk and Rayon Dyers and Finishers of America, 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, and has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

4. By the discharges above set forth, the respondent did discriminate in regard to hire and tenure of employment, and by thereby discouraging membership in a labor organization known as the Federation of Silk and Rayon Dyers and Finishers of America, did engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the National Labor Relations Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of 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, Fashion Piece Dye Works, Inc., and its officers and agents, shall:

1. Cease and desist: (a) from employing detectives, or any other persons, for the purpose of spying upon its employees in the course of their efforts to exercise the rights guaranteed in Section 7 of the Act; and (b) from in any other manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to collective bargaining through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Cease and desist from discouraging membership in the Federation of Silk and Rayon Dyers and Finishers of America, or any other labor organization of its 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 Joseph Regina, Anthony La Rossa, Anthony Montoro, Rocco Montoro, and Antonio Marra immediate and full reinstatement, respectively, to their former positions, without prejudice to their seniority rights or to other rights and privileges previously enjoyed;

(b) Make whole Joseph Regina, Anthony La Rossa, Anthony Montoro, Rocco Montoro, and Antonio Marra for any losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum of money equal to that which each, respectively, would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the rate of 45¢ per hour, and determined by the number of hours worked by the workers who replaced each of them, respectively;

(c) Post notices to its employees in conspicuous places in its plant, stating that the respondent has ceased and desisted as provided in paragraphs 1 and 2 of this order, and further stating that said notices will remain posted for a period of thirty days.