

In the Matter of GREENSBORO LUMBER COMPANY and LUMBER AND SAWMILL WORKERS LOCAL UNION No. 2688, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

*Case No. C-17.—Decided April 27, 1936.*

*Lumber Industry—Interference, Restraint or Coercion:* expressed opposition to labor organization, threats of retaliatory action; questioning employees regarding union affiliation and activity; effort to secure identity of union members; intimidation; vilifying union and union leaders—*Discrimination:* allocation of work—*Collective Bargaining:* refusal to negotiate with representatives; refusal to recognize representatives as bargaining agency representing employees

*Mr. Mortimer Kollender* for the Board.

*Cabaniss & Johnston*, by *Mr. J. H. Cabaniss*, of Birmingham, Ala., for respondent.

*Mary Lemon Schleifer*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On November 21, 1935, Lumber and Sawmill Workers Local Union No. 2688, United Brotherhood of Carpenters and Joiners of America, hereinafter referred to as Local 2688, by Gerald Harris, representative, filed a charge with the Regional Director for the Tenth Region, against the Greensboro Lumber Company, Greensboro, Alabama, hereinafter referred to as the respondent, charging the respondent with violations of Section 8, subdivisions (1), (3) and (5) of the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. A complaint and notice of hearing signed by Charles N. Feidelson, duly designated agent of the National Labor Relations Board, were issued on November 30, 1935 and served December 2, 1935, by registered mail, upon the respondent and upon Local 2688. The complaint charged the respondent with violations of Section 8, subdivisions (1), (3) and (5) of the Act.

An answer was filed on behalf of the respondent which denied the applicability of the Act to the respondent's business in that the acts alleged in the complaint do not affect commerce, in that the applicability of the Act to the respondent's business would violate the Tenth Amendment to the Constitution, and in that the case was

governed by Sections 3447 et seq. of the Code of the State of Alabama. On the basis of the evidence and the findings of fact made below, the respondent's objections are hereby overruled. The respondent also denied the acts of lock-out, discrimination, failure to bargain and other acts charged in the complaint.

Pursuant to the notice of hearing, a hearing was held December 12, 1935, at Tuscaloosa, Alabama, before Walter Wilbur, duly designated to act as Trial Examiner, at which hearing 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 and other acts charged in the complaint.

By order of the National Labor Relations Board, dated December 19, 1935, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 35 of National Labor Relations Board Rules and Regulations—Series 1.

On April 11, 1936, after reviewing the record and finding that the allegations of the complaint did not conform to the evidence offered and received at the hearing, the National Labor Relations Board, acting pursuant to Section 10 (b) of the Act and Article II, Section 7 of National Labor Relations Board Rules and Regulations—Series 1, issued and duly served an amended complaint and afforded the respondent an opportunity to file an answer thereto. At the request of the respondent the answer filed to the original complaint was considered filed to the amended complaint.

Upon the evidence adduced at the hearing and from the entire record, including the transcript of the hearing, exhibits introduced and stipulations filed, the Board makes the following:

#### FINDINGS OF FACT

1. The respondent, a corporation organized under and existing by virtue of the laws of the State of Alabama, owns and operates a sawmill and a concentration yard, hereinafter collectively referred to as the plant, in Greensboro, Hale County, Alabama, for the purposes of sawing and selling yellow pine lumber. The respondent employs about 30 men in the plant when operating one shift, and about 50 men when operating two shifts.

2. Ninety-eight per cent of the lumber sawed and sold by the respondent is purchased by the respondent as timber within the State of Alabama. The timber purchased by the respondent is cut and transported by the respondent to the plant in Greensboro, where it is dried, cut and stacked for sale and shipment.

3. The respondent in the year from January 1 to December 31, 1935, sold 18,295,384 feet of lumber at a sale price of \$442,713.98. Of this amount, 223,097 feet or 1.2% was sold to purchasers within

the State of Alabama. The shipments of the respondent during said period were as follows:

	<i>Feet</i>
To points in Alabama.....	223, 097
To points in Indiana.....	527, 175
To points in Ohio.....	3, 294, 791
To points in Illinois.....	1, 509, 606
To points in Michigan.....	8, 749, 522
To points in Pennsylvania.....	955, 431
To points in New York.....	237, 645
To points in Kentucky.....	286, 909
To points in Nebraska.....	164, 535
To points in Minnesota.....	77, 715
To points in West Virginia.....	38, 073
To points in Tennessee.....	21, 877
To points in Missouri.....	1, 380, 975
To points in Kansas.....	469, 892
To points in Iowa.....	189, 894
To points in Wisconsin.....	168, 247
Total.....	18, 295, 384

The respondent sells approximately 60% of its products through permanently employed salesmen paid on a commission basis, located in Detroit, Michigan; Cleveland, Youngstown, and Columbus, Ohio; St. Louis, Missouri, and Chicago, Illinois, the balance being sold on orders sent direct to the plant. The respondent sells about 15% of its lumber f. o. b. Greensboro, and the rest f. o. b. destination.

4. All of the aforesaid constitutes a continuous flow of trade, traffic and commerce among the several States.

5. Lumber and Sawmill Workers Local Union No. 2688, a local of the United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, is a labor organization which was organized among the employees in the plant in the month of October, 1935, a charter being granted and a chapter installed on October 27, 1935.

The attitude of the respondent was, from the beginning, antagonistic to the formation of Local 2688. On October 27, 1935, E. B. May, Secretary and Treasurer of the respondent and in active charge of operations, sent for Emanuel Bell, an employee, and told Bell that he understood a union was being organized in the plant and that Bell was the ring leader; that he (May) wanted it stopped; and that anyone who joined the union would be fired immediately. Bell reported this conversation to the members of Local 2688. On October 28, May called Bell into his office and asked him whether or not a meeting of employees had been held the night before for the purpose of organizing. Bell falsely denied that such a meeting had been held because "he had me scared." About November 4, 1935, May met Theodore

Bell, another employee, on the street and questioned him as to whether or not a union meeting had been held the night before. May chided Theodore Bell for not having told the management previously about the union organization, and also said that if Theodore Bell took part in it, "it will cause trouble."

6. On November 7, 1935, Gerald Harris, organizer for the United Brotherhood of Carpenters and Joiners of America, having been designated by the members of Local 2688 as their representative, called on May and told May that he had been chosen by a majority of the respondent's employees as their representative and that the purpose of his visit was to engage in collective bargaining. May questioned the correctness of Harris' statement that he represented a majority and asked Harris which of his employees belonged to Local 2688. Harris replied that it would be better if May did not know the names because if any of the members were subsequently discharged, the respondent might be accused of discrimination. May thereupon ordered W. E. Ross, foreman, to shut down the plant, line up the employees outside the office, and bring them in one at a time. Harris remonstrated against such a procedure and advised May that it would be a violation of the Act and that charges would be filed against him if he persisted. He also informed May that an orderly procedure existed whereby information could be obtained, if desired by the respondent, as to how many of its employees desired Local 2688 to represent them, and that was by an election under the Act. Notwithstanding this, May replied that he was able to take the consequences of anything he did, had Ross bring in the employees one at a time, and asked each of them whether they belonged "to this man's organization" or some other similar expression. That this procedure constituted flagrant intimidation and coercion of the respondent's employees is obvious.

After ascertaining that a majority of the employees then at work belonged to Local 2688, May still refused to bargain collectively with Harris. The attitude of the respondent concerning Harris' request, as expressed through May, is shown by the latter's testimony that, "Of course we refused to bargain with them."

7. The attitude of the respondent is shown in acts other than those of May. On November 5, 1935, during working hours, Joe DeWitt, a boss in the yards, questioned Jacob Johnson, a member of Local 2688, about his union affiliation. Upon Johnson's denying he was a member of Local 2688, DeWitt called him a "damned liar." Johnson testified that he denied he was a member of Local 2688 because he was "scared." On November 8, DeWitt again talked with Johnson during working hours. According to Johnson's testimony, DeWitt told him that if he "fooled around" with Harris, "Harris (will) be up here sitting in the hotel smoking a cigar, and (you will) be down here stopping bullets."

8. The complaint alleges that on or about November 11, 1935, the respondent locked out Ben Hopkins, Emanuel Bell, Jacob Johnson, Young Green, Mathew Webster, Percy Keith, Ernest May, Cleveland McDuffy, Theodore Bell, John Lomas, Ish Brown, Fate Ellis, Willie James Sadler, Henry Jackson, William Jackson, Arthur Stevenson, John Edd Reese, Emanuel Hopes, Wesley Ward, Jacob Winston, George King and Henry Washington and at all times since that date has refused to permit the aforesaid union employees to work in the plant with the exception that Henry Washington, Theodore Bell, Emanuel Hopes and Ernest May have been permitted to work in the plant for not more than two or three days.

Normally, the employees work ten hours on Saturdays. The evidence shows that at 3 o'clock on Saturday, November 9, the mill closed down and most of the employees were told there was no more work to be done at present. The mill did not resume operations until November 22, 1935. During this period none of the above-named persons were employed by the respondent. On November 22 the respondent began operation of the mill using one shift. Henry Washington, Theodore Bell, Emanuel Hopes and Ernest May having been previously employed on that shift returned to work on November 22.

On December 2, John Lomas was reemployed and on December 7, five days before the hearing, all the other persons alleged to have been discharged, with the exception of Arthur Stevenson (or Stevens) and Wesley Ward, were told to report back for work on December 9. On account of inclement weather the employees so notified did not resume work until December 10.

9. The closing down of the mill two days after the demand of Harris that the respondent deal with him in matters of collective bargaining is a very suspicious circumstance. Although May testified that the usual seasonal slack in orders occurs about November 1 or before, and extends through the winter months, it is to be noted that a double shift had been working during the whole of the month of October and again beginning on December 10. It may be therefore that the shut-down on November 9 was for the purpose of discouraging union activities. However, the only evidence as to the reason for the shut-down is May's testimony that the respondent at that time had orders for only five to ten carloads of lumber, and that the lumber necessary to fill these orders was not available or in condition to be cut. We therefore refrain from finding that the shut-down of the mill on November 9 constituted a lock-out of the employees named.

10. The amended complaint alleges that the respondent discriminated in regard to hire and tenure of employment to discourage

membership in a labor organization by the employment of non-union employees exclusively to work in the yard during the period from November 9 to 22, 1935, and by the employment of the night shift to work in the plant during the daytime in the period from November 22 to December 9, 1935.

The testimony offered and received at the hearing shows that eight to ten persons who were not members of Local 2688 were employed to stack green lumber in the yard during the period from November 9 to 22. At least one of these persons, Jim Watsford, had previously been employed in the mill as a trimmer and was not by trade a lumber stacker. No evidence was introduced to explain why no member of Local 2688 was employed to do this work. The evidence shows that at least several members of Local 2688 were lumber stackers and had been working as such at the time of the shut-down.

In addition, Emanuel Bell, financial secretary of Local 2688 who was employed in driving a truck which hauled lumber in the yard, and his helper, Jacob Johnson, a member of Local 2688, were told on November 9 that there was no further work for them at present. Bell testified that the truck was operated at least a portion of the period between November 9 and November 22 and that one of the persons engaged in operating the truck was an employee hired after Bell was laid off.

The only reasonable explanation of the employment of lumber stackers who were not members of Local 2688 and the failure to employ lumber stackers who were members of Local 2688 and the substitution of other employees on a truck formerly operated by two union employees is that it was an attempt to discourage union membership and activity by discriminating against members of Local 2688 in the allocation of work.

11. On November 20, Harris requested the respondent to meet with him to discuss the discrimination which had occurred by reason of these acts, but May again refused to recognize Harris as the representative of his employees and to discuss these matters with him.

12. On November 22, the respondent began operation of the mill using one shift which worked during the daytime. Instead, however, of employing those persons who were members of the day shift at the time the mill had ceased operations on November 9, the respondent gave employment to those persons who had worked on the night shift during the month of October. Four persons in that shift, i. e. Henry Washington, Theodore Bell, Emanuel Hopes and Ernest May, who were members of Local 2688, were employed. It is not clear from the testimony whether there were any other former night shift employees who were members of Local 2688.

The night shift, as a group, had never, prior to this time, been employed to work during the day. May testified that the night shift was employed because it was considered by the management to be "loyal" in that only four or five of the employees on the night shift were members of Local 2688, whereas the majority of the day shift employees were members of Local 2688, and that the management wished to be "loyal" to those who were "loyal" to it. When the balance of the employees returned to work on December 10, they resumed their former positions on the day shift, and the employees who had been working since November 22 were again put to work as a night shift.

The employment of the night shift to work in the daytime was by this admission of the respondent because of union affiliation and activity and was clearly for the purpose of discouraging such affiliation and activity.

13. Of the two members of Local 2688 not returned to work on December 10, the respondent stated at the hearing that Arthur Stevens (or Stevenson) did not report to work because of illness and that the respondent proposes to take him back as soon as he is able to work. As to his case, we will therefore dismiss without prejudice. The respondent also stated that it considered Wesley Ward to have been discharged and that it does not propose to reemploy him. The only evidence on the reason for the discharge occurs in the testimony of Wesley Ward, and is to the effect that on November 8, at 12 o'clock noon, Ward requested the permission of DeWitt to leave his work because of illness; that DeWitt did not seem to want to let him off but that he went home; that on Saturday, November 9, he went to work and again requested permission to leave because of illness; that DeWitt was very angry and told another employee that if Ward was not going to work, to put another man in his place. Ward on the next working day, applied for work and was told by DeWitt and by Ross that he had been discharged because he had left his job without permission. In cross-examination, it was developed that although Ward had not left the plant until after 12 o'clock noon on November 8, he had returned driving an automobile at 4 o'clock of the same day to secure his money. In the light of this testimony, the Board does not feel justified in finding that the discharge of Ward was because of Ward's union affiliation.

14. Although the record clearly indicates the refusal of the respondent to carry on negotiations with Harris on November 7 and November 20 in respect to rates of pay, wages, hours of employment and other conditions of employment, we cannot decide on the evidence what the appropriate unit should be, nor exactly how many of the employees in an appropriate unit were members of Local 2688.

The complaint contains no allegation as to which employees of the respondent should be considered in determining the proper unit. It was testified on behalf of Local 2688 that all employees engaged in operations at the plant and all truck drivers engaged in the transportation of logs or lumber, except supervisory employees, are eligible for membership in Local 2688, but the witness did not know whether clerical employees are eligible.

Accepting this testimony on behalf of Local 2688, a further question arises. The record indicates that a day shift was regularly employed except for occasional shut-downs due to weather conditions, lack of orders or lack of lumber of the kind or condition necessary to fill orders then on hand. A night shift was employed only when the volume of business justified it. It is not clearly established what portion of the time a night shift was employed; whether the persons employed when a night shift is used are to be considered regular employees; and whether night shift employees should be considered part of the appropriate unit.

Under these circumstances we are unable to decide which employees of the respondent constitute a unit appropriate for the purposes of collective bargaining.

15. The secretary of Local 2688 testified at the hearing that on or about November 8, 1935, 22 employees of the respondent were members of Local 2688. The testimony concerning who these members are varies considerably from the list of persons alleged in the complaint to be members of Local 2688. Apparently the complaint includes as members at least 2 persons not named by the witness. One of these, Jacob Johnson, was a witness at the hearing and testified he was a member of Local 2688 on November 8, 1935. If the day shift is an appropriate unit, on the basis of the respondent's figures that approximately 30 persons are employed on the day shift, it is apparent that a majority of the members of the day shift are members of Local 2688. On the basis of the respondent's estimate that approximately 50 persons are employed when both shifts are operated, if the appropriate unit includes employees on both shifts, more exact information would be necessary to determine whether the members of Local 2688 constitute a majority of the employees on both shifts.

Under the circumstances, we feel unable to decide the question of whether the respondent refused to bargain collectively within the meaning of Section 8, subdivision (5) of the Act. However, the Board is anxious to effectuate for these employees their right to bargain collectively, and will entertain a petition for an investigation and certification of representatives pursuant to Article III, Section 1 of its Rules and Regulations—Series 1.

16. By the acts set forth in findings of fact 5, 6, 7, 10 and 12, the respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

17. By the acts set forth in findings of fact 10 and 12, the respondent discriminated in regard to hire and tenure of employment and did thereby discourage membership in Local 2688.

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

#### CONCLUSIONS OF LAW

Upon the basis of the foregoing, the Board makes the following conclusions of law :

1. Local 2688 is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The respondent, on or about November 11, 1935, did not discharge Ben. Hopkins, Emanuel Bell, Jacob Johnson, Young Green, Mathew Webster, Percy Keith, Ernest May, Cleveland McDuffy, Theodore Bell, Arthur Stevens (or Stevenson), John Lomas, Ish Brown, Fate Ellis, Willie James Sadler, Henry Jackson, William Jackson, John Edd Reese, Emanuel Hopes, Jacob Winston, George King and Henry Washington, and did not fail and refuse to reinstate said employees, and did not engage in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act, as alleged in paragraph 5 of the amended complaint.

3. The respondent, by its discharge of Wesley Ward on or about November 11, 1935, did not engage in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act, as alleged in paragraph 5 of the amended complaint.

4. The respondent did not refuse to bargain collectively with Local 2688, within the meaning of Section 8, subdivision (5) of the Act, as alleged in paragraph 9 of the amended complaint.

5. The respondent, by the acts set forth in findings of fact 10 and 12 has discriminated in regard to hire and tenure of employment, and has thereby discouraged membership in a labor organization, and did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act, as alleged in paragraph 7 of the amended complaint.

6. The respondent, by the acts set forth in findings of fact 5, 6, 7, 10 and 12 has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

## ORDER

On the basis of the above findings of fact and conclusions of law, and pursuant to the authority granted in Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that:

1. The respondent, Greensboro Lumber Company, and its officers and agents shall:

(a) Cease and desist from, by words, threats, acts or in any other manner whatsoever, interfering with, restraining, or coercing its employees in the exercise of the right 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 and other mutual aid and protection, as guaranteed in Section 7 of the National Labor Relations Act.

(b) Cease and desist from, in any manner whatsoever, discriminating in regard to hire or tenure of employment or any term or condition of employment, and thereby discouraging membership in Lumber and Sawmill Workers Local Union No. 2688, United Brotherhood of Carpenters and Joiners of America, or in any other labor organization.

(c) Take the following affirmative action, which the Board finds will effectuate the policies of the National Labor Relations Act: Post notices in conspicuous places in its plant stating that the respondent will cease and desist in the manner aforesaid, and further stating that such notices will remain posted for a period of thirty consecutive days from the date of posting.

2. And further orders that the complaint be dismissed as to the following allegations:

(a) That the respondent on or about November 11, 1935, locked out Ben Hopkins, Emanuel Bell, Jacob Johnson, Young Green, Mathew Webster, Percy Keith, Ernest May, Cleveland McDuffy, Theodore Bell, Arthur Stevens (or Stevenson), John Lomas, Ish Brown, Fate Ellis, Willie James Sadler, Henry Jackson, William Jackson, Wesley Ward, John Edd Reese, Emanuel Hopes, Jacob Winston, George King and Henry Washington, and failed and refused to reinstate said employees, providing however that, with respect to Arthur Stevens (or Stevenson), the allegation is dismissed without prejudice; and

(b) That the respondent refused to bargain collectively with Local 2688.