

In the Matter of SUNSHINE HOSIERY MILLS and BRANCH No. 55,  
AMERICAN FEDERATION OF HOSIERY WORKERS

*Case No. C-58.—Decided April 29, 1936*

*Hosiery Industry—Interference, Restraint or Coercion:* questioning employees regarding union affiliation and activity—*Strike—Discrimination:* lay-off; discharge; non-reinstatement following lay-off; non-reinstatement following strike—*Reinstatement Ordered, Non-Strikers:* displacement of employees hired in places of—*Reinstatement Ordered, Strikers:* discrimination in reinstatement; strike provoked by employer's law violation—*Back Pay:* awarded, strikers and non-strikers.

*Mr. Walter G. Cooper, Jr.,* for the Board.

*Mr. James D. Richardson,* of Murfreesboro, Tenn., for respondent.

*Mr. Herbert G. B. King,* of Chattanooga, Tenn., for the Union.

*Hilda Droshnicop,* of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On January 11, 1936, Branch No. 55 of the American Federation of Hosiery Workers filed with the Regional Director for the Tenth Region a charge that the Sunshine Hosiery Mills of Murfreesboro, Tennessee, had engaged in and was engaging in unfair labor practices contrary to the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. On January 16, 1936, the Board issued a complaint against the Sunshine Hosiery Mills, hereinafter referred to as respondent. The complaint was signed by the Regional Director for the Tenth Region, and alleged that 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 respondent, by its officers and agents, terminated the employment of four named employees on November 6, 1935 thereby causing three other named employees to strike on the same date, and thereafter refused to reinstate them because each of said employees had joined and assisted a labor organization known as the American Federation of Hosiery Workers, said acts being contrary to Section 8, subdivisions (1) and (3) of the Act.

The complaint and accompanying notice of hearing were served on the parties in accordance with Article V of National Labor Relations Board Rules and Regulations—Series 1. In its answer, filed January 25, 1936, respondent objected to the jurisdiction of the Board on stated constitutional grounds. It admitted the discharges alleged, but denied the allegations of violations. On February 3 and 4, 1936, a hearing was held at Nashville, Tennessee, by Walter Wilbur, the Trial Examiner designated by the Board, and evidence was taken. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing upon the issues was afforded to all parties.

At the hearing the complaint was amended to read "Sunshine Hosiery Mills" instead of "Sunshine Hosiery Mill"; the allegation that Clara Travis requested reinstatement on November 23, 1935 was amended to November 19, 1935; and the allegation that Leburn Woods was discharged and refused reinstatement under the same circumstances as Mr. and Mrs. McClanahan was added to the complaint. Respondent stipulated that the answer put in with respect to the McClanahans would extend to Leburn Woods. The Trial Examiner then over-ruled the objection that respondent's labor relations are "irrelevant" to interstate commerce, and that the Board, therefore, has no jurisdiction. This ruling is hereby affirmed. At the end of the hearing respondent filed a supplemental answer restating its constitutional objections to the jurisdiction of the Board.

By order of the National Labor Relations Board, dated February 28, 1936, the proceeding was transferred to and continued before the Board in accordance with Article V, Section 35 of National Labor Relations Board Rules and Regulations—Series 1.

As considered by the Trial Examiner and presented before this Board, pertinent allegations of the complaint involve the following eight of respondent's employees: Robert Waite, Cecil Cates, Elmo Harvey, Elbert Harvey, Clara Travis, Herbert McClanahan, Mrs. Mabel McClanahan and Leburn Woods.

Upon the entire record in the case, including the pleadings, the stenographic transcript of the hearing, and the documentary and other evidence received at the hearing, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE COMPANY

Respondent, Sunshine Hosiery Mills, is a Tennessee corporation, having its principal office and place of business in the City of Murfreesboro, County of Rutherford, Tennessee. It is engaged in its plant in the production, sale and distribution of men's, women's and children's hosiery.

Respondent employs about 175 to 180 workers, who are divided into a day and night shift. When work is slack it is the practice of the company to stagger work between the two shifts, both then working during the day.

The principal materials used by respondent in the manufacture of hosiery are silk, cotton, rayon, elastic and wool. All of the silk, wool and elastic, and 60% of the cotton, so used by respondent come from outside the state. Garant, president of respondent, testified that from 60 to 70 per cent of all the raw materials used by it are imported, and that 90 per cent of the finished product is sold outside of Tennessee.

The chief methods of transportation used by respondent are freight, truck, parcel post and express. Goods are shipped usually in less than carload lots. Respondent's employees transport the goods to the railroad, but do not load them into the cars.

Respondent's sales are to jobbers all over the United States. Only a small supply of raw material is kept on hand; respondent buys raw materials as they are needed. The entire process of manufacture requires but two to three weeks. In the six months immediately prior to the hearing 50 per cent of the manufacturing done by respondent was done on order.

The aforesaid operations of respondent constitute a continuous flow of trade, traffic and commerce among the several States.

## II. THE UNION

Branch No. 55, the union here involved, is a local of the American Federation of Hosiery Workers which is affiliated with the American Federation of Labor. The union includes employees of hosiery mills in Shelbyville, Tennessee, as well as those in Murfreesboro.

## III. THE UNFAIR LABOR PRACTICES

Before September 1, 1935, there had never been any organization of the labor at respondent's mill. At about that period the union began to gain a foothold, until by October 29 the whole night shift and a substantial portion of the day shift had joined. The employees assiduously concealed their union membership from the management; Garant, the president, Waller, foreman of the full-fashioned department and Carter, foreman of the dye department, unite in the testimony that they were completely unaware of its existence.

That the management did not long remain in ignorance of its employees' union affiliations is evident from the fact that shortly after October 29 Waller began to cast about for information on the subject. Herbert Porterfield, Dewey Porterfield, Ethel Dillahay, Charles Bradford and Harold Burke were among the workers ques-

tioned by Waller on their knowledge of union activities in the plant. On November 5 Waller asked Herbert Porterfield whether he had joined the union. On the same day he also told Dewey Porterfield that he had heard that the employees had been having union meetings at Nashville and insisted that Porterfield ought to tell him what was going on.

On the evening of November 5, the union membership cards were distributed. The next morning, Wednesday, November 6, the blow fell. When Waite and Cates arrived at the mill they were met at the door by Waller with the statement that Garant had given orders not to let them in. Waller locked the door against them while he went for their tools and checks. Neither was given any explanation of his dismissal at the time; the general atmosphere on both sides was that the reason was obvious and that discussion would be pointless. Uncertain of how to proceed, Cates and Waite immediately notified the Harvey brothers and hurried with them to Shelbysville to inform Frazier, the union organizer, of what had occurred.

Meanwhile respondent executed another manoeuver. By ten o'clock in the morning when Waite, Cates and the Harvey brothers returned from Shelbysville, respondent had posted signs saying that the entire night shift was laid off indefinitely for lack of orders. The night shift had been working full time up to this period. Wednesday night, November 6, was the normal end of the working week. Respondent's extraordinary precipitousness in laying off the shift on Wednesday morning accordingly required explanation. The excuse of lack of orders was unsatisfactory since it did not account for respondent's sudden decision to break off its established policy of dividing time between the day and night shifts when work was slack. Moreover, House, the finishing room foreman at the mill, had told Bradford, one of the union employees, on November 4, in response to a question in connection with the stock room, that the company had orders at the moment. It is clear that the employees on the night shift, like Waite and Cates, had provoked this arbitrary and unprecedented display of force by joining the union. The union employees on the day shift quickly drew this inference; in protest against respondent's tactics, and in an effort to anticipate the inevitable, most of them struck Wednesday morning.<sup>1</sup>

Respondent's behavior within the next few days fully confirms this interpretation of respondent's motives. In reply to inquiries from the City Commission of Murfreesboro concerning the labor difficulty at respondent's factory, Garant announced to the Chief of Police, the Mayor and the Chief of the Fire Department that he would not

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<sup>1</sup>Among them were Prudy Dement, Ethel Dillahay, Mrs. Cates, Mr. and Mrs. McClanahan, Leburn Woods, Clara Travis, and Harold Buike

operate a union mill. Two or three days after the strike began he instructed Carter to notify the strikers that their jobs would be filled if they did not return by Monday, November 11.

At about the time this order was given, Frazier and a union committee secured an appointment with Garant to discuss a settlement. When they arrived, however, Garant instructed his secretary to announce that he would not see them because in his opinion there was nothing to discuss. A second committee, composed of Charles Bradford, William Sandford and Dewey Porterfield met with Carter on November 13, and put before him the suggestion that all the employees return to work "as union people". Carter replied that the night shift men would be called back because they had merely been laid off, but that he could not predict the fate of the day shift men who had struck; they would have to make application directly to Garant. He added that the employees who were out would have to come back "as individuals". On November 14, Garant declined to grant an interview to Callahan, another representative of the American Federation of Hosiery Workers, saying that there was nothing to talk about.

The strike had already lasted a week in the face of the uncompromising tactics of respondent. Many of those who were out were suffering severely from lack of funds; some of the union employees had already gone back to work. The newly-formed union was unable to finance the workers, and it was felt by Frazier that the walk-out had in any case been provoked by respondent before the workers were sufficiently educated in union affairs to withstand the rigors of a strike. Waite and Cates suggested that they seek redress from the National Labor Relations Board for their own discharges, and that the others concentrate their energies on getting all the men reinstated in a body through the union's efforts. It was decided that a third union committee composed of Elbert Harvey, Earl McKnight and Herbert McClanahan propose to Garant that the night shift, and the day shift which was still out, be reinstated in a body; that the work be divided between them in the usual manner; and that Waite and Cates not be taken back. About the middle of November the committee finally reached Garant with the above compromise.

Garant's concessions to the union apparently had been exhausted in consenting to see the committee. In reply to their proposal, he said that he had not decided to reinstate any of those who had walked out, and that he would not divide time with the night men. He indicated that he would call them when, as, and if he wanted them. Respondent's attitude was fully as inflexible when Curtis, a representative of this Board, called on November 16 to make a survey of the

situation and asked the reason for the discharge of Waite and Cates. Garant refused to discuss the matter, saying that he would send in a full report on November 18. This was never done.

On or about November 18, respondent re-opened its night shift. Since about the middle of January, 1936, the mill has been operating on three shifts. Several union men from both the day and night shifts have been reinstated from time to time. Since November 6, respondent has hired at least two employees who had no previous association whatever with the mill, and at least four former employees who had not worked there for a year or two. The union men who returned to work severed their connection with the union; one of these testified under subpoena that he no longer pays dues and attends no union meetings; when questioned as to the reason he refused to answer.

#### *The four discharged employees*

The complaint alleges that respondent discharged and refused to reinstate the following four employees because of their union membership and activity:

(a) *Robert Waite* had been employed by respondent for almost seven years. For four and a half years he had performed the most skilled operations in the full-fashioned department, where he was earning \$30.00 a week on piece work, one of the largest salaries paid in the mill. Waite was one of the most active union men in the plant. He was discharged on November 6, and Virgil Parsons, who formerly had collected waste and swept the floor, took his place. Waite has secured no other employment.

Respondent's answer alleges that Waite was discharged for inefficiency, and Waller testified that he had complained frequently to Garant about Waite's work. Garant, however, denied this on the stand and asserted, on the contrary, that though he was thoroughly acquainted with the daily output of every man in the mill, he had never had occasion to question Waite's performance until November 5. On that day, he testified, he detected Waite in the act of manipulating the regulator on his machine so that the finished stockings were several inches shorter than the required length, thus increasing his production. Without giving any sign of his suspicions to Waite he went back to his office and, without assigning any reason to anyone, ordered Waite's summary dismissal.

The evidence offered by respondent in support of so grave a charge seriously strains credulity. When the stockings leave the machine, they are inspected first for quality (dropped stitches, etc.); on the second inspection short lengths are caught on the board in the finishing room. All goods are subject to this daily review; defects can

be traced back to the machine on which the product was made at any point in the process and after the process is complete. Records are kept of such imperfections and a check-up may be made without the operator's knowledge. Samples of this defect had never been traced to Waite. In addition, the ordinary process of manufacture requires the operator to adjust the regulator on the machine frequently. Waite's work on the day in question involved several such adjustments. Garant admitted that Waite might have been making such a legitimate operation when he saw him make the movement which gave rise to his suspicion. It is significant in this connection that Waite's back was to Garant when the latter claims he saw him change the regulator. Woods, Waite's helper on the machine, whose duties necessitate continuous observation of his movements, testified that he saw Waite make numerous proper adjustments of the regulator, but none of the type described by Garant.

In view of respondent's elaborate routine system for detecting errors Garant's personal pursuit of the culprit leaves much to be explained. That he should have chanced to detect Waite in *flagrante delicto* on the same day that Waller was reconnoitering for facts about the union and on the very day that he decided to discharge Cates and to lay off the night shift, presents a series of striking coincidences. Considering the nature of Waite's alleged infraction, even more curious is Garant's failure to confront Waite with it when he noted the improper adjustment, or when he was dismissed. In the light of his statement that the source of these errors had been sought for some time, his failure to communicate with Carter and Waller about the cause of the discharge is unaccountable. This reticence is particularly difficult to explain in view of his testimony that he knew that neither Waite, Waller nor Carter were aware that he had made the crucial discovery. Nor can the latter testimony be reconciled with Garant's declaration that he did not inform Waite of the cause of his dismissal because Waite knew the reason. Respondent's assertion that Waite was discharged for inefficiency is also incompatible with Garant's statement to Curtis, agent of the National Labor Relations Board, on November 16, ten days after Waite's dismissal, that he had not yet determined whether Waite had been discharged for inefficiency, and that he would let him know on November 18.

The plethora of contradictions in respondent's position contrasts markedly with the plausibility of the union's contentions. The facts point conclusively to the view that Waite's discharge was part of a campaign to stamp out the union, and that respondent seized upon an imagined irregularity as a pretext.

(b) *Cecil Cates* had been employed by respondent since September, 1926, and had worked in the day shift of the full-fashioned de-

partment for five years, earning \$27 and \$28 a week on piece work. His output had been satisfactory and the subject of no more complaints than were usual in the department. He had been active in union affairs. Luke Waite, he was denied admittance to the plant without warning on the morning of November 6, by Waller, who said, "Cates, I do not know what this is about; I am sorry to hear it. If you want to know anything about it you will have to ask Mr. Garant . . . I am sorry to hear about this." This statement by an official of respondent hardly accords with respondent's contention that Cates was discharged for inefficiency. Moreover the humane and enlightened policy of respondent to its employees, to which respondent's counsel so continuously adverts, is inconsistent with the summary discharge in this manner of a worker of almost ten years standing. That the circumstances were extraordinary is evident from the fact that Garant in his November 16 interview with Curtis exhibited the same uncertainty about the reason for Cates' dismissal as of Waite's. Garant admitted that this could not be laid to any doubt of his legal right to discharge an employee for inefficiency. That he did not regard Cates' work too unfavorably follows, furthermore, from the fact that a week before the hearing respondent instructed Carter to tell Cates to apply for reinstatement, and thereupon offered him a temporary position. This Cates declined on the ground that he could not afford to accept a temporary job. Raymond Richardson, who was a helper, now occupies his place. Cates has secured no other equivalent employment.

(c) *Elbert* and *Elmo Harvey* had been employed in respondent's mill for approximately nine years and five years, respectively. At the time of the lay-off Elbert was earning \$27.50 and Elmo \$25 a week on an average. Their work had always been satisfactory. However, they had been the most active union men on the night shift. When Waite and Cates were discharged, the Harvey brothers were the first to be notified. As a result of the expedition with Waite and Cates to Shelbysville and their persistent urging of the wavering strikers not to go back individually, their vigorous espousal of the union was forcibly brought to respondent's attention early in the strike. Elbert Harvey was also on the third union committee. The Harvey brothers have secured no other equivalent employment.

Respondent insists that the Harvey brothers were never discharged. It contends that they were recalled to work but did not appear, and that the mill was forced to take other hands instead. No such inference can be drawn from the record. About the period that respondent began to take on men again, both Harvey brothers applied personally to Garant for work at the mill. To Elmo's inquiry on November 22, as to when he would be put to work again, Garant rejoined that

there would be none for him and referred with indignation to a rumor that he had threatened Dewey Porterfield with violence if he returned to the mill without the others. On November 23, Elmo, in a conference with Porterfield and Carter, successfully demolished this tale, and secured Carter's assurance that Garant would be informed of its untruth. Porterfield himself carried a denial to Garant. Thus fortified Elmo again approached Garant for work on the same day, but found him still obdurate. His request for a recommendation was also refused. Elbert's application for work was similarly unsuccessful; he too was refused a recommendation. After his conversation with Garant, in the course of closing accounts with Waller, he commented to him on Garant's unfairness in admitting the adequacy of a man's work, and yet refusing him a recommendation when he was dismissed. Waller refused to give Elbert a recommendation himself because Garant had forbidden him to do so on Wednesday night, when the night men were laid off.

The earnest attempts of the Harveys to obtain recommendations, and their subsequent departure from Murfreesboro on November 25 in search of work, supports the view that they were explicitly informed that their employment had been terminated. On this state of fact, they were under no duty to linger in town awaiting a call which they were told would not come. In view, moreover, of the size of the town, respondent must have been aware that they returned empty-handed about December 3, and have been available since that time. Respondent expanded its working force considerably after that date. The probability suggests itself that even though an early unsuccessful call had been made the subsequent need for men would have resulted in their employment, had they been, as respondent insists, still on the waiting list.

We have found that respondent's intention in discontinuing its night-shift was to terrorize its employees into submission by parading its power to deprive them of their means of support. It is precisely such appeals to force that the Act pronounces illegal, and which this Board is required to prevent and to redress. It is clear, moreover, that respondent considered the Harveys permanently discharged from the date on which the night shift was discontinued. The date of the Harvey brothers' dismissal is therefore fixed at the date of the lay-off, November 6, rather than the date when their applications were rejected.

Elbert Harvey's place has been taken by Harold Burke who was formerly a time-keeper in the mill; Shirly Hay, previously a footer, is now a legger in Elmo Harvey's place.

*The four striking employees*

The four remaining employees here involved struck on November 6 in protest against the discharge of Waite and Carter and the laying off of the night shift. Respondent alleges that these employees were recalled to work, but that when they failed to appear their places were filled. It is clear from the record that respondent's sole announcement that there were jobs for these workers was the message delivered by Carter at the beginning of the strike that those who did not return by Monday, November 11, would be replaced. Respondent's argument proceeds upon the assumption that the employees' refusal to abandon a strike at its height in response to a threat that they will be replaced if they fail to return justifies the inference that they have relinquished all interest in their jobs and may be stricken from the employee lists. This contention betrays a fundamental misconception of the rights created by the Act. It is elementary that rejection of employment under these circumstances connotes a determination to improve the conditions of a job to which the striker intends to return. The Act specifically guarantees the right to strike and provides that the striker retains the status of an employee while he is engaged in this form of concerted activity. To permit the employer to discriminate against strikers when they apply for reinstatement merely because they had previously refused an offer to return to work is, of course, a deliberate rebuke to concerted action by members of a labor organization.

We have found that the union committee made its first request that the strikers be reinstated on November 13. About November 19 respondent had sufficient work to put back the night shift; several weeks before the hearing in this case a third shift was instituted by respondent. It is fair to assume that among the large force hired after November 13, there were several toppers, footers, seamers and leggers, into which classifications the four employees here involved fell. It was admitted at the hearing, moreover, that respondent could, if it so wished, even at that time, work in at least two additional men.

The facts relating to the four employees in question are as follows:

(d) *Clara Travis* had worked in respondent's mill for twelve years; during five of these she had been a topper in the full-fashioned department earning approximately \$17.50 a week. There had been no complaints about her work. She had been among the most active union employees on the day shift, and was one of the first to strike when Waite and Cates were discharged. As a union member, she applied for reinstatement in the middle of November through the second and third union committees, when they requested Garant to re-employ all the men. On November 19th, the day after respondent

reopened its night shift, she applied personally for a job, but was told by Garant that he had nothing for her. She denies that she was ever recalled to the mill. She was always available and has secured no equivalent employment. We find that respondent declined to reemploy Clara Travis because of her union activities.

(e) *Leburn Woods* had been employed by respondent for twelve years. At the time of the strike he was earning \$13.50 a week as Waite's helper on the footer on the day-shift in the full-fashioned department. Woods became a member of the union. He did not go out immediately with the McClanahans and Clara Travis when Waite's and Cates' dismissal became known, but joined the strike after a conversation with Waite. However, unlike several other union men, he did not return to work when Garant delivered his ultimatum on November 8. His first application for reinstatement was made through the second union committee. On November 18, when the night shift was re-opened, however, Woods applied for reinstatement to Waller, who said he would have to see Garant. Garant said he did not need him, and has never offered him employment since. Woods has failed to secure equivalent employment. Respondent's contention based upon Wood's failure to return to work in response to his call on November 8 has been disposed of above. We find that respondent's refusal subsequently to reemploy him was due to his union affiliations.

(f) *Herbert McClanahan* had worked in respondent's mill for ten years, and had been in the full-fashioned department for five. At the time of the strike he was earning \$20 to \$28 a week as a logger on the day shift. McClanahan had joined the union. When Waite and Cates were discharged the McClanahans were among the first to walk out. McClanahan was also singled out for notice as a staunch union man by his presence on the union committee which saw Garant, and by his failure to return to the mill by November 11 in response to Garant's threat. Garant appears to have harbored a special animosity against McClanahan for his participation in the strike. On one occasion in the middle of November when McClanahan attempted to speak to Garant on the street, he was rebuffed with the statement, "To hell with you . . ."; on the other, when he made an effort, about November 23, to apply for a job, Garant would not see him at all. This change of front on respondent's part after ten years' amicable relations at the mill can be laid only to resentment at McClanahan's association with the union. Like the other strikers, McClanahan's application dates from the proposal of the second union committee. The McClanahans were always available for reemployment.

(g) *Mrs. Mabel McClanahan* had been employed by respondent for about five years as a seamer on the day shift in the full-fashioned department. Her earnings were approximately \$15 a week. She had

joined the union, and struck when Waite and Cates were fired. Mrs. McClanahan also ignored Garant's order that the strikers return to work by November 11. Her application for reinstatement was made through the second union committee, which represented her among the other union employees. Respondent thereafter failed to call her to the mill, although she was always available. We find that respondent discriminated against her because of her union affiliations.

By discharging Robert Waite, Cecil Cates, Elmo Harvey and Elbert Harvey from employment, and by refusing to reinstate them and Clara Travis, Leburn Woods, Herbert McClanahan and Mrs. Mabel McClanahan, who struck because of the discharges, and by each of said acts, respondent discriminated in regard to tenure of employment and has thereby discouraged membership in the labor organization known as Branch No. 55, American Federation of Hosiery Workers.

By such discrimination in regard to hire and tenure of employment and terms and conditions of employment, respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### IV. THE REMEDY

It is important to distinguish the nature of the remedy accorded the two groups of employees in the instant case. We have found that Robert Waite, Cecil Cates, Elmo Harvey and Elbert Harvey were discharged on November 6 and refused reinstatement because of union activity. The unfair labor practice of which they were the victims thus dates from November 6; their back pay is accordingly calculated from that period. It follows also that they are entitled to their former jobs at the cost of dislodging those who took their places when they were unlawfully dismissed. We have also found that Clara Travis, Leburn Woods, Herbert McClanahan and Mrs. Mabel McClanahan struck as a result of the illegal discharge of the aforementioned employees. If they are now out of employment, it is because respondent engaged in an unfair labor practice which threatened the labor organization to which they belonged. They are therefore entitled to reinstatement in the positions which they left because of respondent's illegal conduct. Their right to back pay dates from November 13, the period of their first application for reinstatement, and is based upon the discriminatory refusal of respondent to take them back because of their union activities.

#### V. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

It was found above that the employees here involved are engaged in the manufacture of products the preponderant portion of which are sold in interstate commerce. Interruption of their work in-

volves necessarily an interruption of the steady and continuous flow of commerce to and from respondent's plant. This fact is illustrated in the present case, where owing to the labor dispute production was dislocated and the plant was shut down for some time.

Interference with the activities of employees in forming or joining labor organizations results in strikes and other forms of industrial unrest which in the knit-goods industry have habitually had the effect of impeding the movement of these products into interstate and foreign commerce. Official statistics of the United States Department of Labor on labor disputes in the knit-goods industry indicate that of the 65 strikes and lockouts in the industry in 1934 and the first half of 1935, 59 were the outcome of difficulties in regard to union recognition and discrimination for union activities. Eighty thousand six hundred and seventy-four workers were involved in stoppages owing to such disputes, which resulted in a loss of 825,152 man-days of potential productive activity to the industry.

The aforesaid acts of respondent have led and 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 findings of fact and upon the entire record in the proceeding the Board finds and concludes as a matter of law:

(1) Branch No. 55 of the American Federation of Hosiery Workers is a labor organization, within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

(2) Respondent, by discriminating in regard to the hire and tenure of employment of Robert Waite, Cecil Cates, Elmo Harvey, Elbert Harvey, Clara Travis, Leburn Woods, Herbert McClanahan and Mrs. Mabel McClanahan, and each of them, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the Act.

(3) Such 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 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 respondent, Sunshine Hosiery Mills, and its officers and agents shall:

1. Cease and desist:

(a) From discouraging membership in Branch No. 55, of the American Federation of Hosiery Workers, or in any other labor

organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining Branch No. 55, of the American Federation of Hosiery Workers, or any other labor organization of its employees; and

(b) From in any other manner discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment for joining Branch No. 55, of the American Federation of Hosiery Workers, or any other labor organization of its employees; and

(c) From in any other 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 Robert Waite, Cecil Cates, Elmo Harvey, Elbert Harvey, Clara Travis, Leburn Woods, Herbert McClanahan and Mrs. Mabel McClanahan, immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said Robert Waite, Cecil Cates, Elmo Harvey, Elbert Harvey, Clara Travis, Leburn Woods, Herbert McClanahan and Mrs. McClanahan, for any loss of pay they have suffered by reason of its discharge or unlawful failure to reinstate. Robert Waite, Cecil Cates, Elmo Harvey and Elbert Harvey shall be paid, respectively, a sum of money equal to that which each would normally have earned as wages during the period from the date of his discharge on November 6 to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of his discharge or would have earned but for the unlawful failure to reinstate, less the amount each earned subsequent to his discharge; Clara Travis, Leburn Woods, Herbert McClanahan and Mrs. Mabel McClanahan shall be paid at the same rate from the date of their first application for reinstatement on November 13 to the date of such offer of reinstatement;

(c) Post immediately notices to its employees in conspicuous places in its mill, stating (1) that respondent will cease and desist in the manner aforesaid, and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.