

In the Matter of E. R. HAFFELFINGER COMPANY, INC. and UNITED  
WALL PAPER CRAFTS OF NORTH AMERICA, LOCAL No. 6

*Case No. C-46.—Decided May 14, 1936*

*Wall Paper Industry—Discrimination: discharge—Reinstatement Ordered—  
Back Pay: awarded.*

*Mr. Gerhard P. Van Arkel* for the Board.

*Palmer & Serles*, by *Mr. Frank R. Serles, Jr.*, of New York City,  
for respondent.

*Mr. Alfred H. Billet*, of York, Pa., for the Union.

*Mr. Isaiah S. Dorfman*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On October 17, 1935, United Wall Paper Crafts of North America, Local No. 6, hereinafter referred to as the Union, filed with the Regional Director for the Fourth Region, a charge that the E. R. Haffelfinger Wall Paper Co., Hanover, Pennsylvania, had engaged in and was engaging in unfair labor practices contrary to the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act.

On November 19, 1935, the Board issued a complaint, signed by the Regional Director for the Fourth Region, alleging 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 that on August 16, 1935, it discharged from its employ three color mixers: Clifton Fuhrman, Virgil Loss and George E. Rebert; and five machine printers: Ira Brown, Guy Brown, Raymond Kopp, Allen Messinger and Richard Blettner, and has since that date refused to reinstate them, because they joined and assisted a labor organization, known as United Wall Paper Crafts of North America, Local No. 6.

The complaint and the accompanying notice of hearing were duly served upon respondent and the Union. On November 25, 1935 an answer was filed on behalf of respondent. Subsequently, at the hearing held on December 9, 1935 at York, Pennsylvania, before Joseph Knox Fornance, Trial Examiner duly designated by the Board, respondent filed an amended answer which admitted the

discharge of the eight men; denied each and all of the other allegations in the complaint pertaining to the discharge; denied that its transactions and operations constitute "a continuous flow of commerce among the several states", and alleged that it is not engaged in interstate commerce and that the discharged men were not engaged in any operation affecting commerce; and that in so far as the Act is intended to apply to the relations of respondent with its employees engaged in the manufacture of goods, it is unconstitutional. 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 charge and complaint were amended to read "E. R. Haffelfinger Co., Inc." instead of "E. R. Haffelfinger Wall Paper Co." Counsel for respondent orally moved to dismiss the complaint for the reasons stated in the amended answer. The motion was denied as prematurely made, but counsel was given leave to file a brief in support of his motion. At the conclusion of the testimony in support of the complaint, counsel for respondent moved to dismiss on the ground that the Board had failed to prove that the discharge of the eight employees interfered with the free flow of, or hindered commerce. The Trial Examiner reserved decision. At the close of the hearing counsel for respondent moved to dismiss for lack of jurisdiction and for failure to prove the facts alleged in the complaint. The Trial Examiner reserved decision as to these motions also. Upon agreement of counsel, counsel for the Board and for respondent were given leave to file an affidavit and counter-affidavit, respectively, on the nature of the wall-paper industry. The affidavit and respondent's memorandum in reply thereto were received by the Trial Examiner on December 27, 1935. The affidavit (by Justin Allman) is hereby received in evidence, and it, together with the memorandum in opposition to the affidavit, are made part of the record in this matter.

On January 8, 1936, the Trial Examiner duly filed with the Regional Director an Intermediate Report in accordance with Article II, Section 30 of National Labor Relations Board Rules and Regulations—Series 1. The Trial Examiner found that respondent had not committed unfair labor practices within the meaning of Section 8, subdivisions (1) and (3) of the Act as alleged in the complaint. He found further that, "respondent is not subject to regulation by the National Labor Relations Board, and the National Labor Relations Board has no jurisdiction over the matters set forth in the charge and complaint." Upon these findings the Trial Examiner granted respondent's motions to dismiss the complaint for lack of jurisdiction, and for failure to prove the facts alleged in the complaint.

Exceptions to the Intermediate Report were filed on behalf of the Union in accordance with Article II, Section 32 of National Labor Relations Board Rules and Regulations—Series 1.

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

#### FINDINGS OF FACT

1. Respondent is a corporation organized and existing under the laws of the State of Pennsylvania. Its principal office and place of business is in the City of Hanover, York County, Pennsylvania, where it is engaged in the manufacture, sale and distribution of wall-paper. Everett R. Haffelfinger is the principal stockholder, owning 21 but a few shares of the stock of respondent corporation.

2. In the production of wall-paper, respondent uses paper, color pigments, starch, clay, glue and other raw materials. It purchases all of its paper in the States of Maine and New York; about fifty per cent of its starch in Michigan and Illinois, and the balance in Pennsylvania; all of its clay in Georgia; and its glue in Pennsylvania, although it is manufactured in New York. These materials are transported to respondent by rail and truck. A railroad siding facilitates delivery directly to the loading platform of the plant, where respondent's employees unload the goods. Respondent pays the freight charges for all goods delivered at the plant, some of the charges being remitted.

3. Upon delivery, the materials are stored for use in production of wall-paper. The unprinted paper is fed through a grounding machine to impart to it a ground coloring. After the appropriate colors have been mixed, the paper is put through printing machines. The printed paper is then dried, after which it is rolled and is normally ready for shipment. Part of respondent's wall-paper output is embossed; that is, an embossing machine softens the colors and gives the paper a rough appearance. Except for embossing, the process is continuous. The finished product is then stored for shipment and for stock. Normally, respondent employs about sixty workers in the entire process, including among them three color mixers and six printers. On the date of the hearing, however, respondent employed only fifty-five employees at this work. The work of the color mixers and the printers is indispensable to the production of wall-paper.

4. Respondent also employs, on a salary and commission basis, about seven road salesmen, five of whom use automobiles supplied by respondent, and two of whom use their own cars. They operate in the States of New York, New Jersey, Ohio, Oklahoma, Kansas and Texas, and in the Southern and New England States. The salesmen

obtain orders and mail them to respondent, which then fills the orders and causes the finished wall-paper to be transported to the customers.

5. Respondent's gross income from sales in 1934 amounted to about \$200,000, representing the production and sale of approximately two and a half million rolls of paper. Sales in 1935 were between ten and twenty per cent less than in 1934. Between 60 and 70 per cent of respondent's wall-paper is sold and transported to customers in twenty states of the United States other than the State of Pennsylvania. Approximately seventy-five per cent of such paper is conveyed by rail and twenty-five per cent by truck. Normally, a truck, owned by respondent and operated by one of its employees, carries the wall-paper from respondent's plant to the appropriate railroad station, but on occasion the railroad company sends a truck for the paper.

6. Besides respondent, there are only about thirty-four wall-paper producing companies in the United States, all of whom are located in States east of the Mississippi River. Respondent is in direct competition with each and all of the other wall-paper producing companies. In the industry generally, as in the case of respondent, most of the raw materials used are purchased from States other than those in which the wall-paper plants are located. From July 1, 1934, to July 1, 1935, 342,000,000 rolls of wall-paper were produced by the industry. A total of approximately 700 color mixers and printers were employed in the production of that wall-paper. An average of eighty per cent of all wall-paper produced is warehoused preparatory to shipment throughout the United States and twenty per cent for stock purposes.

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

#### THE UNFAIR LABOR PRACTICES

8. Haffelfinger entered into the business of producing wall-paper at Hanover, Pennsylvania, in 1910. At that time the color mixers and printers employed by him were members of a labor organization. In 1911 or 1912 his color mixers and printers joined with others of the same occupation in an industry-wide strike. During the course of that strike he began to operate on an "open shop" basis, and continued that policy to July 1933.

9. In July 1933, the eight employees here involved and one, Walter Bankert, a printer, became members of the Union. Shortly thereafter, a representative of the Union presented to Haffelfinger for consideration a proposed agreement to be entered into between respondent and the Union. Haffelfinger said to the representative, "I don't want anything to do with it." When asked, "Just what part

of it do you object to?", Haffelfinger replied, "I object to the whole thing. I will never sign any agreement." The nine color mixers and printers who had joined the Union, and who were the only color mixers and printers employed by respondent, then went out on strike for a period of about three weeks. No wall-paper was produced at respondent's plant during that period, and shipments of wall-paper to respondent's customers were seriously curtailed.

10. In October, 1934, the Union presented another proposed agreement which Haffelfinger again refused to consider. He said to the Union representative at that time, "If there is any contract made it will be made by me, and it will not be changed, and that will be the only contract that will be signed." On October 11, 1934, the same nine color mixers and printers who struck in 1933, again went out on strike. During the course of this strike Bankert returned to work for respondent, and thus forfeited his membership in the Union. The strike continued to January 17, 1935, when pursuant to a decision of the Philadelphia Regional Labor Board of the old National Labor Relations Board, respondent reinstated the remaining eight striking employees, who incidentally are the same individuals involved in the matter before us.

11. On July 31, 1935 respondent sent to each of the said eight employees, the only union members in the plant, the following notice:

"DEAR SIR: Your services will not be required after August 16th.

Very truly yours,

E. R. HAFFELFINGER Co."

No such notice was sent to Bankert, and he was not discharged.

12. On or about August 14, 1935 a committee of the Union waited upon Haffelfinger. Haffelfinger explained to the committee that he discharged the men for "lack of production". When asked to reconsider, he replied that he would not; "that he had enough trouble with his men for the last two years, and the Union struck on him for two years now in succession and he was not going to have any further trouble."

13. On October 23, 1935, when Ira Brown, one of the discharged men, inquired about reemployment, Haffelfinger said that he did not want any union men. On November 7, 1935, when Loss, another of the discharged men, applied for reemployment, Haffelfinger said to him, "I don't want a union man in my shop any more."

14. At the hearing respondent alleged that during the first seven months of the year 1935 production at the plant was lower than for the same period in 1934, and that the amount of waste or spoiled paper was greater than for the entire year 1934; that this was due to carelessness or inefficiency on the part of the eight employees, and that consequently they were discharged.

Respondent admitted that prior to the year 1935 it had no objection to the work of the discharged men. At the beginning of the year 1935 respondent introduced for the first time in the plant a water-proofing process which was applied to about forty per cent of its wall-paper output. One of respondent's witnesses, Jacob C. Eisenhart, a wall-paper manufacturer, testified that in the manufacture of washable wall-paper there is a fifteen per cent loss of time in starting the machines and getting the colors in and that this loss continues throughout the manufacturing season. Charles Miller, superintendent of respondent's plant, testified that the printing of washable paper invariably resulted in some increase of waste paper. It also appears that there was frequent experimentation with ingredients in the water-proofing process which on occasions caused the color materials to harden and the paper to tear; that respondent failed to furnish appropriate heating apparatus to dry the wet coated paper; and that towards the end of the sampling season for a few weeks there was a shortage of sticks upon which the printed paper is normally hung to dry. Respondent had purchased an order of green sticks, which when subjected to heat would curl and break. It being near the end of the season, the superintendent determined to get along with those sticks rather than purchase a new supply. The combination of these factors could of itself account for the decrease in production and increase in waste; in any event, respondent's evidence fails to convince us that the decrease in production and increase in waste was due to carelessness or inefficiency of the eight men.

15. Each of the eight discharged employees began to work for respondent as a helper, and by a series of promotions became either a printer or a color mixer earning a salary of \$42 or \$44 per week at the time of the discharge. The youngest in point of service was employed by respondent for a period of nine years, the oldest for fourteen years.

16. Haffelfinger testified that he believed only some of the eight employees to be inefficient. He did not, however, name those he considered inefficient. He stated that he spoke to Kopp regarding lack of production, and to Messinger relative to inferior work and inattention to his work, but without more, the evidence would not sustain an allegation that they were inefficient. When asked why he discharged all eight, he stated . . ., "because they struck twice on me as a body and that interfered with my business very seriously, and I knew that they—I thought maybe they would stand together and I just thought I would let them all work along until the end of the year and let them go. There was a time I should have put them out, some of them."

Respondent has thus, by testimony of its principal officer, in effect admitted that it was to prevent concerted activity on the part of its employees, for the purpose of collective bargaining or other mutual aid or protection, that all eight were discharged. If any further proof of respondent's real reason for discharging the eight employees is needed, it can be found in the coincidence that the only employee among respondent's color mixers and printers who was retained was Bankert, a non-union man, while the eight union men were discharged. A more open and brazen attempt to discourage union affiliation by discharging union members than is offered in the plain facts of this case would be hard to discover.

17. We find that respondent discharged and refused to reinstate the eight above mentioned employees for the reason that they joined and assisted the Union, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

18. We find further that respondent discriminated against the said eight employees with respect to hire and tenure of employment for the purpose of discouraging membership in the Union, and has thereby interfered with, restrained and coerced its employees in the exercise of the rights of self-organization guaranteed in Section 7 of the Act.

#### EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

19. It was found above that color mixers and printers were indispensable to respondent's production of wall-paper, between sixty and seventy per cent of which is sold in interstate commerce. Strikes involving color mixers and printers necessarily result in an interruption of the steady and continuous flow of commerce to and from respondent's plant. The aforementioned strike at respondent's plant in 1933 is illustrative. Respondent produced no wall-paper during the course of the strike, and shipments from the plant were seriously curtailed. In October, 1934 also, respondent's refusal to bargain collectively with its employees caused a strike which continued until January, 1935. This experience, according to the record, was also shared by the United Wall Paper Factories Co., whose color mixers and printers went out on strike on four occasions during the period from 1920 to 1935. Each of the strikes seriously interrupted operations of that company and curtailed shipments in interstate commerce to and from its plants.

20. The aforesaid acts of respondent have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce,

## THE REMEDY

In order to undo, so far as possible, the harm resulting from the unfair labor practices, we are ordering respondent to reinstate the eight discharged employees. Normally, we would also order back pay from the date of discharge to the time of respondent's offer of reinstatement. We believe, however, that in view of the Trial Examiner's recommendations, respondent could not have been expected to reinstate the discharged men after it received the Intermediate Report (January 17, 1936), and therefore it should not be required to pay back pay from that time to the date of this decision.

## 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) United Wall Paper Crafts of North America, Local No. 6, is a labor organization, within the meaning of Section 2, subdivision 5, of the Act.

(2) Respondent, by discriminating in regard to the hire and tenure of employment of Clifton Fuhrman, Virgil Loss, George E. Rebert, Ira Brown, Guy Brown, Raymond Kopp, Allen Messinger and Richard Blettner, 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, E. R. Haffelfinger Co., Inc. and its officers and agents shall:

(1) Cease and desist:

(a) From discouraging membership in United Wall Paper Crafts of North America, Local No. 6, or in any other labor organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining said United Wall Paper Crafts of North America, Local No. 6, or any other labor organization of its employees; and

(b) From in any other manner discriminating against any of its employees in regard to the hire or tenure of employment or any term or condition of employment for joining United Wall Paper

Crafts of North America, Local No. 6, 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 Act.

(2) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Clifton Fuhrman, Virgil Loss, George E. Rebert, Ira Brown, Guy Brown, Raymond Kopp, Allen Messinger and Richard Blettner, immediate and full reinstatement, respectively, to their former positions, without prejudice to any rights and privileges previously enjoyed;

(b) Make whole said Clifton Fuhrman, Virgil Loss, George E. Rebert, Ira Brown, Guy Brown, Raymond Kopp, Allen Messinger and Richard Blettner for any loss of pay they may have suffered by reason of their discharge, by the payment to each of them, respectively, of a sum of money equal to that which each would normally have earned as wages during the periods from August 16, 1935 to January 17, 1936, and from the date of this decision to the time of such offer of reinstatement, computed at the weekly wage at the time of discharge, less the amount which each, respectively, has earned during said periods; and in the event of any dispute as to the amount due, the dispute shall be laid before this Board, for determination within the terms set forth in this order; and

(c) Post immediately notices to its employees in conspicuous places in its plant 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.