

In the Matter of CLEVELAND CHAIR COMPANY *and* LOCAL No. 1759,
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Case No. C-18.—Decided June 4, 1936

Furniture Industry—Interference, Restraint or Coercion: expressed opposition to labor organization, threats of retaliatory action—*Discrimination:* discharge—*Strike—Reinstatement Ordered, Non-Strikers—Back Pay:* awarded—*Reinstatement Ordered, Strikers:* strike provoked by employer's law violation; displacement of employees hired during strike; preferential list ordered, including.

Mr. Mortimer Kollender for the Board.

Mr. D. Sullins Stuart, of Cleveland, Tenn., for respondent.

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

Mr. Fred. G. Krivonos, of counsel to the Board.

DECISION

STATEMENT OF CASE

Local No. 1759, United Brotherhood of Carpenters and Joiners of America, hereinafter termed the union, having duly filed a charge with the Regional Director for the Tenth Region, the National Labor Relations Board, by its agent, the said Regional Director, issued and duly served its complaint dated November 13, 1935, against the Cleveland Chair Company, Cleveland, Tennessee, respondent herein, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (3) and (5) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, approved July 5, 1935, hereinafter termed the Act.

The complaint, in substance, alleges that the respondent, a Tennessee corporation, with its principal office and place of business in Cleveland, Tennessee, hereinafter termed the plant, is engaged in the production, sale and distribution of furniture in interstate commerce; that on September 24, 1935 it discharged and has since refused to reinstate Wilson Brannan, president of the union; that on September 25th it discharged and has since refused to reinstate a committee of three union members, employees of the respondent, when they protested Brannan's discharge; that on the same day it discharged and has since refused to reinstate 11 named employees who participated

in a strike in protest against the discharges of the committee members; that all such discharges were for the reasons that such employees had either joined and assisted the union or engaged in concerted activities for mutual aid and protection or both;¹ that the respondent has directly coerced its employees from becoming or remaining members of the union; and that the respondent, on September 25, 1935, and at all times thereafter, has refused to bargain collectively with the authorized agents of the union.

The respondent's answer, in brief, after reserving all constitutional and jurisdictional objections, admits its corporate existence and the complaint's allegations that it causes raw materials and finished products to be transported in interstate commerce to and from the plant, but denies that its operation of the plant constitutes a continuous flow of trade, traffic and commerce among the several states; it admits that it discharged Brannan and the three committee members, but denies that they were discharged for union membership and activity; it denies knowledge of their membership in the union and of the existence of the union; and it alleges that they were discharged and refused reinstatement for violation of the respondent's rules. All other allegations of the complaint are denied.

Pursuant to notice thereof duly served on the respondent, Walter Wilbur, duly designated by the Board as Trial Examiner, conducted a hearing commencing on December 5, 1935, at the Federal Building, Chattanooga, Tennessee. The respondent appeared by counsel, D. Sullins Stuart, and participated in the hearing, announcing, however, its reservation of its rights to question the constitutionality of the Act and the jurisdiction of the Board in the manner prescribed by the Act or in any other manner. The Board was represented by counsel, as was the union. Full opportunity to be heard, to cross-examine witnesses and to produce evidence was afforded to all parties. In the course of the hearing, the respondent agreed to furnish for the record a statement of the dollar volume of its purchases and sales in Tennessee and in states other than Tennessee for some months prior to November 30, 1935, as well as a statement of the number of employees hired and dismissed since September 25, 1935. These statements were furnished by the respondent and are exhibits in the record. On April 9, 1935, the respondent through its counsel entered into a stipulation with counsel for the Board, incorporating a statistical statement, certified by the United States Department of Labor, of strikes in the furniture industry from January 1, 1934, to July 31,

¹The charge designates all 11 of these employees as union members; the complaint, however, names eight as union members and does not allege union membership for the other three. Testimony by Floyd McMahan, who signed the charge, indicates that counsel for the union drafted the charge from a list of names furnished by the union, and the three non-union employees were designated as union members inadvertently. The explanation accounts for this immaterial discrepancy between the charge and the complaint.

1935, as Exhibit B-11 in the record, subject, however, to the respondent's reservation of exceptions as to the relevancy thereof. We find this document relevant and material on the issues of unfair labor practices affecting commerce, and it is hereby admitted into the record as Exhibit B-11.

At the commencement of the hearing the respondent moved to dismiss the complaint on the grounds that the Act is unconstitutional, and that the Act does not apply to the respondent's business, as set forth in its "Formal Exceptions and Jurisdictional Objections" (Exhibit R-1). The motion was denied by the Trial Examiner, and his ruling is hereby affirmed. In the course of the hearing the respondent moved to dismiss the complaint, and at the end of the hearing renewed its motion, on the grounds that the evidence fails to substantiate the allegations of the complaint as to the interstate nature of the respondent's business or as to the unfair-labor practices. These motions, taken under advisement by the Trial Examiner are hereby denied. The respondent also, in the course of the hearing, moved and later renewed its motion, to strike out testimony of events at the plant prior to July 5 or July 17, 1935. Rulings on these motions were reserved by the Trial Examiner. We rule this testimony to be relevant and material on the subject of labor relations at the plant and the respondent's attitude toward the union, essentials in an issue of discrimination; and the motion is hereby denied. The motion of counsel for the union to strike the testimony elicited on cross-examination as to such evidence is also denied. The Trial Examiner also took under advisement the admission in evidence over the respondent's objection of a copy of the minutes of a union meeting on October 1st, which note that the three committee members were "fired September 25, 1935" (Exhibit B-10). We rule this evidence to be relevant and admissible. We find no prejudicial rulings by the Trial Examiner in respect to various other objections to the introduction of evidence, and his rulings are affirmed.

Acting pursuant to Article II, Sections 35 and 36 (a) of National Labor Relations Board Rules and Regulations—Series 1, the Board ordered the proceeding to be transferred and continued before it and ordered the Trial Examiner to file an intermediate report with the Board. Upon the record thus made, the stenographic report of the hearing, and all evidence, including oral testimony, documentary and other evidence offered and received at the hearing, the Trial Examiner, on March 5, 1936, filed an intermediate report, finding and concluding that the respondent engaged in unfair labor practices affecting commerce, as alleged in the complaint, by discriminatorily discharging and refusing to reinstate the three committee members and the 11 named employees and by refusing to bargain collectively with the representatives of its employees. The Trial Examiner recom-

mended the reinstatement of the three committeemen to their former positions with back pay; and the reinstatement of the 11 named employees to their former positions in the order of their seniority, with displacement of workers hired to fill their places, if any. He also found the evidence insufficient to support the allegations in the complaint that Wilson Brannan was discriminatorily discharged and found that he had been dismissed for cause. The Trial Examiner also found the evidence insufficient to support the allegations of direct coercion of employees to refrain from union membership.

On exceptions to the intermediate report, duly filed by the respondent after an extension of time granted therefor by the Board, an oral argument on the record was held before this Board in Washington, D. C., on April 9, 1936, pursuant to Article II, Section 34 of said Rules and Regulations—Series 1.

We find that, except for his conclusion as to the respondent's refusal to bargain and his interpretation of Section 9 (b) of the Act in reference to the function of the committee of three, discussed under "The Respondent's Exceptions" below, and his findings in respect to Ray O. Kelley, the evidence supports the Trial Examiner's rulings, findings and conclusions. We find nothing in the respondent's exceptions, or in the respondent's argument at the hearing before this Board, requiring any other material alteration of his findings and conclusions. Upon the entire record in the proceeding, we make the following:

FINDINGS OF FACT

A. THE RESPONDENT AND ITS BUSINESS

I. The respondent, Cleveland Chair Company, is and has been since 1915, a Tennessee corporation, having its principal office and place of business in Cleveland, Tennessee. It employs 150 workers.

II. The respondent is engaged in the business of production, sale and distribution of furniture, mainly chairs and rockers, and to some extent, tables, sofas and living room furniture. About 85 to 90 per cent of its product consists of chairs and rockers.

III. The raw materials used by the respondent in its operations include lumber, some leather, textile upholstering materials, hardware, glue and the like. The lumber is chiefly gumwood; but mixed hardwood, sycamore, elm and oak are also used. The textile upholsterings include cottons, "cotton bats," velours, mohairs, tapestries. The respondent also purchases coal.

IV. Lumber received at the plant by the respondent is unloaded into its lumber yard; it then goes through the dry kiln into the factory, where it is ripped and cut into "dimension stock". This goes through a planer and other machines and is gradually made into parts ready to be "driven" together. These parts are then

"driven" together and sent into the paint shop and "finished". Upholstery of the furniture follows and then wrapping and preparation for shipment.

V. The respondent's sales are made through salesmen, and by direct advertising and mail orders, principally in the southeastern states, and in Ohio and Indiana. Fifteen commission salesmen, located in various states, are employed to solicit business. The respondent also distributes advertising circulars every 30 days throughout its principal territory, south of the Ohio River and East of the Mississippi. The respondent makes some sales west of the Mississippi to jobbers. About 60 per cent of its product is sold and shipped directly to retail stores; about 40% is sold and shipped to jobbers. The respondent has exhibited at the Chicago, Illinois furniture mart and had an exhibit there in July, 1935; a few sales were made there.

VI. The respondent's president, A. A. Milne, testified that all of its raw materials are received f. o. b. Cleveland, Tennessee and that its products are sold f. o. b. Cleveland, Tennessee. There is a private siding at the plant; carriers place cars at this siding. Most of the respondent's shipments are made by railroad and are loaded on the cars by its employees. A few shipments are loaded at the Cleveland railroad depot. A few truck shipments are made; the trucks, too, are loaded by the respondent's employees.

VII. Of the raw materials used by the respondent, about 66% ¹/₂ is purchased and transported to the plant from other states. From January 1 to November 30, 1935, the respondent's purchases totalled \$135,597.12, of which \$89,279.24 represents purchases in 20 other states. The respondent's sales from December 1, 1934 to November 30, 1935, totalled \$240,648.07. Of this amount, \$165,829.28, or about 69%, represents sales of its product sold and transported to states other than Tennessee. (Statements furnished by the respondent under stipulations made at the hearing.)²

VIII. In the course of the respondent's operations, as described above, there is a flow of large quantities of raw materials from many states other than the State of Tennessee to its plant, and of large amounts of completed furniture from its plant to many states other than the State of Tennessee. These quantities and amounts comprise the greater proportion of the raw materials and finished products so caused to be transported by the respondent.

IX. The respondent's operations, as set forth above, constitute a continuous flow of trade, traffic and commerce among the several States.

² At the commencement of the hearing, counsel for the respondent stipulated that about 75% of its raw materials is obtained in states other than Tennessee and 77% of its finished product is distributed in states other than Tennessee, as based on "a reasonably accurate calculation." This stipulation was accepted by the Trial Examiner and made the basis of his findings in that respect.

B. THE UNION

X. Local No. 1759, United Brotherhood of Carpenters and Joiners, affiliated with the American Federation of Labor, is a labor organization, organized among employees at the plant of the respondent in June, 1935. About 75 employees originally signed applications for membership; about 25 actually became members.

C. THE RESPONDENT AND THE UNION—RELATIONS UNTIL JULY 17, 1935

XI. The respondent's reaction to the appearance of the union in the plant was hostile. There is evidence of anti-union statements by the respondent's supervisory employees to union members and officers between the time of its organization and July 17, 1935. Bill Johnson, the first president of the union, was discharged. Clifford Samples, the union's second president, withdrew from the union shortly after he had been told by Hyder, superintendent at the plant, that he could not "work here and belong to the union, that is out of the question." He is still employed at the plant and testified under subpoena. The dismissal of several union members, among them Floyd McMahan, one of the employees named in the complaint, caused a strike by 25 or 30 employees in the plant on July 10. Upholsterers employed by the respondent were out on strike at the time. Peter A. Carmichael, Commissioner of Conciliation, United States Department of Labor, effected a settlement, evidenced by a memorandum dated July 17, over his signature. Under the settlement, strikers were to be reinstated, with the exception of Bill Johnson, the union's first president. "Now, as to UNIONISM", the memorandum states, "the company agrees or states it as its policy to abide by the terms of the Wagner Labor Act, where such terms are mandatory" . . . "It is fully understood and agreed that the employees of the Cleveland Chair Company have the right to join any labor union of their own choosing without jeopardy to their jobs." (Exhibits R-4 and 5). McMahan, whose discharge apparently was due to his union membership, was reinstated with the others.

D. THE UNFAIR LABOR PRACTICES

XII. Wilson Brannan, the third president of the union and one of its organizers, was employed by the respondent as a chair driver until Tuesday, September 24, 1935. He had worked for the respondent, with interruptions, for six or seven years, the last period for 26 months. When he arrived for work on that day he found his time card had been "pulled" out of the rack by Stonecypher, his foreman, and Hyder, superintendent of the plant. He was informed he was discharged for violation of rule 4 of the respondent's rules, printed on the back of each time card.

Rule 4 provides: "All employees being absent from work must report promptly to the factory office, stating cause, and when they will return to work. Any employee failing to comply with the rule will lose their position." There is testimony indicating that under the rule, employees absent from work are required to send word to the plant before noon of the same day explaining their absence, to avoid dismissal, excepting unusual circumstances or employees living out of the City of Cleveland. Brannan lives in town. On Friday, September 13, he informed Stonecypher that he was ill; that he was required to take medicine for "stomach and liver trouble"; and that he wanted permission to be off in order to do so. Stonecypher told him to take his medicine while at work, and told him to come to work the next day, Saturday. He did so. On Monday, September 16, he did not appear at the plant for work, and did not report his excuse. Stonecypher called at Brannan's house that afternoon. According to his account, Brannan came out on the porch; he appeared to have been drinking. Stonecypher testified he smelled liquor on Brannan's breath. Stonecypher also testified that he warned Brannan that it was against the rules "to stay out from work and not send in any excuse . . . if you do it any more, it means your job." Brannan denied that he had been drinking and testified he was sick that day. The following Monday, September 23, Brannan again failed to appear at the plant for work. Stonecypher called at his house that morning and found him away. Brannan testified he was ill that day, too, and had left the house for a short time when Stonecypher called. There is evidence that two other employees of the respondent who were absent from work on that day without notification were not dismissed, and that several others had so absented themselves at other times without dismissal. As to this, the respondent's superintendent testified that such employees lived out of town, and that the rule was otherwise enforced by the respondent. Cecil Walker, a fellow employee, testified that Brannan had told Walker, in a conversation several days before September 23, that "Stonecypher got on to me about that (drinking) and said if I didn't quit it he was going to have to let me go." Brannan denied that he had such a conversation with Walker. Although Brannan disclaimed knowledge of rule 4, and denied that he had ever read the rules on the time card or had been told to do so, there is testimony that the rules had been called to the attention of the respondent's employees.

XIII. On the afternoon of Tuesday, September 24, the day of Brannan's discharge, a self-appointed committee of three union members, employees of the respondent, called on Hyder to ask the reason for Brannan's discharge. They were told he was dismissed for violation of rule 4. At the regular weekly union meeting held

that night, a committee of three was appointed to investigate Brannan's discharge and to bargain with the respondent "to put him back to work" (Exhibit B-9). Early the next morning, September 25, the committee, Floyd McMahan, a car packer, Amos Gentry, an upholsterer, and Mit King³, a chair driver, all employees of the respondent, spoke to Hyder about reinstating Brannan, arguing that other employees absent from work on the day Brannan was out were not discharged. Hyder refused and the committee requested a conference with Milne and returned to work. Milne granted the interview, and about 8:30 that morning, the committeemen were summoned to Milne's office. Milne, Hyder, Stonecypher and another foreman were there. The interview was very short. In reply to Milne's inquiry as to their business with him, McMahan stated they were there to demand or insist that Brannan be put back to work. Milne replied that they were trying to tell him how to run his business; that when they reached the point of contributing to his payroll they might tell him what to do; but until then they could not. He then discharged all three.

XIV. Word of the discharge of the committee circulated while the committeemen were getting their coats and caps and waiting for their pay. About 20 employees of the respondent left their work and followed the committeemen to the paymaster, in protest of their discharge, and stood there in a group. Milne approached the group and announced that they could go back to work; that they were being misled; that if they walked out, he would fill their places, and it would be a long time before they could work again. The employees walked out on strike in protest of the discharge of the committee members and picketed the plant.

XV. (a) Of the employees of the respondent who went out on strike on September 25, as set forth above, Clarence Wamble, Arthur Stephenson, Lake Pruitt, Earl Ledford, Boyd Herron, Curtis Gentry, and Charles Gentry, were members of the union; James Davenport and Virgil Johnson were applicants for membership. Hubert Foulks, a member of the union, then employed by the respondent as an upholsterer, joined the strikers later that morning when he heard of the discharge of the committee. Although Roy O. Kelley, an applicant for union membership, testified that he joined the strikers the next day, his time card and endorsed pay check (Exhibits R-10 and 14) show that he worked and was paid for the week ending Friday, September 27. Hyder, the respondent's superintendent, testified that on that day Kelley refused to remain on the job at the rate of 30 cents per hour.

³ King voluntarily replaced Carl Whaley, appointed to the committee at the union meeting, on Whaley's plea that "he was afraid to go, he could not talk . . . and that he hadn't the nerve."

(b) According to a statement furnished by the respondent under a stipulation entered at the hearing, "since September 25, 1935 . . . we employed 29 people during this period and there were 46 that we let go." This statement was furnished on December 31, 1935, more than three weeks after the hearing. The period which the statement covers is not clear, and it does not appear whether the "46 that we let go" includes the three committeemen and the 11 strikers. There is testimony on the record indicating that some of the new employees have replaced the strikers.

E. CONCLUSIONS

XVI. *Wilson Brannan*. The evidence is insufficient to support the allegations in the complaint that Wilson Brannan was, on September 24, 1935, discharged for union membership and activity. He was discharged for cause—absence from work without reporting as required by rule 4. In reaching this conclusion we are not unmindful of the respondent's open hostility to the union at its inception; nor are we convinced that the respondent's earlier anti-union attitude and hostility to the exercise by its employees of their right to self-organization, collective bargaining and concerted activities for mutual aid and protection was necessarily purged in the strike settlement memorandum of July 17. The absence of evidence of hostile conduct by the respondent towards the union during the three months between that date and the day of Brannan's discharge would not of its own accord be proof that the respondent was not motivated by Brannan's union membership, office and activity in discharging him. We are also mindful of the fact that Brannan was the third president of the union, that the union's first president was discharged, that its second president resigned to save his job, and that it has been our experience that employers hostile to unions and desirous of disrupting them particularly single out union leaders and officials for discrimination. However, on the entire testimony, especially the testimony of Cecil Walker set forth in finding XII above, we are persuaded that Brannan was discharged for cause.

XVII. (a) *Floyd McMahan*, *Amos Gentry* and *Mit King* were discharged by the respondent's president, Milne, on September 25, 1935, while engaged, as a union committee, in concerted activities of the respondent's employees for mutual aid and protection. The representative capacity of the committeemen was obvious. Milne knew McMahan as a union man; he had discharged him for union membership and reinstated him in July as a result of the strike settlement in which Carmichael participated (see finding XI above). Milne also knew or must have known the existence of the union and the purpose

of the committee's desire to confer with him. It had been arranged through Hyder; and he, Stonecypher and another foreman were in Milne's office apparently by arrangement when the committeemen were summoned to Milne's office. They came there with Milne's permission. The negotiating technique employed by the committee may have been crude; McMahan's statement may not have been nicely diplomatic. The union was new, young, and its members and officers inexperienced. But Milne, an experienced business man of many years standing, instead of meeting the situation with a measure of tact or making any effort to secure an expression from the committee as to how they came to be demanding or insisting that Brannan be reinstated, reacted immediately with an employer's heaviest weapon, severance from employment, and, in his own words, for the reason that the men were there interfering with his business. It is precisely such discharges, among others, which Section 8, subdivision (3) of the Act⁴ was designed to preclude. In discharging the committeemen, Milne was discharging union members, clearly and apparently engaged in union activities and in concerted conduct for mutual aid and protection, and was discharging them solely for that cause.

(b) The respondent's conduct in discharging the three committeemen named in finding XVII (a) above, constitutes interference, restraint and coercion of its employees in the exercise of the rights guaranteed in Section 7 of the Act; and constitutes discrimination in regard to hire and tenure of employment to discourage membership in a labor organization, in this case the union.

XVIII. (a) *Clarence Wamble, Arthur Stephenson, Lake Pruitt, Earl Ledford, Boyd Herron, Curtis Gentry, Charles Gentry, James Davenport, and Virgil Johnson*, who participated in the strike on September 25, were discharged by the respondent for engaging in concerted activities for mutual aid and protection. Workers struggling to realize their rights to self-organization, collective bargaining and concerted activity for mutual aid and protection often find, as they did here, that their only salvation in the face of a denial of those rights lies in direct and immediate combined action. When they gathered about the paymaster on that morning in protest of the discharge of the committeemen, Milne, the respondent's president, gave them the alternative of going back to work or leaving their jobs. Again, Milne met concerted activities by these employees with the employer's most potent weapon, severance of employment. The effect of this conduct as discouragement of union membership is obvious.

⁴ Section 8, subdivision (3) of the Act provides, "It shall be an unfair labor practice for an employer . . . By discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . ."

(b) *Hubert Foulkes* left his work and joined the strikers late that morning, when he heard the committeemen were discharged. His action was spontaneous, an assertion of his right to join in concerted activities with other employees for mutual aid and protection in protest against the respondent's conduct. There is nothing in the record to indicate that the respondent does not consider him in the same category as the nine employees listed in the preceding paragraph. The severance of his employment and the respondent's subsequent refusal to reinstate him was caused by his union membership and activity.

(c) The respondent's conduct in severing the employment of the strikers named in findings XVIII (a) and (b) above constitutes interference, restraint and coercion of its employees in the exercise of the rights guaranteed in Section 7 of the Act; and constitutes discrimination in regard to hire and tenure of employment to discourage membership in a labor organization, in this case the union.

XIX. *Roy O. Kelley*. We find the evidence insufficient to support the allegations in the complaint that Kelley participated in the strike on September 25, thus taking part in concerted activities with other employees of the respondent. The evidence indicates, rather, that he worked until Friday, September 27, was paid for that week, and refused to return to work at the hourly rate paid him by the respondent.

XX. The evidence is insufficient to support the allegations of the complaint (paragraph 11 and a portion of paragraph 12), that the respondent has urged and warned its employees from becoming or remaining members of the union; and there is no evidence to support the allegations (paragraphs 6 and 14) that the respondent refused to bargain with the union.

F. THE RESPONDENT'S CONDUCT IN RELATION TO INTERSTATE COMMERCE

XXI. (a) Discrimination by the respondent against its employees who were members of the union occasioned the July strike in the plant. The discharge of the three committeemen on September 25 caused the strike in the respondent's plant on that day. Statistics compiled by the Bureau of Labor Statistics, United States Department of Labor, certified under the seal of the Department of Labor and the signature of the Secretary of Labor and the Commissioner of Labor Statistics (made Exhibit B-11 by stipulation) show that in 1934, in the furniture industry, of a total of 58 strikes involving 9,501 workers and 155,670 man-days of idleness, 33 were "organization strikes" over questions of union recognition and discrimination and involved 5,134 men and caused 95,040 man-days of idleness. In 1935, from January through July, 20 out of 36 strikes were over

the issues of union recognition and discrimination, affected 6068 men and caused 94,685 man-days of idleness.

(b) On the basis of experience in the respondent's plant and in other plants, the respondent's conduct as set forth above in findings XIII, XIV and XV, and XVII and XVIII above, has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce among the several States.

THE REMEDY

In order to repair the injury wrought the union by the respondent's conduct in the discriminatory discharges of the three committeemen, we shall order the respondent to offer them reinstatement to their former positions with back pay. The situation of the strikers differs only in that, although they were discriminatorily discharged in the course of the exercise of concerted activities guaranteed them by the Act, they left their work voluntarily. We shall order the respondent to offer them reinstatement in the order of their seniority, and to that end, if necessary, to displace employees hired since September 25, 1935, to take the places of strikers. Since the strike on September 25 was caused by the respondent's discrimination in regard to hire and tenure of employment and interference with the exercise by its employees of the rights guaranteed them in Section 7 of the Act, we shall order the respondent to offer them reinstatement, as set forth above, in order to restore the status quo existing in the plant on that date.⁵

THE RESPONDENT'S EXCEPTIONS

The respondent's exceptions to the Trial Examiner's intermediate report, in substance, advance the respondent's apparent theory of the case, that the respondent, in its business, is not engaged in interstate commerce, and that its conduct in discharging the three committeemen and the strikers, was not in violation of the Act because the union was not chosen to represent employees for the purposes of collective bargaining, and for the reason that these employees were not engaged in concerted activities for mutual aid or protection. The respondent also excepts to the Trial Examiner's denial of its motion to dismiss the complaint on the ground that the Act is unconstitutional, and because of his failure to rule on several of its motions to strike testimony and to dismiss the complaint.

We have found that the evidence establishes that the respondent in its business is engaged in interstate commerce. See findings I to VIII

⁵ See *Matter of Columbian Enameling and Stamping Company*, Case No. C-14; *Matter of Radhor Company, Inc.*, Case No. C-29; *Matter of Brown Shoe Company, Inc.*, Case No. C-20.

above. The respondent's motion to dismiss the complaint on the ground of the unconstitutionality of the Act does not merit consideration at this stage of the proceeding. We have also, in the statement of the case above, ruled on motions on which the Trial Examiner reserved decision.

The exceptions stressed by the respondent at the hearing before the Board concern its theory that since the union was not representing a majority of its employees, the three committeemen were exercising no right under the Act in their interview with Milne, and he was under no duty under the Act not to discharge them. For the same reason, the exceptions argue, the strikers were exercising no right under the Act in going out on strike. The respondent, apparently, has confused the provisions of the Act concerning the majority rule in the choice of representatives for collective bargaining,⁶ with the provisions concerning interference, restraint, and coercion and discrimination. It may have been misled in this respect by the Trial Examiner's statement in the intermediate report that the three committeemen had functioned as a "committee appointed by the union to present a grievance to their employer within the meaning of the proviso clause of Section 9, subsection (a) of the . . . Act".⁷ The Trial Examiner erred in including this interpretation of the committee's function as an element in the case. The provisions of the Act making interference, restraint and coercion of employees and discrimination against them unfair labor practices are operative wholly irrespective of the majority rule provisions regarding collective bargaining.

In view of the findings and conclusions in this decision, the respondent's other exceptions to the intermediate report do not warrant further discussion.

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. Local No. 1759, United Brotherhood of Carpenters and Joiners of America, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

⁶ Section 8, subdivision (5) of the Act provides. "It shall be an unfair labor practice for an employer . . . to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a) "

Section 9(a) of the Act provides. "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer."

⁷ For the text of the proviso clause, see footnote 6.

2. The respondent, by discharging Floyd McMahan, Amos Gentry, Mit King, Clarence Wamble, Arthur Stephenson, Lake Pruitt, Earl Ledford, Boyd Herron, Curtis Gentry, Charles Gentry, James Davenport, Virgil Johnson, and Hubert Foulks, and each of them, thus discriminating in regard to hire and tenure of employment to discourage membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1), of the Act.

4. 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 findings 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, Cleveland Chair Company, and its officers and agents, shall:

1. Cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

2. Cease and desist from in any manner discouraging membership in Local No. 1759, United Brotherhood of Carpenters and Joiners of America, or any other labor organization, by discrimination in regard to hire or tenure of employment or any term or condition of employment, or by threats of such discrimination;

3. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Floyd McMahan, Amos Gentry and Mit King, and each of them, immediate and full reinstatement, respectively, to their former positions, without prejudice to their seniority or other rights and privileges previously enjoyed;

(b) Make whole the said Floyd McMahan, Amos Gentry and Mit King, and each of them, 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 of them would normally have earned as wages during the period from the date of the severance

of his employment to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of such discharge, less any amounts, if any, which each earned during such period;

(c) Offer to Clarence Wamble, Arthur Stephenson, Lake Pruitt, Earl Ledford, Boyd Herron, Curtis Gentry, Charles Gentry, James Davenport, Virgil Johnson and Hubert Foulks, and each of them, immediate reinstatement, respectively, to their former positions, in all cases in which the respondent has since September 25, 1935, employed others to do the work of these employees, and in all other cases place such employees on a preferential list to be offered employment in the order of their seniority, respectively, as and when their services are needed;

(d) Post notices in conspicuous places in all departments of the plant and near the time clock, stating (1) that it will cease and desist as aforesaid; and (2) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

And it is further ordered that,

5. The complaint be, and it hereby is, dismissed with respect to the discharge of Wilson Brannan and Ray O. Kelley, and with respect to the allegations in the complaint referred to in finding XX.