

In the Matter of BRADFORD DYEING ASSOCIATION (U. S. A.) (a Corporation) and TEXTILE WORKERS' ORGANIZING COMMITTEE OF THE C. I. O.

*Case No. C-265.—Decided December 22, 1937*

*Textile Dyeing, Printing, and Finishing Industry—Interference, Restraint, or Coercion:* expressed opposition to outside labor organizations; attempt to persuade employees not to join or to resign from union—*Discrimination:* discharge—*Company Dominated Union:* domination and interference with establishment and administration of; support; sponsoring and fostering growth of; disestablished as agency for collective bargaining—*Unit Appropriate for Collective Bargaining:* production and maintenance workers—*Representatives:* proof of choice; membership in union—*Collective Bargaining:* refusal to negotiate with representatives; dilatory tactics; attempt to destroy union's majority—*Reinstatement Ordered:* employees discharged—*Back Pay:* awarded

*Mr. Edward Schneider*, for the Board.

*Greenough, Lyman & Cross*, by *Mr. George Paul Stade* and *Mr. T. Deater Clarke*, of Providence, R. I., for the Respondent.

*Mr. John Ferguson*, of Westerly, R. I., for the Federation.

*Mr. J. Mark Jacobson*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by the Textile Workers' Organizing Committee, herein called the T. W. O. C., the National Labor Relations Board, herein called the Board, by the Regional Director for the First Region (Boston, Massachusetts), issued its complaint dated June 30, 1937, against Bradford Dyeing Association (U. S. A.), Bradford, Rhode Island, herein called the respondent. The complaint and notice of hearing thereon were duly served upon the respondent. The complaint alleged that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, herein called the Act. The respondent in its answer dated July 6, 1937, denied each and every material allegation of the complaint.

Pursuant to notice, a hearing was held in Westerly, Rhode Island, on July 12 to 16, 1937, before W. P. Webb, the Trial Examiner duly designated by the Board. A written motion to intervene in this proceeding was filed with the Regional Director by B. D. A. Employees' Federation, herein called the Federation, and was resubmitted at the hearing; the Trial Examiner granted this motion with certain restrictions relative to the intervenor's role in this proceeding, agreed upon by counsel for the Federation, the respondent, and the Board.

At the outset of the hearing the respondent resubmitted the following motions which it had previously filed with the Regional Director: (a) "Special Appearance and Motion to Dismiss", contesting the jurisdiction of the Board upon the ground that the respondent is not engaged in interstate commerce; (b) motion to dismiss portions of the complaint as improperly drafted; and (c) motion for a bill of particulars. These motions were denied by the Trial Examiner.<sup>1</sup> During the hearing, paragraphs 10 and 11 of the complaint were, upon motion, amended by changing the date therein from April 23, 1937, to April 16, 1937.

The Board, the respondent, and the Federation were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to the respondent. The Federation was permitted to examine witnesses and to produce evidence within the scope of the procedural arrangements agreed to by the Federation upon the granting of its motion of intervention. Subsequent to the hearing the respondent filed requests for findings of fact and law.

On October 16, 1937, the Trial Examiner filed an Intermediate Report finding that the respondent had committed unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the Act. Exceptions to the Intermediate Report were thereafter filed by the respondent and the Federation.

The Board has reviewed the ruling of the Trial Examiner on motions and on objections to the admission and exclusion of evidence and finds that no prejudicial errors were committed. Those rulings are hereby affirmed. As set forth below, we also find that the evidence supports the findings and conclusions made by the Trial Examiner in his Intermediate Report that the respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3), and (5), and Section 2 (6) and (7) of the Act.

Upon the entire record in the case, the Board makes the following:

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<sup>1</sup> During the hearing the respondent renewed its motion to dismiss on the ground that the respondent is not engaged in interstate commerce and that, therefore, the Board lacks jurisdiction. The Trial Examiner denied this motion.

## FINDINGS OF FACT

## I. THE BUSINESS OF THE RESPONDENT

The respondent, a Rhode Island corporation, has its plant and principal office at Bradford, Town of Westerly, Rhode Island, and an office in New York City. The majority of its stock is owned by stockholders of Bradford Dyeing Association, Ltd., of England; and the two companies have an interlocking directorate.

The respondent is engaged in the business of dyeing and finishing cotton, rayon, and acetate piece goods, and employs over 700 workers at its Bradford plant.<sup>2</sup> It has about 200 customers, more than one-half of whom are located outside the State of Rhode Island. These customers, known in the trade as converters, purchase unfinished cloth, or grey goods, from textile mills and ship them to the respondent's Bradford plant, together with dyeing, finishing, and reshipment instructions, retaining title to the goods throughout the finishing process. The grey goods arrive at the plant by railroad<sup>3</sup> and truck in cases and bales containing cloth in lengths ranging from 20 to 120 yards. As a general rule, processing instructions arrive with the goods or very soon thereafter. The goods are then taken into the "grey room" and opened; the pieces sewed together to provide a continuous flow of the goods into the dyeing vats; and after it has been dyed and finished, the cloth is inspected, folded, and packed for shipment. From the time the grey goods arrive at the plant until the finished cloth is shipped out in accordance with the converter's instructions, the respondent's operations are practically continuous.

During 1936 the respondent processed 23,745,747 yards of cotton cloth and 33,685,199 yards of rayon cloth; and during the first six months of 1937 the respondent processed 12,282,922 yards of cotton cloth and 16,930,914 yards of rayon cloth. More than one-half of this cloth came from points outside the State of Rhode Island;<sup>4</sup> and about 90 per cent of the finished cloth was shipped to points outside the State of Rhode Island. In addition, the respondent in 1936 sold on its own account 588,000 yards of remnants, secured during the finishing process, and about 90 per cent thereof were shipped to points outside the State of Rhode Island, principally to a single customer in New York City.

During 1936 the respondent purchased 325,111 pounds of colors and dyestuffs at a price of \$355,856. Forty per cent of these essential supplies came from points outside the State of Rhode Island.

<sup>2</sup> During 1935 the respondent paid out in wages, exclusive of salaries, \$604,614.68, and in 1937 its monthly pay roll was approximately \$75,000.

<sup>3</sup> The respondent has a spur track connecting with the New York, New Haven & Hartford Railroad.

<sup>4</sup> Over one-half of the respondent's income was secured from work done on goods arriving from other states.

On December 23, 1935, George Summersby, president of the respondent, in a sworn declaration in conjunction with the respondent's registration of its trade mark, "B. D. A. Mel Brae", stated that "said trade mark is used by said corporation in commerce among the several States of the United States." The respondent did not deny that it is still using this trade mark.

The dyeing and finishing industry, of which the respondent is an important member,<sup>5</sup> forms a bottle-neck for the textile industry between the producers and the consumers of cloth; and a labor dispute<sup>6</sup> that clogged up this bottle-neck would create chaos in the entire textile industry. The market for finished textiles depends upon the uninterrupted operation of the dyeing and finishing branch of the industry; and the stoppage of these processing plants would deprive the needle trades and other consumers of finished cloth of the goods essential to their production, would cause the grey goods to pile up at the cotton and rayon mills, and would, in turn, compel the latter to diminish their production of cloth and their orders for raw materials. The flow of commodities in interstate commerce would thus be widely affected.<sup>7</sup>

## II. THE UNIONS

The Textile Workers' Organizing Committee, affiliated with the Committee for Industrial Organization, herein called the C. I. O., is a labor organization. It admits to membership all the employees of the respondent, except supervisory and clerical employees.

The B. D. A. Employees' Federation, affiliated with Associated Workers of Printing, Finishing and Allied Industries, is a labor organization. It admits to membership all non-supervisory employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

### A. *The Discharges*

Percy Schofield, until his discharge on April 16, 1937, was employed by the respondent for five or six years as a "jigger", or dyeing machine operator. Edward Nelson, until his discharge on April 3, 1937, was employed by the respondent for two years as a carpenter.

Schofield became interested in the T. W. O. C. on March 27, 1937, when he attended a meeting of that organization in a nearby com-

<sup>5</sup> The respondent's plant is medium sized, compared to similar dyeing and finishing plants in the United States.

<sup>6</sup> The record indicates that the 1929 strike at the respondent's plant stopped all shipments thereto and therefrom

<sup>7</sup> For a more complete description of the textile dyeing and finishing industry see *Matter of Martin Dyeing and Finishing Company and Federation of Dyers, Finishers, Printers and Bleachers of America*, 2 N. L. R. B. 403, Board's Exhibit No. 9.

munity. That night he secured and had signed by employees of the respondent eight T. W. O. C. membership cards. The next day Schofield got 700 more cards and on March 29 he took the cards to the respondent's plant and gave one-half of them to Nelson. Within three days they distributed all the cards among the respondent's employees, and then secured an additional 1,000 T. W. O. C. membership cards, which they similarly distributed.

On the night of April 1 and while he was off duty, Nelson, contrary to the rules of the respondent, visited the plant in order to get some T. W. O. C. membership cards that employees had signed and left for him.

On April 2 George Summersby, president and general manager of the respondent, stopped Schofield at work and discussed with him the work of the "jiggers" and then raised the matter of C. I. O. activities at the plant. Summersby told Schofield that he could see no value in an outside labor organization and suggested the formation of a shop union. Schofield replied that he had never seen a shop union that was any good. This was the first time that Schofield had heard any reference to a local or shop union in the plant. During this conversation Nelson approached them, and Schofield introduced him to Summersby as one who was assisting him in organizing the respondent's employees for the T. W. O. C.

About 10:30 A. M. that same day, Silvia, the respondent's paymaster, told Nelson that Summersby wanted to see him at his office during the day. Silvia knew that Nelson was organizing for the T. W. O. C. and endeavored to ascertain the names of other employees active in the union.

During the afternoon of April 2, a conference was held at Summersby's office among Summersby, Schofield, and three other "jiggers" to discuss possible adjustment in the pay of the "jiggers". Again, Summersby brought up the C. I. O., and told the conferees that he would not recognize a C. I. O. union and that a shop union was more desirable. During this conference, Nelson entered the office, stating that he had heard that a union organization committee was meeting with Summersby. Summersby ordered Nelson out of the office, telling him that the conference did not concern him and remarking after Nelson's departure that Nelson was a troublemaker and that he did not like Nelson.

About 3 o'clock that same afternoon, just before he went off duty<sup>8</sup> Nelson was told by Greenhalgh, the respondent's watchman, that Summersby wanted to see him at the office. Nelson, after waiting an hour and a half, was finally called in by Summersby. Summersby told Nelson that he knew that Nelson had been in the plant the

<sup>8</sup> The first shift worked from 7 A. M. to 3 P. M.

previous night, but that he would not be punished for violating the rules in so doing. Summersby inquired of Nelson what was the trouble at the plant and what need there was for union organization; and he remarked that if the workers were organizing why they did not organize a local union. This was the first mention that Nelson had heard of a local union at the plant. Summersby told Nelson that he would cooperate with a local union and suggested that Nelson participate in the formation of such an organization. Summersby knew that a T. W. O. C. committee of the respondent's employees was meeting that night for the purpose of drafting a bargaining agreement to be presented to the respondent; and Summersby asked Nelson to put before this committee the suggestion that a local rather than a C. I. O. union be formed. When Nelson did not respond favorably to Summersby's proposal of a local union, the latter told him: "You are a pretty young fellow, Nelson, and if you keep doing what you are doing you are going to land in jail."

On the morning of April 3, Nelson arrived at work early and answered inquiries from individual workers concerning the committee meeting of the previous night. Nelson testified that he started work at seven o'clock by assisting a worker, Alex Thompson, in some work and then started a job which he had previously been instructed to do that day. At 7:25 A. M. Dudley, the carpenter foreman, saw Nelson and asked him when he intended to begin his work. Dudley testified that he caught Nelson talking to other men at work and that he could not get Nelson to begin work until 7:30 A. M., and that he reported Nelson to Pierce, his superior and chief engineer. Dudley admitted that between 7:00 and 7:25 o'clock, even though he had not seen him do so, Nelson might have been working on a job with Thompson. Dudley further admitted that, although on previous occasions Nelson had started work late or quit early and had talked to men during working hours, he had not reported him. Dudley stated, moreover, that on these previous occasions Nelson had conversed with the men about ordinary subjects, whereas on the morning of April 3 he talked to them about the union; and that this time he "got sore". Pierce admitted that he had seen men at work talking to one another, but had never discharged or laid off anyone for doing so.

About three o'clock that same afternoon Dudley told Nelson that Summersby wanted to see him, and they went to the main office. Dudley testified that before he left the office he heard Summersby ask Nelson if he had decided some question which they had discussed the previous afternoon and that, when Nelson replied in the negative, Summersby said: "Well, then, if you can't give me a satisfactory answer on that, I have thought it over and I have decided to lay you off for two weeks and let you think it over." Nelson testified that

Summersby was referring to his proposal that Nelson present to the plant committee the formation of a local union; and that, when he reported that the committee had rejected that suggestion, Summersby "got sore", accused him of starting work late and of violating company rules by returning to the plant after working hours, implied that he may have been at the plant at night in order to steal, and laid him off for two weeks to "cool off" on the ground that Nelson was "too excited about the whole thing." Summersby's version of this conversation was somewhat different. Summersby testified that on April 2 he had told Nelson that his union activities did not interest him, but had reprimanded him for ungentlemanly conduct and insubordination demonstrated in his interrupting the talks with Schofield and the committee of "jiggers" earlier that day, and that, on April 3 when Dudley had told him that he could not get Nelson to begin his work on time and that Nelson was a nuisance around the plant, he felt that Nelson was not only insubordinate but also defiant.

Dudley testified that Nelson was a very good workman.

Nelson did not apply for reinstatement at the end of the two week period because Bernard, United States Department of Labor conciliator, and Salerno, head of the Rhode Island branch of the T. W. O. C., after two conferences with Summersby told Nelson that the respondent would not take him back. Summersby admitted telling Bernard: "I couldn't take back either one of them [Nelson and Schofield] because it would break down the discipline of our plant."

A careful weighing of all the testimony, in the light of the circumstances set forth hereafter, leads us to the conclusion that the respondent discharged Nelson because of his activities on behalf of the T. W. O. C.

Schofield was laid off or discharged on April 6 under the following circumstances. During the evening of April 4, a T. W. O. C. mass meeting of the respondent's employees was held at which Schofield and Nelson conspicuously sat on the platform along with the T. W. O. C. organizers and speakers. And on April 5 Schofield continued to distribute union membership cards among the respondent's employees. On April 6 about 2:25 P. M. Schofield was told that Summersby desired to see him at his office. Schofield testified that Shawn, second hand or assistant foreman, gave him the message and that immediately thereafter Hopwood, boss dyer, repeated it to him and gave him permission to wash up before going to Summersby's office. Hopwood at first denied seeing Schofield at that time, but upon cross-examination stated that he could not remember whether he had seen Schofield at the jig. Schofield went to the locker room, washed, and changed his clothes. While he was in the locker room, Schofield met two workers, Nicholas and Johnson, and, contrary to the respondent's rules, they all smoked.

At this point Hopwood, contrary to his usual custom, entered the locker room and caught Schofield smoking. He did not see, according to his testimony, the other two men smoking. Nicholas, testifying as a witness for the respondent,<sup>9</sup> stated that just before Hopwood entered the room he had put out his cigarette and that Johnson was partially hidden behind the lockers where very likely his smoking would not have been seen by Hopwood. Nicholas testified that he heard Hopwood, at the time he caught Schofield smoking, say that he "had him now." Hopwood attempted to explain away this remark by stating that he had been searching the plant for Schofield in order to give him Summersby's message. However, this explanation does not conform to the fact that approximately fifteen minutes previously the message had actually been delivered to Schofield.

Although the respondent forbade smoking anywhere within the plant, except the main office, the rule had not been vigorously enforced. The record indicates that employees had openly broken the rule without being caught, or had actually been caught by foremen who, however, had not reported them. Hopwood testified that he had caught four employees smoking and that in each instance he had personally laid off the guilty worker.<sup>10</sup> In Schofield's case, however, Hopwood personally did not discipline him but, contrary to his usual practice, reported him to Pawson, the respondent's vice-president.

Schofield went directly from the locker room to Summersby's office; and while he waited in the outer office, Summersby learned that Schofield had been caught smoking. Without informing Schofield why he had asked him to come to the office, although two of his superiors had told him to report to him, Summersby merely remarked that Schofield knew what the respondent generally did to men caught smoking and that he could not expect any more leniency than anyone else. Schofield testified that he was laid off for two weeks; Summersby, that he then and there discharged Schofield. In any event, Schofield did not apply for reinstatement because, as stated above, Summersby told Bernard and Salerno that the respondent would not reemploy him.

On April 2, Summersby had praised Schofield and held him up as a model for Nelson to follow.

To refute the charge that Schofield and Nelson had been discharged for reason of their T. W. O. C. organization activities, the

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<sup>9</sup> That night Nicholas informed Schofield that immediately after the locker room incident Hopwood told him: "If anything comes of this, I want you to be a witness that Schofield was smoking" Hopwood admitted telling Nicholas to remember that he had seen Schofield smoking

<sup>10</sup> Eight months before this locker room incident Schofield had been laid off two weeks for violating the "no smoking" rule.

respondent introduced evidence that on April 8 an employee named Rhodes, while under the influence of liquor, had unsuccessfully attempted to organize a sit-down strike at the plant, that Pawson "cooled" him off, and that the respondent did not discharge him. This attempt to show that the respondent did not discriminate against employees active in the T. W. O. C., however, is not very convincing. By April 8, the Federation, discussed below, had become established and the threat of the T. W. O. C. had passed. Moreover, Rhodes himself became a member of the Federation and Ashworth, the temporary president of the Federation, interceded on his behalf with the respondent.

We find that Percy Schofield and Edward Nelson were discharged for the reason that they had joined and assisted the T. W. O. C. They have secured no other regular or substantially equivalent employment since their discharge. Inasmuch as their employments were terminated by unfair labor practices, they at all times thereafter retained their status as employees of the respondent within the meaning of Section 2 (3) of the Act.

### B. *The Federation*

The above recital of facts indicates that on April 2 Summersby suggested to Nelson, Schofield, and a committee of "jiggers" the formation of a shop or local union, that he then expressed his hostility to the T. W. O. C., and that he asked Schofield and Nelson to participate in the organization of a shop or local union.

On the morning of April 6, about eleven o'clock, 12 or 14 employees from different departments of the plant, selected by their bosses, met with Summersby and Pawson in Summersby's office, presumably to discuss certain grievances. Among other things they discussed unions in general, and in particular the merits of the T. W. O. C. and shop unions. Several of the employees present at this conference—including Potter, who was selected temporary secretary of the Federation—testified that Summersby declared that he would not recognize the C. I. O. and advised them to form a local union. During this meeting the conferees saw on Summersby's table certain packages; and when Summersby and Pawson left the room, they opened these packages. The packages contained literature signed by the "Committee for Organization of the B. D. A. Employees Federation" and membership cards for the Federation. None knew where the literature and cards came from or who had ordered and paid for their printing. Nor did the respondent during the hearing explain the presence of the cards and literature on Summersby's table.

Before this conference adjourned Ashworth was chosen temporary president of the Federation and Potter, temporary secretary. Pot-

ter secured Summersby's permission to pass out Federation literature and membership cards during working hours among the employees at the plant, and he posted Federation notices on the plant bulletin board.

During the afternoon of April 6 a second Federation organization meeting was held at the respondent's office for the benefit of some second shift employees and for the purpose of counting the Federation cards that had already been signed and returned by the workers. William Durfee, Jr., a first shift employee, testified that about four o'clock that afternoon Silvia, respondent's paymaster, visited him at home and inquired how deep he was in the C. I. O. and that, when he replied that he was not active, Silvia asked him if he would be willing to talk to Summersby. Silvia and Durfee drove to the plant; and Durfee and Summersby talked about the C. I. O. and local unions. Summersby then told Durfee that a committee had gotten together to form a local union because he had told its members that he would not recognize the C. I. O. but would cooperate with a local union. Summersby stated that he was sorry that Durfee had been left out of the morning meeting. Summersby preceded Durfee into the next office, where the afternoon meeting was then being held, in order to ask the committee members if they would mind Durfee joining them. When Durfee entered the meeting, Ashworth stated the purposes of the meeting; Summersby again explained the advantages of a local union and the bad features of the C. I. O.; and again Federation literature and membership cards were distributed. It is significant that the respondent made no attempt to cross-examine Durfee.

On the afternoon of April 7, before the first shift went off duty, the Federation held a mass meeting in the respondent's shipping room attended by about 200 men. The employees were told to attend by their foremen and they were paid by the respondent for the time spent at the meeting. Both Ashworth and Summersby addressed the meeting. Several witnesses testified that Summersby told the employees he would not recognize the C. I. O. and he favored a shop union. During and after this meeting, supervisory employees of the respondent passed out Federation membership cards.

During the next two days a large number of Federation cards were signed by the workers; and on April 9 the Federation had secured 484 members, many of whom had previously joined the C. I. O. On that day the Federation officers and organization committee met, with Summersby's permission, in the respondent's grey room and prepared a letter to the respondent advising that the Federation had signed up a majority of the plant's employees and requesting that the Federation be recognized as sole bargaining agent for the respondent's employees. Ashworth took the letter and the Federation cards into

Summersby's office. Ashworth testified that Summersby and Silvia checked the number of Federation cards against the respondent's pay roll, but did not compare signatures. Ashworth left the cards with Summersby for about a week; nevertheless, that same day the respondent by letter granted the Federation recognition as exclusive bargaining representative for its employees. Thereafter Ashworth discussed a number of minor grievances with Summersby and adjusted them in a few instances.

On April 11 the Federation elected permanent officers. Subsequently, meetings of the Federation executive committee were held at the Bradford Social Club, which property was owned by the respondent. The Federation paid no rent for the use of that meeting place. Potter testified that, with the permission of the respondent's watchman, he had used the respondent's automobile for Federation purposes.

On April 23 the Federation voted to affiliate with Associated Workers of Printing, Finishing and Allied Industries, which had been organized on April 3, 1937; and on May 22 the Federation received its charter. Prior to this affiliation, the Federation possessed no charter, constitution, or by-laws.

Potter, who testified that he had helped organize the Federation partly to prevent the success of the T. W. O. C., admitted that the Federation affiliated with the Associated Workers in order to prove to the respondent's employees that the Federation was not a company union.

The following instances are also significant in evaluating the labor practices of the respondent. After the discharge of Nelson, Summersby saw Nelson putting up C. I. O. posters along the town highways and tore them down. Summersby called in and reprimanded an employee named Kenyon for having a C. I. O. card on the back of his automobile, and told him that he would not recognize that union. On April 11 Summersby inserted in the Westerly Sun, a local newspaper, an advertisement, entitled "The Strike That Failed", in which he drew analogies to the failure of a Bethlehem Steel Company strike "instigated by unlawful C. I. O. agitators." And on April 25 Summersby gave a scare statement to the Westerly Sun that the respondent's parent corporation, because of labor unrest, was considering the transfer of machinery from the Bradford plant to Egypt.

We find that the respondent has participated in, dominated and interfered with the formation and administration of the Federation and that by intimidation and coercion compelled its employees to join the Federation, contrary to the provisions and intent of Section 8 (1) and (2) of the Act.

*C. Refusal to Bargain Collectively*

The complaint alleged that the production and maintenance departments at the respondent's Bradford plant constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. The respondent in its answer, although questioning their materiality, admitted the above allegations.<sup>11</sup>

We find that a unit composed of all the production and maintenance employees at the respondent's Bradford plant, except supervisory and clerical employees, would insure to the respondent's employees the full benefit of their right to self-organization and otherwise effectuate the policies of the Act, and constitutes a unit which is appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

The record indicates that by April 4, 465 or 467 of the respondent's employees in the appropriate unit had signed T. W. O. C. membership cards and that there were less than 780 employees in the appropriate unit. On or before April 10, 481 employees of the respondent signed up with the T. W. O. C. Although the original T. W. O. C. membership cards were not introduced into the record, counsel for the respondent and the Federation compared a typewritten T. W. O. C. membership list with the original signed membership cards; counsel for all parties agreed that this typewritten list, which was admitted as an exhibit, was a true and correct list of the names appearing on the T. W. O. C. membership cards and that the total number of such names was 482.

The record further indicates that as early as April 2 the respondent knew that the T. W. O. C. had signed up a majority of the employees at the plant. On the afternoon of that day Nelson, while waiting to see Summersby, told one of the employees on the respondent's office staff that over 60 per cent of the workers had already signed up with the T. W. O. C. The record indicates that Summersby was well advised at all times as to what progress the T. W. O. C. was making in its organization drive.

On the evening of April 2, a committee composed of Nelson, Schofield, and other representatives from the various departments of the respondent's plant met for the purpose of drafting a proposed bargaining agreement between the T. W. O. C. and the respondent. Summersby knew beforehand about this meeting and its purpose, inasmuch as he suggested to Nelson that he lay before the meeting the suggestion that a shop union be organized. The discharge of

<sup>11</sup> The respondent stated that it uses the term "processing department" for what the complaint calls the "production department."

Nelson on April 3, when he refused to reconsider Summersby's shop union suggestion, and of Schofield only two working days later, forestalled an immediate bargaining demand by the T. W. O. C. shop committee.

On April 2 and at all times thereafter Summersby emphatically informed the respondent's employees, including Schofield and Nelson, that the respondent would not recognize or deal with the T. W. O. C. The language and actions of the respondent rendered futile any immediate demand by the T. W. O. C. for collective bargaining with the respondent.

Further, on April 8 or 13 Salerno, head of the Rhode Island branch of the T. W. O. C., had a conference at Providence with Summersby and Bernard of the United States Department of Labor, at which they discussed the discharge of Schofield and Nelson and possible collective bargaining between the respondent and T. W. O. C.<sup>12</sup> Summersby stated at this meeting that he would negotiate with the T. W. O. C. if it had a majority of the employees, and told Salerno to see his attorney, Cross. Thereafter, Salerno talked with Cross, who told him that the T. W. O. C. would not be able to accomplish anything in the way of collective bargaining with the respondent. Nevertheless, on April 16 Salerno went to Westerly and again conferred with Summersby and Bernard. Salerno told Summersby that the T. W. O. C. had a majority of the plant and offered to show the membership cards to Bernard and to have Bernard check the names on the cards against the respondent's pay roll. This offer Summersby rejected. During this conference Salerno handed Summersby a typewritten draft of a proposed bargaining agreement. Summersby said that he would look it over, for what it was worth, but that the respondent had already signed a bargaining agreement with the Federation.

We find that at all times since April 4, 1937, the majority of the respondent's employees in an appropriate unit had designated the T. W. O. C. as their bargaining agent. The respondent contends that subsequent to the above date many of its employees revoked the authority of the T. W. O. C. to represent them and that by April 9 a majority of the employees had authorized the Federation to act as their bargaining representative. However, the record is clear that, had it not been for the unfair labor practices of the respondent in organizing and fostering the Federation and in persuading, intimidating, and coercing its employees to join the Federation and leave the T. W. O. C., the respondent's employees would have remained members of the T. W. O. C. The unfair labor practices of the respondent cannot operate to change the bargaining representative pre-

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<sup>12</sup> Salerno fixes the date as April 8 and recalled that it was immediately after Schofield's and Nelson's discharges. Summersby fixed the date as April 13.

viously selected by the untrammelled will of the majority. Accordingly, we find that on April 4, 1937, and at all times thereafter, the T. W. O. C., pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in the appropriate unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

We further find that the respondent at all times since April 4 has refused to bargain collectively with the T. W. O. C., as the representative of its employees, contrary to the provisions and intent of Section 8 (5) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Upon the whole record, we find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, commerce, and transportation among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### THE REMEDY

As we have found that Percy Schofield and Edward Nelson were discharged because of the respondent's unfair labor practices, we shall order the respondent to offer to reinstate them and we shall award them back pay for the period from the dates of their discharges to the dates on which they obtain regular and substantially equivalent employment, less any amounts earned by them in the meantime.

It is clear that the respondent was instrumental in organizing and compelled many of its employees, contrary to their desires, to join the Federation. In order to remedy its unlawful conduct therein, the respondent must cease requiring, urging, or intimidating its employees to join or remain members of the Federation; must cease contributing financial or other support to the Federation; and must withdraw all recognition from the Federation as an organization representative of the respondent's employees for the purposes of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

We shall also order the respondent to bargain collectively with the T. W. O. C. as representative of all its non-supervisory and non-clerical employees at its Bradford, Rhode Island, plant. Prior to the hearing many of the members of the T. W. O. C. joined the Federation and by implication renounced their T. W. O. C. affiliation. We have found that such action was the result of the respondent's unfair labor practices. We are ordering the respondent to inform its em-

ployees that they are free to become or remain members of the T. W. O. C. and are not required to become or remain members of the Federation. In the presence of such a finding and order, to refrain from ordering the respondent to bargain collectively with the T. W. O. C., would be to hold that the obligation of one subdivision of the Act may be evaded by the successful violation of another; that the freely expressed wishes of the majority of the employees may be destroyed if the employer brings to bear sufficient interference, restraint, and coercion to undermine the representatives' majority support. We cannot permit the purposes of the Act to be thus circumvented.

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following:

#### CONCLUSIONS OF LAW

1. Textile Workers' Organizing Committee is a labor organization, within the meaning of Section 2 (5) of the Act.

2. B. D. A. Employees' Federation is a labor organization, within the meaning of Section 2 (5) of the Act.

3. Percy Schofield and Edward Nelson are employees of the respondent within the meaning of Section 2 (3) of the Act.

4. The respondent, by discriminating in regard to the hire and tenure of Percy Schofield and Edward Nelson, and each of them, and thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

5. 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 in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

6. The respondent, by organizing and dominating the administration of the B. D. A. Employees' Federation, by actively sponsoring membership in said organization among its employees, and by contributing financial and other support to said organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

7. The production and maintenance employees at the respondent's Bradford, Rhode Island, plant, excluding all supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

8. By virtue of Section 9 (a) of the Act, Textile Workers' Organizing Committee, having been designated as their representative by a majority of the employees in an appropriate unit, was on April 4, 1937, and at all times thereafter has been, the exclusive representative

of all employees in such unit for the purposes of collective bargaining.

9. By refusing and continuing to refuse to bargain collectively with Textile Workers' Organizing Committee, as the exclusive representative of the employees in the above stated unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

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

### ORDER

Upon the basis of the findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Bradford Dyeing Association (U. S. A.), Bradford, Rhode Island, and its officers, agents, successors, and assigns 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 purpose 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 dominating or interfering with the administration of B. D. A. Employees' Federation or with the formation or administration of any other labor organization of its employees and from contributing financial or other support to B. D. A. Employees' Association or any other labor organization of its employees.

3. Cease and desist from discouraging membership in Textile Workers' Organizing Committee or any other labor organization of its employees by discrimination in regard to hire or tenure of employment or any terms or conditions of employment.

4. Cease and desist from refusing to bargain collectively with Textile Workers' Organizing Committee, as the exclusive representative of the production and maintenance employees at its Bradford, Rhode Island, plant, except supervisory and clerical employees.

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

a. Offer to Percy Schofield and Edward Nelson immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

b. Make whole Percy Schofield and Edward Nelson for any losses of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them of a sum of money equal to

that which each would normally have earned as wages from the date of his discharge (i. e., April 6, 1937, and April 3, 1937, respectively) to the date of the respondent's offer of reinstatement, less any amount earned by each during that period;

c. Withdraw all recognition from B. D. A. Employees' Federation as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely disestablish said Federation as such representative;

d. Upon request bargain collectively with Textile Workers' Organizing Committee, as the exclusive representative of the production and maintenance employees at its Bradford, Rhode Island, plant, except supervisory and clerical employees, in respect to rates of pay, wages, hours of employment, or other conditions of employment;

e. Post immediately notices to its employees in conspicuous places throughout its plant stating: (1) that the respondent will cease and desist as provided in paragraphs 1, 2, 3, and 4 of this Order; (2) that the respondent withdraws and will refrain from all recognition of B. D. A. Employees' Federation as a representative of its employees and completely disestablishes it as such representative; (3) that the agreement signed with B. D. A. Employees' Federation recognizing it as the bargaining agent for its members is void and of no effect; (4) that to secure or retain employment a person need not become a member of B. D. A. Employees' Federation; (5) that the respondent will not discharge or in any manner discriminate against any employee or applicant for employment because of his membership in Textile Workers' Organizing Committee, or any other labor organization of its employees, or because of his assisting such organization or engaging in union activity; (6) that the respondent has instructed its foremen and other supervisory officials to remain neutral as between labor organizations and that any violations of this instruction should be reported to it;

f. Such notices shall remain posted for a period of at least thirty (30) consecutive days from the date of the posting; and

g. Notify the Regional Director for the First Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.