

In the Matter of CHERRY COTTON MILLS and LOCAL No. 1824, UNITED  
TEXTILE WORKERS OF AMERICA

*Case No. C-69—Decided December 30, 1937*

*Cotton Textile Industry—Interference, Restraint, or Coercion:* surveillance of union meetings; expressed opposition to labor organization; threats of retaliatory action; shut-down of plant—*Discrimination:* closing plant to effect replacement of active union members with new employees; discharges—*Reinstatement Ordered—Back Pay:* awarded.

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

*Mr. W. H. Mitchell* and *Mr. Chas. A. Poellnitz, Jr.,* of Florence, Ala., for the respondent.

*Mr. Ralph Gay,* for the Union.

*Mr. Lester Asher,* of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On February 13, 1936, Local No. 1824, United Textile Workers of America, herein called the Union, filed with the Regional Director for the Tenth Region (Atlanta, Georgia) a charge that Cherry Cotton Mills, Florence, Alabama, herein called the respondent, had engaged in and was engaging in unfair labor practices within the meaning of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On February 27, 1936, the National Labor Relations Board, herein called the Board, issued its complaint against the respondent, signed by the Regional Director for the Tenth Region, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act.

With regard to the unfair labor practices, the complaint alleged in substance that the respondent had discharged and refused to reinstate Alfonse McDonald, Empress Blaylock, Mary McClure, Ida Robnette, Maude Coker, and Grady Doyle, all employees of the respondent, because they joined and assisted Local No. 1824, United Textile Workers of America, a labor organization, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

Copies of the complaint, the accompanying notice of hearing, and an amended and second amended notice of hearing were duly served on the parties. On March 10, 1936, the respondent filed a motion to dismiss the complaint, and on March 16, 1936, it filed a plea to the jurisdiction and in abatement of the proceedings, and also an answer to the complaint. The motion to dismiss was based on allegations that the National Labor Relations Act does not extend to the relationship between the respondent and its employees, transcends the commerce powers delegated to the Federal Government, and violates the Fifth, Seventh, and Tenth Amendments to the Constitution. The plea in abatement alleged that neither the respondent's business nor its labor relations are in or affect interstate commerce. The answer of the respondent repeated the allegations that the Act is unconstitutional and that the respondent's business and operations are not in interstate commerce. In addition, the answer admitted the discharge of some of the persons named in the complaint, but averred that the employment of said persons was terminated for good cause and not for the reasons stated in the complaint. It further alleged that others of those named in the complaint were not discharged, but voluntarily quit work.

Pursuant to the second amended notice, a hearing was held in Florence, Alabama, on March 23, 24, 25, and 26, 1936, before Noel R. Beddow, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel; the Union by an organizer. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all the parties. At the hearing the Trial Examiner denied the motion to dismiss, and also denied the plea to the jurisdiction and in abatement of the proceedings. During the course of the hearing, exceptions were taken by the parties to various rulings of the Trial Examiner on objections to the admission of evidence. The Board has reviewed these rulings of the Trial Examiner and his rulings on the motion to dismiss and the plea in abatement, and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

As evidence in behalf of the respondent, its counsel requested the production of the Union membership list for the purpose of showing the comparative number of Union members employed by the respondent at the time of the hearing. The Trial Examiner reserved ruling thereon. It is the established policy of the Board not to compel a Union to produce its membership rolls for examination, lest its members be exposed to possible discrimination by the employer.<sup>1</sup> Even assuming that members of the Union were being employed by

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<sup>1</sup> *Matter of Samson Tire and Rubber Corporation and United Rubber Workers of America, Local No. 44*, 2 N. L. R. B 148, 156.

the respondent at the time of the hearing, this entire line of evidence is immaterial to the issue of the discriminations against the six prominent members involved in this case. For these reasons the motion of the respondent for the production of the Union membership list is hereby denied.

On March 30, 1936, the Board, acting pursuant to Article II, Section 35, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered this proceeding to be transferred and continued before it. Counsel for the respondent presented oral argument before the Board at Washington, D. C., on April 9, 1936, and thereafter filed with the Board a memorandum commenting on the testimony.

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

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

The respondent, Cherry Cotton Mills, a corporation organized and existing under the laws of the State of Alabama, has its only mill and principal place of business in Florence, Alabama. It is engaged in the business of converting cotton into yarn, and selling and distributing the yarn. During capacity production, the mill employs about 400 workers.

Cotton is the principal raw material used in the spinning of the yarn, and the respondent purchases between 40 to 60 bales each week. The major portion of this raw cotton is purchased by the respondent within Alabama, although about 25 per cent of all the cotton used by it is purchased outside the State. Rayon and yarn containing wool are also utilized as raw materials to a small extent, and together with machinery and parts, oil, and veneer packing cases, are obtained by the respondent in States other than Alabama.

Between 50,000 to 60,000 pounds of the finished cotton yarns are manufactured each week, about 90 per cent, measured both by weight and value, being shipped by railroad and other carriers to purchasers outside the State of Alabama. Textile mills in Pennsylvania, Ohio, and Illinois form the principal market for the product of the respondent, and its cotton yarns constitute the raw material for further textile operations such as knitting and weaving. The respondent obtains its customers primarily through factors and commission merchants having offices in the principal cities of the eastern and middle western textile markets, and the operations in the mill at Florence are generally determined on the basis of orders received. The mill attempts to manufacture its yarns as closely as possible to the specified shipment dates. In the large majority of shipments, the respondent pays the freight charges to the destination outside the State of Alabama.

## II. THE UNION

Local No. 1824, United Textile Workers of America, formerly affiliated with the American Federation of Labor, affiliated now with the Textile Workers Organizing Committee and the Committee for Industrial Organization, is a labor organization admitting to membership employees at the respondent's plant, and was organized in or about September 1933.

## III. THE BACKGROUND OF THE UNFAIR LABOR PRACTICES

A. *The strike of 1934*

On July 17, 1934, the Union, with a membership of about 300, called a strike at the respondent's mill which later merged into the general textile strike of that time. The Union maintained an active picket line, and the strikers were at all times observed by the plant supervisors and officials. During the period of the strike, Fred E. Gamble,<sup>2</sup> a mill overseer, circulated a petition to determine which of the employees wanted to go back to work, but his testimony concludes, "I went to about three or four, but they cursed so much about it, I didn't go around with it."

When the general textile strike ended on September 25, 1934, the respondent did not immediately reopen its mill. After carrying on some discussions with a committee from the Union the respondent reopened its plant on about October 2, 1934, and the regular employees were all reinstated.

B. *Surveillance of union meetings*

The meetings of the Union were held weekly on Saturday afternoon or evening. During the spring and summer of 1935, John Gamble, section man or foreman in the speeder department and brother of the first-floor overseer, made a constant practice of watching the meetings from a filling station almost directly across the street from the Union hall. He would arrive shortly before the beginning of the meeting and would remain standing around the filling station, or near the store beneath the meeting hall, for the entire two or two and a half hours that the meetings generally lasted, and was usually still there when the Union members came out.

After having seen him around the gas station during Union meetings on six or seven occasions, the owner of the premises questioned him and asked him to leave. John Gamble explained that "he was looking up into the hall to see what they were doing. He said that he did not believe in the Union . . ." Despite his orders to leave, the owner of the station found Gamble repeating his practice of

<sup>2</sup> Incorrectly referred to in the complaint as F E Gammon

watching the Union attendance and proceedings on several later meeting days during August and September, 1935.

Testimony was offered by the respondent in support of its contention that John Gamble had no authority to hire or discharge employees, and was never instructed by his superiors in his activities concerning the Union, and never reported what he had seen to any mill official. The evidence is clear, however, that John who is a brother of the overseer, Fred Gamble, was considered a section boss over 16 or 18 workers, had the authority to correct bad work, allow days off, and transmit rules from the management. His brother, Fred, testified, "Well, I never did give him the authority to hire and fire, but I told him time and time again, of course, if a hand didn't do the work right, to lay them off, and he let me know it, and I would pay them up."

Dowell Hendon, mill timekeeper at the date of the hearing, but formerly overseer of the top floor, stated that John Gamble talked to him about the Union, and "was all the time talking about this and that, but he didn't make any report to me or anybody else that I know of, in particular, but I never did pay any attention to what he said, no way." Yet an employee of the mill testified that he had been told by Hendon, early in 1935, that "the Union could pull nothing over on him, that he knew everything that happened in the Local in an hour after they adjourned."

It is significant that the respondent did not call John Gamble as a witness.

### *C. The threat of a strike in October 1935*

In June 1935 production at the mill slumped severely, and in August the second shift was taken off. Several individual members and a committee of the Union spoke to Darby, the superintendent of the plant, about resuming operations of the second shift, and they were told, "Well, go ahead and get on relief . . ." Darby was reported to have said that "when the government and the Union run his business he would shut it down."

The discriminatory discharges set forth in the complaint are alleged to have occurred during this period of reduced production in the summer and fall of 1935. In October Darby heard rumors that the Union was considering a strike vote because of the discharges and the notices received by several Union members living in mill houses ordering them to vacate. At about noon on Saturday, October 19, Darby went to the office of Lee Green, Mayor of Florence, and requested protection for the plant. The Mayor sent a representative to the Union meeting held that afternoon, and the voting of a strike was postponed pending a conference. On the following morning the Mayor met with about 20 of the Union members, including Albert K. Cox, State organizer for the United Textile Workers

of America, and not an employee of the respondent. At this meeting the Mayor called in one of the city commissioners who was also a member of the board of directors of the respondent. The Union presented its complaints and requested a conference with the mill management.

Mayor Green spoke to J. F. Flagg, then vice-president, and to the directors of the respondent, and advised them of the desire of the Union to discuss the discharges and notices of dispossession with the plant officials. On October 22 Flagg wrote to the Mayor:

Pursuant to our conversation this afternoon with reference to a meeting with certain labor groups, the Board of Directors of the Cherry Cotton Mills have given this matter due consideration, and, under the existing conditions at the mill, do not feel that the outcome of such a meeting could be of any particular help or benefit.<sup>3</sup>

At this time the respondent was negotiating for a mortgage on its plant to obtain funds with which to continue operations, and the stockholders were debating whether to approve the proposed loan or to shut the mill down and liquidate all the assets. The management, therefore, stated that any meeting with the Union committee was absolutely unnecessary, and the respondent further contends that no representation was ever made that the meeting was desired by its employees, all the requests referring to a conference with Cox and persons outside the ranks of its own workers. The demand for possession of the mill houses was dropped by the respondent for the time being, however, and although the management never met with the Union, no strike vote was taken.

#### *D. The shut-down and resumption of operations*

The stockholders of the respondent remained undecided about the mortgage, and on November 12, 1935, the following bulletins were posted throughout the plant:

##### Notice to All Employees:

Due to our inability, up to the present time, to secure sufficient financing for operations, and failure of stockholders to approve proper financing, we find ourselves without sufficient funds to operate the mill, and it becomes necessary, very much to our regret, to close down our Mill indefinitely. All employees are, therefore, released from any employment as the work coming thru runs out, and it will be in order for you to obtain employment in any other direction you may find.<sup>4</sup>

<sup>3</sup> Respondent's Exhibit No. 1

<sup>4</sup> Respondent's Exhibit No. 2.

On about November 22, 1935, the plant did cease operations for a period of four or five days, but the first shift resumed work about November 28. The stockholders approved the loan soon afterwards, and on about December 6, the second shift was also put back to work. Many old employees were called back to their jobs by the foremen, and during December 1935 many new employees were also added and even "learners" were taken on for the first time in years.

Meda Gandy, a non-Union worker who had long been on the first shift, complained to Darby about being called on the second shift, "to give up a day job to a new country hand, like they were bringing in to learn them", and, according to her testimony, the superintendent told her, "We shut down and started up under entirely different arrangements. We shut down for the purpose of hiring who we pleased. The Union is absolutely not going to run our business, that is all there is to it." Although Darby took the stand, he did not deny having made this statement. It is apparent from this statement and confirmed by the entire record that the shut-down was to a large extent based upon a policy of driving out of the mill the active members of the Union and replacing them with new employees.

Referring to efforts being made to obtain the reinstatement of the discharged employees named in the complaint, Darby stated in February 1936, that he had nothing against them, except that "the mill could not work agitators . . . who were trying to stir up a strike or something to stop our people from working, or stir up strife among the help or between them . . . bringing in outsiders here and trying to stir up trouble."

Production in the mill picked up rapidly during and after December 1935, and in February 1936 over 100,000 pounds of yarn were manufactured, the highest figure in nearly ten months. The many complaints about the quality of the product which were made by customers during 1934 and 1935<sup>5</sup> also ceased; the respondent's own testimony showing, however, that it was due to Darby's being relieved of all office duties, the cleaning up and adjusting of the machinery, and the transfer of many foremen and supervisory employees.

#### IV. THE UNFAIR LABOR PRACTICES

None of the actions of the respondent so far discussed are alleged in the complaint to constitute an unfair labor practice within the meaning of the Act. They are important, however, in showing the attitude of the respondent's officials and the motives underlying the alleged discriminations against the six persons named in the complaint.<sup>6</sup>

<sup>5</sup> Respondent's Exhibit No 3.

<sup>6</sup> *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 91 F. (2nd) 458 (C. C. A. 9th, 1937).

*Alfonse McDonald.* Alfonse McDonald was first employed by the respondent in 1923, when he was 15 years old. Beginning as a sweeper, after about four months he became a doffer. In 1926 he quit, and for seven months worked in a wholesale grocery. He again obtained employment with the respondent late in 1926, and was returned to the job of doffer. After approximately five months he was assigned to changing spinning frames from one yarn to another. In about 1928 he was made section man in charge of the spooler room, and also sized yarn and made samples. He was taken from the spooler room in February 1934, and retained the work of sizing yarn and making samples.

McDonald was a charter member of Local 1824, becoming its vice-president at the end of 1933. He was elected president of the Union early in 1934 and retained this office until the summer of 1935, when Grady Doyle became president. McDonald was thus in charge of the 1934 strike and instructed the squads on the picket line.

In January 1935, he was discharged. An employee in the mill accused McDonald of having bothered him during working hours, and having asked him to join the Union. McDonald went to the N. R. A. Compliance Board, and, after an investigation, the employee making the charge changed his story, and McDonald was reinstated two days after his discharge. Production slumped in February 1935, and McDonald was laid off. After being without work for several weeks, he saw Dowell Hendon, overseer of the top floor, who told him there was not enough work in the mill. When McDonald complained that he was not being treated fairly, Hendon retorted, "Why don't you hire a lawyer, like you did before, and make us put you back to work?" McDonald then complained to the Textile Labor Relations Board, and through the intervention of its representatives, he was put back to work in April 1935, as a doffer.

He remained as a doffer until August 21, 1935, and then was laid off again. Nothing was said about the quality of his work; he was told that production being slack, he was not needed. On September 1 he questioned his section man, T. S. Richey, about work, and was advised "that the mill was running short, and they could not give all them work, and what was working was not getting over one or two days a week, and I was the last man that was put on doffing, and he thought it was right to give the older hands the work . . . He told me if they ever started up where they could use me he would send after me." In November, McDonald asked Hendon when he would get his job back, and was told "when they needed me." McDonald further testified: "I went back the 13th day of December, they had hired another doffer and never sent after me. . . . I said, 'Mr. Hendon, why are you not working me? . . . What is the rea-

son you won't work me, because I belong to the Union?', and he said, 'No, not only that, but you don't put out production.'" McDonald was never given any further work at the mill.

Nowhere does the record disclose any denial of these conversations by the respondent's officials. Instead the contention is made that McDonald's work was not satisfactory, that he was removed as section man over the spoolers because of his inefficiency, that he talked too much when on the job, that as a doffer he was slow and lazy, and that he violated the rules by repeatedly breaking bobbins.

The evidence does support the position that while McDonald was in charge of the spoolers there were many complaints concerning the work put out by that department. McDonald's explanation, however, that he was at the same time also doing the job of making samples and sizing yarn, and that he himself asked to be removed as section man, is not contradicted. McDonald's poor record as section man early in 1934 does not substantiate the contention of inefficiency made two years later.

Most of the testimony concerning "talking too much during working hours" refers to the incident which caused McDonald's two-day discharge in January 1935. His reinstatement after this episode and the later intervention by the Textile Labor Relations Board to secure his return after a lay-off of six weeks, convincingly refutes any charges of inattentiveness, talking instead of working, or unsatisfactory work prior to that time.

T. S. Richey, section man in charge of the doffers, characterized McDonald as being "the laziest white man I ever worked", unable to keep up with the other doffers, and habitually guilty of breaking bobbins which were later found on the floor near his machine. The respondent called an employee, Fred Ruple, who testified that while McDonald did not talk more than the rest of the hands, he sometimes lagged behind the witness in doffing. The importance which the respondent itself attached to this test of efficiency is best shown by the fact that Ruple was laid off six or eight weeks before McDonald.

The testimony of the overseer, Hendon, disputes the rule concerning bobbins which Richey emphasized. Hendon pointed out that "as a general rule . . . if a bobbin is cracked so it won't run well, it is thrown on the floor." The lack of sincerity in the respondent's contention that McDonald was slow, inefficient, and a violator of its rules is illustrated by the following passages from the record covering Hendon's examination by counsel for the Board:

Q. Do you know why Alfonse McDonald is not now working for the company?

A. I don't suppose his service is needed, I don't know.

Q. You say you didn't fire him?

A. No, I laid him off.

Q. Why did you lay him off?

A. Until we needed him, work was slack.

On December 13, 1935, or possibly prior thereto, the respondent hired new and inexperienced doffers, and at the time of the hearing was employing more men in that department than at the time McDonald was laid off. The true reason for the refusals to reinstate was given by the general manager, Darby, when in explaining why he had termed McDonald an "agitator" he pointed to "the strike we had, and the trouble we had in the mill with him running around . . . He stood out in front of the mill, in front of our office, and prevented our office force and our foremen from coming into the mill, and I think he testified himself, that he had charge of all the crowd there to do such things, and see that such things were done." The discrimination against McDonald, we find, was based upon his Union activity and affiliations, and the discriminatory act took place on December 13, 1935, when the respondent refused to reinstate him.

*Empress Blaylock.* First employed by the respondent in 1928, Empress Blaylock worked on the draw frames for eight years and for a shorter time on the speeder machines. She was a charter member of the Union, the second employee to join up, and during 1934 was on the picket line every night.

She was laid off on August 10, 1935, when the second shift was shut down, nothing being said to her about the quality of her work. Her testimony shows that she came back to the mill in October, asking for her job, and Fred Gamble told her, "You go back home and when your job starts up I will send for you." She never received any word from the mill.

The evidence presented by the respondent is designed to show that Empress Blaylock did unsatisfactory work, failed to carry out instructions, whipped up the ends of her draw frames, and is handicapped by a crippled right hand, several fingers of which are missing. Fred Gamble testified that when he laid her off in August and when he spoke to her in October, he did not promise that she would have her job back, that he merely told her there was no work for her. He stated that he had complained to her about her work and the whipping up of the ends of her draw frames. However, an employee of the same department, called as a witness by the respondent, testified that the only complaint about Empress Blaylock had been made shortly before the strike of 1934, when Gamble had called all the employees together and made a general criticism of the practice of throwing up the ends of the draw frames. No complaint since that time is revealed. Fred Carter, an overseer, declared that Em-

press Blaylock did satisfactory work when under his supervision a few years before the hearing. The record also discloses that the condition with respect to her right hand had existed since 1918, and was not shown to have affected her work.

Cleo Sanderson, a new, inexperienced, and non-Union employee about 18 years of age, was put to work on the draw frames in place of Empress Blaylock, sometime in December 1935, when production was resumed. We find that in failing to reinstate Empress Blaylock, the respondent has discriminated against her with respect to hire and tenure of employment for the purpose of discouraging membership in Local No. 1824.

*Mary McClure.* Mary McClure had been employed by the respondent for 11 years, working on the speeders, draw frames, combers, and slubbers. She joined the Union at the time of its organization in September 1933, and a month later was put on the entertainment committee. In December 1933, she was made secretary of the Local, and during the spring of 1935, the office of treasurer was added to her duties. At the time of the hearing, she was still acting as secretary-treasurer of the Union. She was a leading figure on the picket line of 1934 and has been instrumental in obtaining new members for Local No. 1824.

When the entire second shift was taken off on August 10, 1935, she was laid off with all the others. She spoke to Fred Gamble soon afterwards, and he told her that he would try to work her as an extra. The second shift was used for completing a special order on August 27, and Mary McClure worked that one night, running combers. That was the last time she was employed by the respondent.

On the next night, Gamble told her there was no work for her, but he denies that he told her he would send for her. In the latter part of September 1935, she went to Darby in regard to obtaining work and also in regard to a notice she had received to vacate the mill house. He told her there was no work for her and that it would be necessary for her to vacate the house. Fred Carter also told her in February 1936, that he had no work for her. Yet when the second shift was reopened, sometime before December 13, 1935, many new and non-Union employees were taken on to operate the speeders and draw frames.

The respondent introduced evidence to show that the reason Mary McClure was not reinstated was because she did not properly clean her machine, and on occasion was rebuked for leaving her work. Fred Gamble testified to this effect, and also stated that after she had worked the one night of August 27, her foreman, "Ed (Stafford)" said she could not do the work, and I told her I could not work her any more." All the testimony relating to leaving her machine dirty, however, concerns a period about two months after the 1934 strike,

during which time Ed Stafford also reported her for going away from her machine and talking to other workers. Stafford testified that he did not remember that he made any complaints about her after December 1934. During the last eight months she worked for the mill, no complaints against her are shown by the record, and Fred Carter testified that she had worked for him in 1933, for over a year, and had done good work.

Darby explained his labeling of Mary McClure as an "agitator", by the fact that she had been "bringing in outsiders here and trying to stir up trouble", and he attributed to her the presence of Albert K. Cox, state organizer for the Union, during the threat of a strike in October 1935. We find that the refusal to reinstate Mary McClure on and after December 13, 1935, was caused by her prominence in the affairs of Local No. 1824.

*Ida Robnette.* An employee of the respondent for 35 years, at the time of the hearing Ida Robnette was 50 years of age. For the most part, she worked on the spoolers, but she also had experience on the twisters and winders. She was a charter member of the Union, regularly attended all meetings, and, during the strike of 1934, was on the picket line every day and greeted all the officials as they went into the mill.

She testified that she last worked on September 6, 1935, when she was laid off by T. S. Richey and told that she was not needed. On September 9, she returned and asked for work, but was advised that there still was no work and she would be sent for when needed. In November, according to her further testimony, she was astonished when she saw Hendon and Darby about her job, and was told by each of them that nothing could be done for her, since she had quit.

Although the respondent makes some point of Ida Robnette's talkativeness, the fundamental reason given for the refusal to reinstate her is that she had voluntarily quit her job. When told, on September 9, that there was no work for her, she said to both Richey and Hendon, "I think I will just quit and go up to Huntsville and get me a job." The record clearly discloses the truth of both contentions presented by the respondent. It may be conceded that Ida Robnette was a very talkative worker. Such a characterization, however, can have little importance in the face of a record of employment for 35 years, and cannot overbalance testimony that she did excellent work and was used for jobs of unusual difficulty. As to the assertion that she voluntarily resigned, the record also supports this conclusion. She told many of her neighbors and co-workers that she had quit and was going to Huntsville to look for a new job.

She did not go to Huntsville, however. She stayed on in the house which the mill owned, expecting to be called back to work.

When she received a notice to vacate her house during November 1935, she talked to Darby and pleaded with him to put her back to work. Certainly at that time she was making application for employment, and clearing up any uncertainty as to her intentions. The answer made to her by the respondent that nothing could be done, that she should not have quit, was a deliberate attempt to ignore her request for employment. Moreover, the desire of Ida Robnette to return to work was well known throughout the community of mill-owned houses surrounding the plant of the respondent, and continued to be known during all of December. Yet the record shows beyond a doubt that early in December 1935, many inexperienced hands were called in from outside the mill neighborhood and put to work in the spooling and twisting departments. The record also discloses that the mill officials vividly recalled Ida Robnette's activity and talkativeness on the picket line in 1934. When asked about her part in the strike, Darby stated, "She was agitating something. I could not say she was active. She was out there sitting in a chair in front of the mill for probably the two months, or three months of the strike."

By hiring new employees on or before December 13, 1935, to do the work which she had been doing for 35 years, we find that the respondent discriminated against Ida Robnette because she was a leading figure in the activities of the Union.

*Maude Coker.* Maude Coker was first employed by the respondent in 1904, but later also worked for other cotton mills in the vicinity. From 1933 on she had worked for the respondent, generally as a spinner. She joined the Local about two weeks after it was organized, took an active part in the strike and picketing in 1934, and regularly attended all Union meetings.

On November 15, 1935, she was laid off by T. S. Richey, who stated that the mill was going to shut down. The mill did shut down during the following week, but after about six days, the first shift was put back on, and early in December the second shift was also reinstated. Maude Coker's testimony indicates that she was told that she would be called back when work started, and since the mill never sent for her, she did not return to the plant after November 15.

At the hearing, the respondent's attorney and general manager both stated that she was a very good employee, and would be given her job at any time she applied and there was work available. No explanation is offered for the failure to follow the general community practice of calling the employees back to work, except the suggestion that the shutdown notices which were posted throughout the mill on November 12, 1935, terminated all employments. As stated above, the record shows, however, that after that date many other em-

ployees were called to work by the foremen, and the entire background of the labor activities of the respondent indicates that the cessation of operations was in a large measure designed to carry out the purpose of forcing the active elements of the Union out of the mill and putting inexperienced workers in their places. All the officials of the respondent admitted that new employees were taken on in December 1935, even "learners" were added for the first time in many years. We find that the failure to reinstate Maude Coker in December 1935, was a discrimination based upon her Union activities, and formed a part of a general plan to rid the mill of the leading Union members.

*Grady Doyle.* Grady Doyle was first employed by the respondent in 1928, working for the greater portion of the time on a machine in the picker room, but also running draw frames in the drawing department and operating the waste machinery for shorter periods. He joined Local 1824 when it was first organized, became a delegate to the Central Labor Body in May 1935, and was the president of the Union from about August 1935, up to a few days before the hearing. He was active during the 1934 strike, being on the picket line every day, and was generally influential in obtaining new members for the Local.

About June 27, 1935, he told his foreman, Fred Gamble, that since he was only working a few days each week, he was not making a living for his family, and would like to get off his job and go on relief. According to Doyle's testimony, Gamble told him "it would be perfectly all right," and that his job would be ready for him when he got ready to come back. The foreman denied that he had ever promised Doyle that he would have a job waiting for him, but did admit that he had granted the permission to lay-off and permit him to go on relief.

Doyle came back for his job on about October 1, 1935. He testified that Gamble first spoke to him about a Union member not being a religious man; reminded him of "last summer when you carried clubs down here and kept me out of the mill"; asked him if he had been carrying a petition around protesting against working ten hours a day at the mill; and then concluded, "I don't guess you ever will go back to work or ever will have any more job. He said he heard all I done was talk unionism on the street and on my job, and that that was the reason I didn't have no job at that time." Gamble contradicted this testimony, and admitted only that he told Doyle there would be no job for him.

Within a short time afterwards, Doyle also saw Darby and asked to have his job back. He was told that the mill was running slack and that there was nothing for him at that time. In January 1936, he

spoke to Fred Carter, foreman during the illness of Fred Gamble, and was told that there still was no work, but that Carter would do all he could for him. Since June 27, 1935, Doyle has never been taken back to work by the respondent.

The management of the mill contends that Doyle was not efficient, that he made adjustments of the machinery contrary to the plant rules, and that his supervisors frequently warned him about his work and practice of tinkering with the machinery.

In his testimony, Doyle disclosed as the only complaint against him, that about April 1935, an efficiency man, who had been at the mill a short time, objected because he adjusted a finishing machine in the picker department for the change to a different size of cotton. Doyle testified that no fixer was available, and that Fred Carter later told him that the efficiency man had nothing to do with production, and if no fixer could be located, Doyle could get a wrench and adjust the machines. Carter did not recall having any such conversation concerning the machinery.

The refusal to reinstate Doyle is based upon this incident with the efficiency man, together with the charge made by Fred Gamble that on the last day that Doyle worked he again violated the rules and moved the evener on his machine, causing all the finished laps to run far too heavy. Gamble testified that "the morning he quit he done all his dirty work, there in the morning, and I didn't find out until I had Donald Lindsey and Paul Poague up, and was about to let them go. I thought they done it, but they said it was him."

Lindsey and Poague, workers in the picker room on the second shift, placed the incident as having occurred sometime within a period commencing about three months after the strike and March 1935. Both testified that when Gamble complained about the heavy laps, they told him it was not their work. They testified that they did not say anything about Doyle; that they did not know who made the laps; and that Lindsey was not even working on Doyle's machine.

It is clear from the record that the charges of inefficiency and violation of the rules concerning the handling of the machinery were deliberately fabricated by the respondent after Doyle had been allowed to go on relief. Even after he requested the return of his job, he was never advised of the complaints against him. He was told that there was no work for him, that the mill was running slack.

The record does not indicate that any new employees have been added to the picking department force. However, some employees with less experience than Doyle have been recalled for work on the pickers. Donald Lindsey was first taken on by the respondent as an employee just a few months before Doyle voluntarily laid off in June 1935. He was assigned to the second shift in the picking depart-

ment, but in October 1935, was moved to the first shift and was not at once replaced on the second shift. Ed Lindsey, who was on the first shift and also went off in June to go on relief, was called back by Fred Carter at the beginning of February 1936, and placed on the picking room second shift. Ed Lindsey has not been employed by the respondent as long as has Doyle. In addition, workers entirely new to the payroll of the respondent have been added to the drawing room staff, although Doyle is familiar with this work.

These circumstances, when viewed in the light of the history of the respondent's relations with its workers, make it evident that the accusations of violation of the rules and inefficiency are merely to camouflage a discharge designed to remove from among its employees the president and one of the active members of the Union. By reason of his seniority, Doyle should have been reinstated on February 3, 1936, at the time Ed Lindsey was called back to work.

Although we have found that Ida Robnette voluntarily left the respondent's employ, the refusal to accept her application for employment and to offer her a position was based upon her union activity and constituted an unfair labor practice by the respondent. In accordance with the foregoing findings of fact, the Board concludes that by refusing reinstatement to Alfonse McDonald, Empress Blaylock, Mary McClure, Maude Coker, and Grady Doyle, and by refusing employment to Ida Robnette, and thus discriminating against its employees and applicants for employment with respect to hire and tenure of employment, the respondent has discouraged and is discouraging membership in Local No. 1824, United Textile Workers of America, and that by such acts the respondent has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act. We further find that at the time of the hearings in this proceeding none of these six individuals had obtained any other regular and substantially equivalent employment.

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

We find that the activities of the respondent set forth in Section IV 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, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### VI. THE REMEDY

In addition to an order to cease and desist from its unfair labor practices, we shall affirmatively require the respondent to offer reinstatement and present employment to the six persons named in the

complaint, against all of whom we have found discrimination. All those named in the complaint are also entitled to back pay from the dates of the discriminatory acts, less any amounts earned by them in the meantime. We have already indicated above that the dates of the discriminatory acts are clearly established by the evidence to be December 13, 1935 in the case of Alfonse McDonald and February 3, 1936 in the case of Grady Doyle. As to the remaining individuals named in the complaint, the record does not specify the exact date of the discriminatory acts, but the testimony does establish that new employees were taken on to do the work of these particular persons early in December 1935, and that the second shift started about December 5. The date of December 13, on which day a new man was hired to take the place of McDonald, is later than the time set by the corroborating testimony, and we shall find that the discriminatory acts against all the persons named in the complaint, with the exception of Grady Doyle, occurred on December 13, 1935.

This proceeding was transferred and continued before the Board on March 30, 1936, and no Intermediate Report has been filed by the Trial Examiner. While in the normal case we should order the payment of back pay from the date of the discrimination to the date of the offer of reinstatement or employment, in this case, because of the long delay after its transfer to the Board, we shall not require payment between the date of such transfer and the date of this decision. In each instance, therefore, back pay will be ordered from the date of the discriminatory act to March 30, 1936, and from the date of this decision to the time of such offer of reinstatement or employment, less any amounts earned during such period.

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

#### CONCLUSIONS OF LAW

(1) Local No. 1824, United Textile Workers of America, is a labor organization, within the meaning of Section 2 (5) of the Act.

(2) Alfonse McDonald, Empress Blaylock, Mary McClure, Maude Coker, and Grady Doyle were at the time they ceased working, and at all times thereafter, employees of the respondent, within the meaning of Section 2 (3) of the Act.

(3) By discriminating in regard to the hire and tenure of employment of Alfonse McDonald, Empress Blaylock, Mary McClure, Ida Robnette, Maude Coker, and Grady Doyle, thereby discouraging membership in the labor organization known as Local No. 1824, United Textile Workers of America, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

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

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

### ORDER

On the basis of the above 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, Cherry Cotton Mills, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from discouraging membership in Local No. 1824, United Textile Workers of America, or any other labor organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees, or refusing to hire any applicants for employment, or discriminating in any other manner against them in regard to hire or tenure of employment or any other condition of employment.

2. 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 National Labor Relations Act.

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

(a) Offer to Alfonse McDonald, Empress Blaylock, Mary McClure, Maude Coker, and Grady Doyle immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(b) Offer present employment to Ida Robnette, comparable as to wages, general duties, and general conditions of employment with the position formerly held by her;

(c) Make whole Alfonse McDonald, Empress Blaylock, Mary McClure, and Maude Coker for any loss of pay they have suffered by reason of the refusal to reinstate them, and Ida Robnette for any loss of pay she has suffered by reason of the respondent's discrimination in regard to her hire, by 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 December 13, 1935, the

date of the discriminatory acts; to March 30, 1936, and from the date of this decision to the time of such offer of reinstatement or employment, less the amount earned by each of them, respectively, during such periods;

(d) Make whole Grady Doyle for any loss of pay he has suffered by reason of the refusal to reinstate him, by payment to him of a sum of money equal to that which he would normally have earned as wages during the periods from February 3, 1936, the date of the discriminatory act, to March 30, 1936, and from the date of this decision to the time of such offer of reinstatement, less any amount earned by him during such periods;

(e) Post immediately notices to its employees in conspicuous places throughout its mill in Florence, Alabama, stating (1) that the 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;

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