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The Textile Labor Relations Board

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The cotton textile industry was the first to come forward with a proposed code after the passage of the National Industrial Recovery Act in May, 1933. In the public hearings on this code there was much discussion about the problems of the "stretch-out" or increased work load. It was stipulated in the Executive Order of approval of the code that "until adoption of further provisions" such as might prove necessary to prevent "any improper speeding up of work (stretch-outs)" no employee was to be required to do any work in excess of the practice as to the class of work of such employee prevailing on July 1, 1933, or prior to the share-the-work movement, unless such increases were approved by the code authority and by N. R. A.\footnote{This Code of Fair Competition for the Cotton Textile Industry was approved July 9, 1933.} This Code of Fair Competition for the Cotton Textile Industry was approved July 9, 1933.\footnote{Report of the Board of Inquiry for the Cotton Textile Industry (Sept. 17, 1934) p. 2.}

The committee appointed to investigate the problem of the "stretch-out" or increased work load as presented at the public hearings on the Code made its report within a few weeks after the adoption of the Code of Fair Competition for the Cotton Textile Industry. The committee reported that the stretch-out system "both as a present practice and in its prospective developments" presents "a grave problem in industrial relations".

The committee recommended the creation of a national industrial relations board to assist the employer and employee to adjust by conference the differences that might arise between the

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\* Member of the North Carolina Bar.

\footnote{Report of the Board of Inquiry for the Cotton Textile Industry (Sept. 17, 1934) p. 2.}

\footnote{This was the first code to be adopted under the National Industrial Recovery Act passed in May, 1933.}
two groups. It was recommended that the national board set up state boards where necessary.

The recommendations were in large measure adopted and the members of the stretch-out committee were appointed to the newly created Cotton Textile National Industrial Recovery Board. N. R. A., upon the request of the code authority in the textile industry, granted a twenty-five per cent. curtailment of machine hours for the months of June, July and August, 1934, as it was alleged large inventories were piling up in the industry. This curtailment of machine hours was the culminating act in a series of events that caused a general strike to be called tentatively for the first week in June, 1934. Under the terms of a settlement between the Union and officials of the N. R. A. the strike order was "countermanded without prejudice to the rights of labor to strike".

The settlement was short-lived. In July the United Textile Workers in Alabama called a strike. About the middle of August, 1934, the United Textile Workers of America, in convention in New York, voted a strike in the textile industry. The Cotton Textile National Industrial Relations Board offered its services

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4 Under the terms of this settlement, "one representative of the employees of the cotton textile industry was to be appointed to the Labor Advisory Board of N. R. A., one to the Cotton Textile National Industrial Relations Board, and one as advisor to the Government representative on the Cotton Textile authority; the Research and Planning Division of N. R. A. was to investigate their report on the questions of wage increases, productive machine hours necessary to meet normal demand, wage differentials above the minimum, changes in man-hour productivity and the stretch-out. The scope of the Cotton Textile National Industrial Relations Board was to be enlarged to make express provisions for that Board to handle all complaints of Code violations."

5 The report of the Board of Inquiry for the Cotton Textile Industry stated that the settlement by which the strike order was countermanded on June 2, 1934, did not, in the opinion of the Board, go to the roots of the difficulty. The report at page 4, reads: "During the year 1933 and up to May 1934 there were few labor disturbances in the industry. All through this period, however, there were developing the seeds which finally grew into the present conflict. Complaints of workers centered around three main problems. First was a growing feeling that the machinery under the code for protecting the rights of employees guaranteed by Congress under section 7(a) and for administering the other labor provisions of the code was proving inefficient and inadequate, and that as a consequence workers were not obtaining their full rights granted by the code and by the Recovery Act. A second source of dissatisfaction was the increased work load resulting from the growing pressure upon management, due to increased labor costs, to obtain the fullest possible utilization of its labor force. The third factor in the situation was the complaint that the hours prescribed by the code were not sufficient to secure the reemployment intended and that weekly earnings were declining."

6 This strike was not called off and was merged in the general textile strike called for the first week in September, 1934.
as mediator.' The National Labor Relations Board undertook to effect some agreement before the strike was actually called, so it invited representatives of the Union and of the Cotton Textile Institute to a joint conference in Washington. The Cotton Textile

7 See Report of the Board of Inquiry for the Cotton Textile Industry, pp. 8 and 9: 'There is no doubt but that one of the basic causes of the present conflict is the wide-spread dissatisfaction on the part of the labor with machinery of code administration dealing with labor's rights under the code. The procedure for handling complaints of violation of section 7(a) and other labor provisions of the code, as it has existed up to the strike, may be described briefly as follows:

'The Cotton Textile National Industrial Relations Board was, as already noted, originally conceived as a body for handling 'controversies' arising over stretch-out problems alone. More or less as an afterthought the Board was given jurisdiction over controversies arising out of 'any other problem of working conditions.' In all types of cases, however, the legal power of the Board was limited to hearing cases on appeal from the State boards, whose power in turn was limited to hearing cases on appeal from the mill committees. Thus the National Board and the State board were legally equipped to act only through the mill committee procedure, and only in case a 'controversy' arose in the mill.

'The Board was seriously handicapped in other ways. It lacked facilities for performing its functions; it was granted no definite budget. Two of the members were unable to devote their full time to the Board. The member of the Board representing labor was from the printing industry and not a textile worker. Much of the work had to be experimental. The State boards often did not function satisfactorily and in the end several became virtually defunct. Without in any way wishing to reflect upon the integrity or sincerity of the members of the Board, its operations in practice under these handicaps resulted in wide-spread dissatisfaction with the Board as a part of the code administrative machinery.

'With reference to the handling of complaints (as distinguished from 'controversies' which had gone through the mill-committee procedure) the actual practice was as follows:

'A complaint from an employee or a group of employees filed in any branch of the Government was routed to the Cotton Textile National Industrial Relations Board. The Board acknowledged the complaint, enclosing a copy of the code and a statement outlining the employee's rights with reference to the mill-committee procedure. No further notice or report was sent to the complainant. A digest of the complaint, omitting the complainant's name, was prepared by the Board and forwarded to the Code Authority, a body composed entirely of textile manufacturers except for the three Government representatives without vote. The private field agents of this organization made the investigation and reported back to the code authority. There was no supervision by any other body. Although the complainant's name was omitted at the request of labor, the necessity for doing this is significant and the ineffectiveness of the method is obvious.

'The principle of investigation by management of complaints made by workers against management cannot be defended from any standpoint consistent with the principles on which the Recovery Act is founded. The principle is in fact directly contrary to usual N. R. A. procedure, as expressed in N. R. A. regulations and enforced as to many other codes. And, as might be expected, there is considerable evidence, both from the union and from an independent inquiry conducted by a member of the N. R. A. staff, that the investigations were often less effective than would be the case had they been independent in character.

'Complaints of the violations of section 7(a), such as alleged discriminatory
Institute declined to attend. The Union accepted the invitation. The conferences thereafter held by the National Labor Relations Board with each side separately failed to avert the strike which was called for September 3, 1934.

On September 5, 1934, President Roosevelt appointed a Board of Inquiry for the Cotton Textile Industry. This Board, in its report filed September 17, 1934, recommended, among other things, the creation of a textile labor relations board. The refusal to bargain collectively, were handled by the same procedure. It appears to us self-evident that in no event should such complaints be handled by a partisan body made up of employers only. The code authority agrees to this conclusion and has already expressed its willingness to withdraw entirely from the handling of section 7(a) complaints.

"In summing up the situation it may be said in general that the whole system of administering the labor provisions of the code has completely lost the confidence of labor in this industry and is for that reason alone incapable of functioning satisfactorily in the future. The Board therefore feels it necessary that there be set up entirely new machinery for the administration of the code insofar as it affects labor."

The Cotton Textile Institute contended that the strike was a strike against the code and that the union was not representative of the wishes of most of the employees in the industry.

John G. Winant, Chairman, Marion Smith and Raymond V. Ingersoll constituted this Board. The Board and the report submitted by the Board are customarily referred to as the "Winant Board", and the "Winant Report".

Summary of Recommendations, Report of the Board of Inquiry for the Cotton Textile Industry, pp. 15 and 16:

1. "For the more adequate protection of labor's rights under the collective bargaining and other labor provisions of the code, there shall be created under Public Resolution No. 44 an impartial board of three to be known as the Textile Labor Relations Board which shall be provided with an adequate staff and other facilities. This Board shall have powers and duties in the textile field similar to those exercised by the National Labor Relations Board and the Steel Labor Relations Board in their respective fields, and shall have authority to administer, in addition to section 7(a), other labor provisions of the cotton, silk, and wool codes.

2. In order to obtain necessary data upon the ability of the cotton, silk, and wool textile industries to support an equal or a greater number of employees at higher wages, it is recommended that the President direct the Department of Labor and, in accordance with section 6(c) of the Recovery Act, the Federal Trade Commission to investigate and report on these matters at the earliest possible time.

3. For the purpose of regulating the use of the stretch-out system in the cotton, wool, and silk industries it is recommended that the respective codes be amended to provide that a special committee be created under the Textile Labor Relations Board to supervise the use of the stretch-out; that until January 1, 1935, no employer shall extend the work load of any employee, except in special circumstances with the approval of the stretch-out committee; that the stretch-out committee shall have power to investigate present work assignments and where it finds improper speeding up of work require reduction accordingly; that the stretch-out committee shall recommend to the President not later than January 1, 1935, a permanent plan for regulation of the stretch-out, under which employers shall be required to secure approval of an impartial agency prior to increasing the work load of the employees, which plan when approved by the President after such notice and public hearing as he may prescribe shall become effective as part of the code.

4. To aid in the enforcement of code provisions relating to wages above
sons assigned for its creation are significant.\textsuperscript{12}

Upon the basis of this report and in response to the request contained therein, the United Textile Workers called off the strike, and requested all of the strikers to return to their jobs on Monday morning, September 24, 1934.

On September 26, 1934, President Roosevelt issued an executive order creating the Textile Labor Relations Board,\textsuperscript{12} and in the

the minimum and to serve as an aid and guide in making collective agreements, it is recommended that the Department of Labor be directed to study definitions and classifications of occupations and existing wages for such occupations, and that the information thus collected be made available to labor and management of the industry.\textsuperscript{7}

\textsuperscript{11} See n. 7, supra.

\textsuperscript{12} "By virtue of and pursuant to the authority vested in me under title 1 of the National Industrial Recovery Act (Ch. 90, 48 Stat. 995, Tit. 15 U. S. C., Sec. 701) and under joint resolution approved June 19, 1934 (Public Res. 44, 73d Cong.), and in order to effectuate the policy of said title and the purposes of the said joint resolution, it is hereby ordered as follows:

"Sec. 1. There is hereby created in connection with the Department of Labor to be known as the 'Textile Labor Relations Board' (hereinafter referred to as "The Board") which shall be composed of the following three 'Special Commissioners': Judge Walter P. Stacy of North Carolina, Chairman; James A. Mullenbach of Illinois; and Admiral Henry A. Wiley, United States Navy, Retired. Each special Commissioner shall receive necessary traveling and subsistence expenses and, except on such days as he receives compensation pursuant to Executive Order No. 6751, June 28, 1934, $40 per diem in addition thereto. Two Special Commissioners shall constitute a quorum. A vacancy in the Board shall not impair the right of the remaining special Commissioners to exercise all the powers of the Board.

"Sec. 2. The Board and/or such agencies as it may create or utilize in accordance with this order shall immediately investigate, hold hearings, make findings of fact, and take appropriate action in any case in which it is alleged that there has been discrimination in taking men back to work after the textile strike.

"Sec. 3. The Board is hereby authorized and directed, in connection with the textile industry:

(A) To create, utilize, or exercise its powers through such regional or special agents or agencies as it may deem necessary to carry out its functions; and

(B) To exercise all the powers provided in Public Resolution 44, Seventy-Third Congress, for a board established under said resolution; and

(C) On its own motion or on complaint of any party affected, to investigate, hold hearings on, and make findings of fact as to, any alleged violation of section 7(a) of the National Industrial Recovery act and such part of any code of Fair Competition or agreement as incorporates said section, and, if necessary, to refer such findings, with recommendations, to proper Governmental agencies for appropriate action; and

(D) Upon request of the parties to a labor dispute, to act as a board of voluntary arbitration or to appoint a person or agency for such voluntary arbitration; and

(E) To exercise such powers as may be conferred upon it by any Code of Fair Competition.

"Sec. 4. In connection with the Codes of Fair Competition for the cotton textile, silk textile, and wool textile industries, the Board is hereby authorized and directed, on its own motion or on complaint of any party affected, to investigate, hold hearings on, and make findings of fact as to, any alleged violation of any provision of said codes relating to hours of work, rates of pay,
same order abolished the Cotton Textile National Industrial Relations Board. Section Two of this executive order is as follows:

"The Board and/or such agencies as it may create or utilize in accordance with this order shall immediately investigate, hold hearings, make findings of fact, and take appropriate action in any case in which it is alleged that there has been discrimination in taking men back to work after the textile strike."

Immediately thereafter the Textile Labor Relations Board began to function. It was authorized, in Section 3 (c) of the executive order creating the Board "on its own motion or on complaint of any parties affected, to investigate, hold hearings on, and make findings of fact as to, any alleged violations of Section 7 (a) of the National Industrial Recovery Act and such part of the new code of fair competition or agreements as incorporates

or other conditions of employment, and, if necessary, to refer such findings, with recommendations, to proper Governmental agencies for appropriate action.

"Sec. 5. The Board shall certify the results of all elections conducted by it or by its agents to parties concerned, and the person, persons, or organization certified as the choice of the majority of those voting shall be accepted for the purpose of collective bargaining, as the representative or representatives of the employees eligible to participate in the election, without thereby denying to any individual or employee or group of employees the right to present grievances, to confer with their employers, or otherwise to associate themselves and act for mutual aid or protection.

"Sec. 6. (A) Appeals on questions of law in cases involving section 7(a) of the National Industrial Recovery Act and such part of any Code of Fair Competition or agreement as incorporates said section may be taken from the Textile Labor Relations Board to the National Labor Relations Board in which (1) The Textile Labor Relations Board recommends review, or (2) there is a difference of opinion in the Board, or (3) The National Labor Relations Board deems review will serve the public interest.

(B) Whenever the Board has taken or has announced its intention to take jurisdiction of any case or controversy authorized by this Order, no other person or agency in the executive branch of the Government, except upon the request of the Board or except as otherwise provided in the preceding subsection, shall take or continue to entertain jurisdiction of such case or controversy. Whenever the Board has made a finding of fact and such order shall (except as otherwise provided in the preceding subsection or except as otherwise recommended by the Board) be final and not subject to review by any person or agency in the executive branch of the Government.

"Sec. 7. (A) The Board, with the approval of the National Labor Relations Board and the President, shall make and prescribe such rules and regulations as it may deem necessary for the exercise of the powers conferred in this order.

(B) The Board shall make quarterly and annual reports through the National Labor Relations Board and the Secretary of Labor to the President. Such reports shall state in detail cases heard, decisions rendered, investigations made, and the names, salaries and duties of all officers and employees appointed by it under the authority of this Order and receiving compensation directly or indirectly from the United States.

"Sec. 8. The Bureau of Labor Statistics shall prepare a comprehensive report on the actual hours of employment, earnings and working conditions in the
said section and, if necessary, to refer such findings, with recommendations, to proper governmental agencies for proper action.

In many instances conciliators connected with the Department of Labor attempted to learn the cause of disagreements between the employers and employees and to settle the employer-employee controversies amicably. If this method was not pursued, or if it was unsuccessful and the Union representatives made complaint, the Textile Labor Relations Board would send Examiners\textsuperscript{14} to conduct hearings in the various communities where the difficulties arose, or the Board would conduct hearings in Washing-

textile industries. The Bureau shall also make an investigation on and a report of the different types of work performed by the various classes of labor in such industries, the actual wage rates paid for the various classifications of work, and the extent to which differential wage rates apply to different skills. In accordance with section 6(c) of the National Industrial Recovery Act, and in order to furnish a basis for determining whether wage increases based upon reduction in hours or otherwise can, under prevailing economic conditions, be sustained, the Federal Trade Commission shall undertake an investigation of, and report on, the labor costs, profits and investments of companies and establishments in the textile industries, and make pertinent comparisons between the facts so ascertained and the changes in wages, hours and extent of employment or workers in such industries. In order to expedite this inquiry, the Federal Trade Commission is directed to give it priority over any other general investigation. The Bureau of Labor Statistics and the Federal Trade Commission shall, at the earliest possible moment, make public the reports required by this section. Such public reports shall be so prepared that data confidentially furnished by a particular person, corporation or establishment cannot be identified.

"Sec. 9. The Board of Inquiry for the cotton textile Industry created by executive order No. 6840 of September 5, 1934, the Cotton Textile National Industrial Relations Board created by section XVII of The Code of Fair Competition for the Cotton Textile Industry, as amended July 10, 1934, and the Textile National Industrial Relations Board created by Administrative Order of June 28, 1934, are hereby abolished.

"Sec. 10. (A) In order to carry out this Order, there is hereby allotted from the funds appropriated for the purpose of the National Recovery Act by Title II of the 'Emergency Appropriation Act, Fiscal Year 1934,' approved June 19, 1934 (Public Res. No. 412, Seventy-Third Congress) $50,000 to the Textile Labor Relations Board, to be expended under the direction of the Secretary of Labor. After estimates have been submitted to me, further allotments from the same funds shall be made to the Textile Labor Relations Board to be expended under the direction of the Secretary of Labor; to the Federal Trade Commission; and to the Bureau of Labor Statistics.

(B) The Board (with the approval of the Secretary of Labor), the Bureau of Labor Statistics, and the Federal Trade Commission shall have authority to incur such financial obligations and (without regard to the Civil Service Laws, the classification Act of 1923 as amended, or Executive Order No. 6746 of June 21, 1934) to appoint or assign such employees as they deem necessary for their functions and the functions of such agencies as the Board may create or utilize in accordance with this Order."


\textsuperscript{14} These examiners are usually well trained men. In North Carolina two examiners appointed were R. H. Wettach, Professor of Law, University of North Carolina, and W. Ney Evans, formerly of the faculty of law of the University of North Carolina. Mr. Evans at the time of his appointment was an active practitioner at High Point, N. C.
ton. These hearings before the Examiners and before the Board are rather informal in that the rules of evidence are not adhered to strictly. Both the complainants and the respondents are allowed to present evidence. At the conclusion of all the evidence attorneys for both sides, or some representatives if attorneys are not available, are requested to summarize briefly their contentions. Both sides are allowed a certain period of time, usually ten days from the time of the hearing, to file their briefs if they care to do so. Sometimes the Examiner, or Board requests that such briefs be filed. The Examiner sends a transcript of the evidence, together with the arguments of counsel and his own analysis of the facts to the Textile Labor Relations Board. Upon all the evidence, the arguments and briefs of counsel and the recommendations of the Examiner, the Textile Labor Relations Board makes findings of fact and upon the basis of these facts renders decisions.

The Textile Labor Relations Board, hereinafter referred to as the Board, thus acts as a fact finding body and states its conclusions of law as based upon these facts. In this respect it resembles the various commissions set up by the different states and the Federal Government.

As it is essential, in order that the Board have authority to act, that the respondent mills are engaged in interstate commerce and are thus subject to the Code of Fair Competition for the Cotton Textile Industry, it is agreed by the parties or found as a fact at the outset of the hearing that the employer mills are engaged in interstate commerce.

All of the decisions rendered by the Board conclude with the statement that the employer has or has not violated Section 7 (a) of the National Industrial Recovery Act and the Code of Fair Competition for the Cotton Textile Industry. This much discussed Section 7 (a) reads thus:

"Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) That no employee and

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15 See statutes of the various states creating commissions to execute the provisions of Workmen's Compensation Acts.
no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President."

The decision in the case of the United Textile Workers of America, Local No. 2305, Complainant, and Hannah Picket Mills, Rockingham, North Carolina, Respondent, was one of the first to be rendered by the Board. This mill did not cease operation during the strike.

The complainants contended that fifteen union members were discharged because of alleged participation in union activities. The Board found that "The evidence clearly shows that the company was hostile toward the Union and that the union employees that were discharged were known by the company or its representatives to be members of the Union. It was proved that various statements made by the company officials and its overseers in the mills clearly showed the active hostility of the company to union membership and activities of its employees."

The mills, on discharging an employee would discharge all members of the family of that employee, regardless of whether there were any complaints against the other members of the family. This practice was admitted by the respondent mill and justified on the ground that this was necessary in order that notice might be given to all the members of the family to vacate the company house which they occupied. Five of the fifteen complainants in this case were admittedly discharged for this reason and for no other. The Board ordered these five employees to be reinstated in their own former positions, and all of the other complainants, with the exception of two, to be reinstated as there was no reason given for their discharge. One of the two complainants not ordered to be reinstated was found by the Board to be "an agitator and trouble-maker which justified the respondent in his discharge." This employee was not a regular worker at the mill. The decision did not discuss what constitutes an agitator and trouble-maker and did not show whether the charge of discrimination was dismissed on these grounds or because the employee was

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10 This was case No. 2, heard by Robert H. Wettach, Professor of Law, University of North Carolina, as examiner for the Textile Labor Relations Board, at Rockingham, N. C. on October 13, 1934. Both the complainant and the respondent were represented and presented evidence at the hearing. Decision was rendered December 12, 1934.
not a regular worker at the mill. The Board found that one other of the complaining employees was discharged for reason in that, according to uncontradicted testimony, his work was unsatisfactory.

The president of the union was discharged for breakdowns on the slasher machine which he was running. He admitted that he was not an expert slasher hand. The evidence showed that he was hired originally to make sizes and that his work in that capacity was satisfactory. The decision of the Board does not show directly why the president of the union was changed from a job he was qualified to operate and had operated for years to one he was not qualified to operate. Apparently the Board recognized, this change as a subterfuge, an excuse for discharging the president of the union, for in its decision it found that "The company was justified in the discharge of Byrd [president of the union] as a slasher hand, but as an act of good faith, because he is President of the Union and was admitted to be a law-abiding employee, the company should restore him to his former position of making sizes or to some other position which he is qualified to fill".

The employer groups attack this decision in that it is at variance with the orthodox conception of master and servant. Heretofore, it has been taken for granted, generally, that employees in textile mills are not hired for any particular period of time, but only at will and, therefore, the employer could discharge the employee at any time without assigning any reason for the discharge. This decision, therefore, was very gratifying to organized labor. Its implications have not as yet been fully realized for the decisions of the Board are not binding as precedents in State and Federal Courts and have not been brought to the attention of the legal profession as a whole. This decision is a boon to organized labor. Heretofore, employers hostile to organized labor could, by discharging all employees who were members of a labor organization, thwart the organization in its embryonic state without subjecting themselves to any legal liability.

The Lydia Cotton Mills, Clinton, South Carolina, and the Clinton Cotton Mills, Clinton, South Carolina, which mills are under the same management, were closed during the period of the textile strike. On the morning after the strike the officials and members of the union active during the strike were refused ad-

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27 These cases were heard before the Textile Labor Relations Board in Washington on November 26, 1934. Final decisions were rendered December 7, 1934.
mission to the mills and their positions were filled by others. Several of the employees not reinstated in their jobs were evicted from company houses. The Board found as a fact that none of the employees were guilty of disorderly conduct during the period of the strike. Persons not employed by the mill at the time of the textile strike were hired after the strike to take the place of the union leaders and the active strike members. The Board, in its decision in the case of the Lydia Cotton Mills, stated that "It was admitted by the company that the reason for not re-employing the complaining strikers was to give the management time to investigate their activities during the strike and that these activities took the form of speech-making on behalf of the Union." Speech-making and the disseminating of union propaganda are insufficient to make one an agitator or trouble-maker. The respondents were found guilty of discrimination in their refusal to reinstate complainants in the positions occupied by them at the time of the textile strike and in hiring new help to fill these positions, "in violation of section 7 (a) of the National Recovery Act and Section 8 (1) of the Code of Fair Competition for the Cotton Textile Industry, and has thereby interfered, reinstated, and coerced employees in the exercise of their right of concerted activities for mutual aid and protection."

The decisions in these two cases follow in general outline the decision in the Hannah Picket Mills case. The Board ordered that in the event of the failure of the respondent employer mills to notify the Board on or before a specified date that it had complied with the terms of the Board's decision by reinstating the employees in their former positions that the case would be referred to the Compliance Division of the National Recovery Administration and to other agencies of the Federal Government for appropriate action.

Where the job performed by an employee at the time of the strike no longer exists the Board has uniformly held that the employee not reinstated has not been discriminated against.\(^\text{19}\)

The Board has held that where the striking employee was

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\(^\text{18}\)This section begins: "Employers in the cotton textile industry shall comply with the requirements of the National Industrial Recovery Act as follows:"
The provisions are the same as contained in Section 7(a) of the National Industrial Recovery Act.

\(^\text{19}\)Southern Brighton Mills, Shannon, Georgia, Case No. 12 (March 18, 1935); Defiance Manufacturing Company, Barrowsville, Mass., Case No. 19 (Jan. 10, 1935); Robbins Knitting Company, High Point, N. C., Case No. 43 (March 1, 1935); Knit Products Corporation, Belmont, N. C., Case No. 442 (March 7, 1935).
guilty of lawless violence or disorderly conduct during the time of the strike the employer was justified in discharging him.\textsuperscript{20} The Board has not clearly defined what constitutes lawless violence or disorderly conduct. It held in one case\textsuperscript{22} that the employer was justified in failing to re-employ certain of its employees who were guilty of petty larceny. It does not appear from the decision that this larceny was in any way connected with the textile strike or in any manner affected the employer-employee relationship. It seems to be based upon the assumption that an employer can discharge employees who thus prove themselves to be undesirable citizens. The Board did not intimate whether such violations of law as to justify the employer in failing to rehire the employee or in justifying his discharge were limited to felonies and violations involving moral turpitude, or whether they included petty misdemeanors. Under the orthodox concept of the right of the employer to discharge an employee at will the failure of this case to define clearly disorderly conduct would be of no significance. Under the departure as outlined in the Hannah Picket Mill Case and the Clinton and Lydia Cases hereinbefore referred to, the exact implication of what constitutes such disorderly conduct is most important for accusations or proof of the commission of some petty misdemeanor, such as violation of a traffic ordinance not in any way involving moral turpitude as that term is commonly defined, would, oftentimes, again give an employer hostile to labor an opportunity to discharge an employee at will.

The decisions of the Board have not defined clearly the term "lawless violence". It seems that the violence which the Board holds as justifying the employer in discharging or failing to reinstate the employee in his former position must be violence directed toward the management of the mills or the employees desiring to work, or violence in some manner interfering with the operation of the mill.\textsuperscript{22} Where the Board found that the employees prevented, by force or threats, the employers and other employees from entering the mill, or destroyed any of the property of the mill, it held that this conduct justified the employer in the discharge of or in the failure to reinstate the employees thus offending. What constitutes such lawless violence seems to be a question to be decided upon the evidence in each particular case. The Board repeatedly has upheld the right of the employee to strike

\textsuperscript{20} Ibid.
\textsuperscript{21} Defiance Manufacturing Company, Barrowsville, Mass., \textit{supra} n. 19.
\textsuperscript{22} Knit Products Corporation, Belmont, N. C., \textit{supra} n. 19.
and to picket peacefully the employer's plant, according to the
definition of peaceful picketing that was laid down by Chief
Justice Taft in American Steel Foundries v. Tri-City Council,\(^23\)
the leading case on the question of what constitutes peaceful
picketing.

The case against Rosemary Manufacturing Company\(^24\) presents
some very interesting questions, including a discussion as to what
extent union employees on picket duty during the strike are
vicariously responsible for the conduct of those who are not mem-
bers of the union and who engaged in lawless violence, disorderly
conduct or unlawful picketing. In that case it was alleged by the
respondent mill that there were not over one hundred to one
hundred and fifty of its employees who were members of Local No.
2230, United Textile Workers of America. It was estimated that at
various times during the period of the strike between two and
three thousand people were at the same time loitering around the
entrances to the plant of Rosemary Manufacturing Company and
prevented anyone from entering. According to the testimony pro-
duced by the respondent the crowd was very boisterous and at
times menacing. No actual violence occurred, however. These
pickets who augmented the picket lines as formed by the employees
of Rosemary Manufacturing Company came from the other textile
mills in the town and from nearby towns. The Board held it did
not appear that the striking employees of Rosemary Manufacturing
Company were responsible for the existing conditions and at the
same time found that a large number of non-union employees of
Rosemary Manufacturing Company were prevented from exer-
cising their lawful right to work because of the danger inherent
in a tense situation. The Board found that "the mere fact of mem-
bership in a central, local union is hardly sufficient, without more,
to fasten responsibility upon individuals for the conduct of a
group."

The decision cites Section 6 of the Norris-LaGuardia Anti-
Injunction Act\(^25\) as pertinent and concludes its findings thus:

"Certainly the Board does not intend to condone or ex-
cuse unlawful conduct, either by individuals or by a group of

\(^{23}\) 257 U. S. 284, 42 S. Ct. 72 (1921).

\(^{24}\) Rosemary Manufacturing Company, Roanoke Rapids, N. C., Case No. 16,
heard before the Board in Washington on December 4, 21 and 22, 1934; deci-
dion rendered January 30, 1935. The Rosemary Manufacturing Company has
failed to reinstate the complainants in accordance with the decision of the Tex-
tile Labor Relations Board. The case is now pending for removal of the Blue
Eagle and prosecution by the Department of Justice.

\(^{25}\) 29 U. S. C. A. (1928) § 106: "No officer or member of any association
individuals. Yet the only satisfactory issue upon which to
decide this case seems to be the proof of actual participation,
authorization, or ratification of unlawful conduct by the in-
dividual complainants.

"Upon the whole record before it the Board is unable to
escape the conclusion that the striking employees of Rosemary
Manufacturing Company were confronted with a condition
not wholly of their own fashioning and beyond their control,
and that from all the evidence it does not appear that they
were remiss in their duty in dealing with it."

The Board in its decision of the Knit Products Corporation,26
Belmont, N. C., case, cites the Rosemary case in holding that the
striking employees were not responsible for the unlawful conduct of
a mob. This case held, however, that four of the complainants were
active in the mob and "made use of its presence and the po-
tentialities of disorder inherent in the situation to keep employees
who were reporting for work from going into the plant. Their
action in this regard so far evinces an adoption and ratification
of improper conduct as to warrant their exclusion, although there
is evidence to show the management has forgiven other employee-
participants of conduct equally subject to criticism; and there
is a strong inference that the refusal to reinstate them was based
on the fact of their leadership of organized labor rather than their
conduct. The evidence, however, is in such balance that the Board
cannot say that their exclusion was not based on their conduct, or
that the refusal to reinstate them for that reason is not justified."

In the Rosemary Manufacturing Company case the manage-
ment gave explicit instructions to its superintendents and over-
seers to restore first to the pay rolls after the strike those em-
ployees who had reported for work during the strike and who were
classified as loyal employees. Such action on the part of the em-
ployer has been uniformly held to constitute discrimination.

Twenty-nine of the employees of Rosemary Manufacturing
Company, according to the admission of the respondent company,
have been refused employment and have been replaced by other
workmen and the sole reason for their replacement workmen and

or organization, and no association or organization participating or interested
in a labor dispute, shall be held responsible or liable in any court of the United
States for the unlawful acts of individual officers, members, or agents, except
upon clear proof of actual participation in, or actual authorization of, such
acts, or of ratification of such acts after actual knowledge thereof."

26 Case No. 42. Final decision rendered March 7, 1935. A hearing was held
before the Textile Labor Relations Board in Washington on January 16, 1935.
Another hearing on the issue of violence was held before W. Ney Evans, Ex-
the sole reason for their replacement was that they were on the picket lines during the time of the strike. Their jobs were filled in many instances by helpers who had not worked for the respondent mills for periods ranging from two months to sixteen months prior to the strike according to the testimony of the superintendent of the mill, and some of the new help, according to the complainants, had never worked in the mill before. Under the decision in the Hannah Picket Mills case this failure to re-employ was a clear violation of Section 7 (a) of the National Industrial Recovery Act and, in reality, the only question before the Board was whether the method of picketing "vitiates the discrimination inherent in the deferment" of employment and in the failure to reinstate workers on their former jobs.

In its final decision in the Rosemary case the Board did not discuss the question as to whether an active interest on the part of the employer in the organization of a company union constituted discrimination. In the hearings before the Board one of the overseers for the respondent company admitted on cross examination that he had attended organization meetings of a "home union" and invited a relative of his who lived several hundred miles away to address the prospective members of the home union at one of the organization meetings.

The decisions in the cases of Ninety-Six Cotton Mill, Ninety-Six, S. C., and Alexander Manufacturing Company,27 Forest City, N. C., brought forth vigorous protest from organized labor.

In anticipation of the strike called for September 3, 1934, a petition was circulated and signed by a majority of the employees of Ninety-Six Cotton Mill requesting that the employer continue the mill in operation. It was alleged but not proved according to the finding of the Board that the employer fostered the petition. The petition was sent to the Governor of South Carolina with a request for protection for the employees who desired to work. Two hundred special deputies were sworn in to preserve order. The mill did not close on September 3, 1934, at the beginning of the textile strike but continued in operation during the entire strike. On September 3, 1934, the local unit of the United Textile Workers of America telegraphed the National headquarters stating that only thirty-five per cent. of the employees of Ninety-Six Cotton Mill were members of the union. It received a telegraphic order to strike. Picket lines were formed. Deputy sheriffs turned a water

27 Cases Nos. 9 and 32. Decisions were rendered on Jan. 30 and Jan. 31, (1935).
hose on the pickets and drove them back ninety feet from the
gate to the mill and marked a white line beyond which the pickets
did not thereafter go. The striking employees were invited to re-
turn to work but they elected not to return until after the termin-
ation of the textile strike. Immediately after the termination of the
textile strike the striking employees reported for work on Septem-
ber 24 and on October 1 and they were refused employment. During the period of the strike from September 6, 1934 to Septem-
ber 24, 1934, new workers were hired. No new workers however
were hired after the strike and the management stated its willing-
ness to put all of the workers back to work as soon as jobs were
available. The Textile Labor Relations Board after stating the
findings of fact based its decision on the ground that "the complai-
ants' strike was unsuccessful and for that reason it was not
incumbent upon the employer to reinstate the strikers in their
former positions."

The case of Alexander Manufacturing Company, Forest City,
N. C., is similar upon its facts to the case of Ninety-Six Cotton
Mill and the Board used practically the same language in de-
clining that the employer was not guilty of discrimination. The
decision in part reads "it is quite clear from the evidence in this
case that the strike of the union members employees of the Alexan-
der Manufacturing Company did not prevent the operation of the
mill with a full complement of operatives after September 10,
1934, and that the objectives of the strike were not attained."

Organized labor entered a protest to these decisions and a new
hearing before the Board in Washington was granted in both
cases. Labor took the position, at the re hearing, that the success
or failure of the strike had nothing to do with the question of
violation of Section 7 (a) of the National Industrial Recovery
Act and that the sole question before the Board was whether Sec-
tion 7 (a) had been violated and that the success or failure of the
strike was material only in that it might throw some light
upon the question of discrimination. The complainants contend
that if this decision is allowed to remain unaltered bloodshed and
chaos will be the order in the next general strike, for the employer
will use every force possible to see that the mill is kept in operation
during the period of the strike and will, wherever possible, secure
the aid of state militia. The employee, it is contended, will realize
the utter hopelessness of the struggle and will content himself with

28 See argument and brief of counsel for the complainants filed with the Tex-
tile Labor Relations Board, Washington, D. C.
being controlled forever by the whims and fancies of the employer and if the employee should have courage to strike he will realize the odds are against him and will use every force possible to see that the mills are not operated during the period of the strike. There is some merit to this contention.

The Board has held uniformly that where the mill did not resume operation until after the textile strike and then hired new help, if employment was given to the new help rather than to employees who were working at the time of the strike and who did not engage in disorderly conduct during the period of the strike, the employer is guilty of discrimination.\(^{29}\) If the employer operated the mill during the period of the strike and hired new employees after the strike and before the old employees were put back to work such conduct also constituted discrimination if the striking employees applied for their jobs after the strike before the new help was employed. The case of Byrum Hosiery Mills, Inc.,\(^{30}\) Shelby, N. C. adopts this viewpoint.

Early in 1934 several employees of Aponaug Manufacturing Company, Kosciusko, Miss.,\(^{31}\) were discharged because of their union activities. A committee from the union discussed their grievances with the management which agreed to re-employ all of those discharged with the exception of four. When the discharged employees returned to work thirty-five were refused employment instead of four. Thereafter, the management discharged, without assigning reasons therefor, practically all of the members of the union. On or about August 10, 1934, the union called a strike as a protest against a practical lockout of union employees. This strike was merged with the national textile strike called in September, 1934. The Board found that the employer was clearly hostile to the union and that this indiscriminate discharging of union officials without cause constituted discrimination.

The case against Robbins Knitting Mill,\(^{32}\) High Point, N. C., is different from the other cases decided by the Board in that after

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\(^{29}\) Groves Thread Company, Inc., Gastonia, N. C., Case No. 10 (Jan. 8, 1935). The hearing was conducted by W. Ney Evans, Examiner, at Gastonia on Nov. 20, 1934.

\(^{30}\) Case No. 33. Final decision rendered Feb. 12, 1935.

\(^{31}\) Case No. 1 (Dec. 21, 1934). The respondent employer agreed to participate in the hearing before C. H. Logan, Associate Director of the New Orleans Regional Labor Board as the agent of the Textile Labor Relations Board at Durant, Miss., on October 6, 1934, but later declined to do so and did not appear at the hearing. The inability of the Board to force witnesses to attend the hearings is one of the defects of the present body.

\(^{32}\) Case No. 43 (March 1, 1935).
the termination of the textile strike when certain employees of the boarding department were refused employment the other workers in the boarding department and several workers in the knitting department went out on another strike in protest of the discrimination against the six employees not rehired. The Board held that this strike was in protest against the violation of Section 7 (a) of the National Industrial Recovery Act and the Code of Fair Competition for the Hosiery Industry and, therefore, it was incumbent upon the management to rectify the error and reinstate the strikers. In this case the Board found that thirty of the complainants were employed elsewhere, sixteen in the textile industry and fourteen in other employment. Therefore, the Board held it inadvisable to "disturb the process of reabsorption of these people in gainful occupation" but ordered that they be put on a preferential list and reinstated before any new help was hired.

In the Knit Products Case33 some of the former employees not reinstated were working elsewhere at the time of the hearing before the examiner. The Board as to these complainants said "The complainants who have secured employment since the strike showed that they would prefer their former jobs in Knit Products Corporation to their present situations. Six of the Eight are employed in towns other than Belmont, some distance away. Because of the nature of the evidence pertaining to their employment, and the facts shown by it, their cases will be considered without reference to their present employment."

The other decisions rendered by the Board are decided upon the same basis, with some minor variations, as the cases already considered.34

33 Knit Products Corporation, Belmont, N. C., Case No. 42 (March 7, 1935).
34 Case No. 3, Standard-Cooosa-Thatcher Company, Piedmont, Ala. (Jan. 22, 1935). This case is unusual in that the company agreed to close the mill in the event a majority of the employees decided to strike. A majority voted to strike so the mill was closed. One of the union members was discharged for violating a sign relative to non-smoking. The Board held that there was not enough evidence to show that he had been discriminated against on account of union activities, yet his discharge seems to be unjustified. The Board ordered an election in this case to determine who would be the representative of the employees for the purpose of collective bargaining. At the election, under the supervision of the Textile Labor Relations Board, 399 votes were cast for a representative other than a member of the United Textile Workers of America, and 303 votes were cast for the United Textile Workers of America to act as a bargaining agent.

Case No. 4, Commander Mills, Inc., Sand Springs, Okla. (Dec. 12, 1934). The Board found that the employer was guilty of discrimination in that two of its employees had been discharged without sufficient reason. The reasons assigned were that one complainant had used bad language toward a woman employee in the mill, and that one had entered the mill out of working hours.
The gist of the misunderstanding between the employer and employee in all of the cases that have come before or been decided by the Textile Labor Relations Board is that the employer maintains that he has the right to discharge an employee at will, with-

The Board concluded that this was a subterfuge and that the two employees were discharged because of their Union activities.

Case No. 7A, Duplan Silk Corporation, Hazleton, Penn. Employer found guilty of discrimination in that the jobs of Union men not reinstated were being filled by former employees shifted from other positions within the mill.

Case No. 7B, Duplan Silk Corporation, Wilkes-Barre, Penn. The charge of discrimination was sustained in that non-union people were shifted to union people's jobs, and two union workers who were reemployed were discharged for errors in their work, which errors are "quite usual in a silk mill and which usually called for reprimands only . . . . under the circumstances the errors made by these men were not of sufficient importance to justify their discharge."

Case No. 8, Eureka Printing Company, Clifton, N. J. (Jan. 7, 1935). Charges of discrimination were not sustained as new employees were hired during the strike but no new employees were hired since September 24, 1934.

Case No. 11, Mountain City Knitting Mills, Chattanooga, Tenn. (Dec. 27, 1934). Charges of discrimination were sustained, as an employee was rehired after the strike and then discharged because she allegedly violated a newly posted rule against "heckling, quarreling with, coercing and intimidation of fellow workers." All the complainant did was to tell a relative and friend who was an employee in the mill that she should not have signed an employment card sent out by the company "because the company just sent those cards out to find out how many scabs there was."

Case No. 13, Indianapolis Bleaching Company, a subsidiary of Benis Bag Company, Indianapolis, Ind. (Dec. 6, 1934). This mill remained open during the strike and hired approximately 100 new employees during that time. After the strike an agreement was reached providing for the return of the striking employees to their former jobs with the exception of those proved guilty of acts of violence during the strike. The Company failed to abide by this agreement and failed to rehire 119 of the striking employees. The decision does not show that any new employees were hired after the strike. It appears that this decision is contrary to the decision in the cases of the Alexander and Ninety-Six Cotton Mills, for the plant remained in operation during the strike and the new employees were hired during that time. This case can be distinguished, however, on the ground that the employer agreed, after the strike, to take back the striking employees and then failed to live up to his agreement.

Case No. 15, Saratoga-Victory Mills, Inc., Guntersville and Albertsville, Ala. Charges of discrimination were not sustained as the mills operated during the strike. The management offered, on September 6, 1934, to rehire all of the workers who desired to work and the employers since the strike have not hired any new employees and have agreed to reinstate former employees as soon as business warrants.

Case No. 18, Acme Finishing Company, Providence, R. I. (Jan. 23, 1935). During the hearing before the examiner the company agreed to reemploy the union members and the union withdrew its complaint.

Case No. 20, Wakefield Textile Company, Inc., Wakefield, R. I. (Jan. 30, 1935). The charge of discrimination was sustained in that three new workers were hired after the textile strike in the places of employees who were on the company's pay rolls prior to the strike. These three new employees were ordered replaced by employees working at the time of the strike.

Case No. 29, Worth Spinning Company, Stony Point, N. C. (Jan. 16, 1935). The charge of discrimination was sustained in that after the strike the employers said that employment, until business improved, would be given ex-
out assigning any cause therefor. As an employee is generally hired for no fixed period of time, under the orthodox concept he is an employee at will and thus may be discharged at will. There would be some merit to this contention were it not for the underlying economic conditions that called forth the creation of the National Industrial Recovery Act, the relaxation of stringent provisions of the anti-trust laws and the encouraging of employers and employees to regulate industry by mutual agreement rather than by governmental interference. These matters must be taken into consideration in determining what does constitute discrimination in violation of Section 7 (a) of the National Industrial Re-

clusively to those employees who had stood by the company during the strike. After the strike the company changed its system of operation from the division of available work between two shifts comprising 123 workers to one shift comprising 72 workers. The Board apparently reached the view that this change in method of employment was a subterfuge. Practically the same subterfuge was employed in the case of Robbins Knitting Mill.

Case No. 47, Alabama Mills, Inc., Winfield, Ala. (Jan. 10, 1935). This case was decided against the employees in that the Board held that the members of the union were bound by a prior agreement with the company to the effect that the two complainants would not be worked in the future because of the negligence of one complainant and the disorderly conduct of the other.

Cases Nos. 48 and 49, Enterprise Manufacturing Company and Sibley Manufacturing Company, Augusta, Ga. (March 15, 1935). In these cases the Board held that the employers were guilty of discrimination in that in each case they refused to reinstate employees who had been on strike and who reported for work after the strike and before their jobs were again in operation.

Case No. 50, Globe Cotton Mills, Augusta Ga. (March 15, 1935). The charge of discrimination was sustained as after the strike many new employees were hired and the striking employees were not rehired.

Case No. 51, John P. King Manufacturing Company, Augusta, Ga. (March 15, 1935). It was held that the employer was not guilty of discrimination in failing to rehire the striking employees for their places had been filled during the strike before the striking employees reported back to work. The company did refuse to treat with a committee representing employees, however, and this was held to constitute infraction of Section 7(a).

Case No. 56, Cyril Johnson Woolen Mills, Stafford Springs, Conn. (March 1, 1935). The findings of fact in this case were as follows: "Under its general powers of mediation and conciliation, the Textile Labor Relations Board has endeavored to assist in composing certain differences that have arisen between Cyril Johnson Woolen Mills of Stafford Springs, Connecticut, and certain of its employees who are members of Local Union No. 2035 of the United Textile Workers of America.

"The differences in question have led to a strike by certain employees of the company who are members of Local Union No. 2035 of the United Textile Workers of America. The Board has used its best efforts to effect a conciliation between the parties to the end that the strike could be terminated, but regrets that its efforts have thus far not been successful.

"In the absence of an allegation or proof of the violation of Section 7(a) of the National Industrial Recovery Act, and the Code for Fair Competition of the Woolen Textile Industry, which does not appear in this case, the Board does not have jurisdiction beyond mediation and conciliation.

"These findings are made at the instance of both parties."
covery Act. Before there could be any "bargaining" between capital and labor it was necessary that the bargaining parties be put on terms of equality, for the term "freedom of contract" or freedom to bargain is meaningless between a wealthy corporation on the one hand and an impoverished textile worker on the other. Therefore, in order to place the employer and employee in equally advantageous positions for the purpose of bargaining, it was necessary that workers be permitted to join together for the purpose of collective bargaining and for mutual aid and protection. This declaration of policy is clearly expressed in Section 1 of Senate Bill No. 1958,35 commonly referred to as the Wagner Labor Bill, which reads:

"Equality of bargaining power between employers and employees is not attained when the organization of employers in the corporate and other forms of ownership association is not balanced by the free exercise by employees of the right to bargain collectively through representatives of their own choosing."

If the employer is given the right to discharge the employee without cause the purpose of the National Industrial Recovery Act would be thwarted in a large measure, and the employer would be given an increasingly greater advantage. The employer's assertion of his right to discharge an employee at will is unassailable under the concept prevalent at the time of the National Industrial Recovery Act. The declaration of policy as contained in Section 7 (a), however, changes this in its entirety. The decisions narrow down in each particular case to a question of whether the employer intended to discharge the employee because of union membership or whether he was discharged for some other reason. The Board seems to intimate that an employee can be discharged for any reason other than union activities, providing that it is in good faith. When the Board finds an employer guilty of discrimination by failing to reinstate old employees and hiring new employees to take the places of those thus discharged, the Board has ruled that the employer must discharge the new employees and take back the former employees on the jobs performed by them previously.

The employer contends that when the employee goes out on strike he thereby forfeits all right of any kind to the job held by him prior to the strike and that the employee hired during

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35 Organized labor is unreservedly supporting this bill.
the strike to take the place of the striking employee has a superior right to that of the striking employee.

The right to strike and the right to picket the employer's mill during the strike, providing the picketing is peaceful, is generally recognized. The right to picket implies that the employer-employee relationship has not been terminated for a non-employee is not allowed to picket. It is only the employee who has the right to picket the employer's property during the strike.

If at the termination of the strike the employee decides that he cannot accept his former position under the terms and conditions of employment existing at the beginning of the strike and elects to seek employment elsewhere and desires not to return to his former work, then the employer-employee relationship ceases and new help hired after that date would have a right to the job superior to that of the employee who elected not to return to work. The employee contends that when he goes out on strike he has evidenced an intent to leave his job for a temporary period of time only and with the intent to return to that job at some later time when the grievances between the employer and employee have been adjusted. An analogy is drawn from the law of personal property in that the owner of personal property who abandons the same temporarily or lays the same aside with the intent to use it again at some subsequent date does not lose all of the interest that he had in the property, but may reclaim the same at will and his right to the property will be superior to that of one who uses it during the period of temporary non-use. Labor contends that Section 7 (a) protects labor in its right to bargain collectively and if, in order to accomplish a legitimate purpose, a strike is called then the law in guaranteeing the right to bargain collectively protects the employee in the interim.

In the decisions rendered by the Board there has been no discussion as to whether the textile strike called for September 3, 1934, was justified.

The contention on the part of labor that the employee has some kind of a right or equity in his job superior to that of an employee who operated his job during the time of the strike is startling to those who think in orthodox terms. If one becomes reconciled to the decision in the Hannah Picket Mill case in which it was held that an employer did not, under Section 7 (a) of the National Industrial Recovery Act, have the right to displace at
will an employee, he has but to take another step forward to the position that the employee has a right or equity of some kind in his job. Under our present social system all of the rights or equities have been on the side of the employer who had control over and the management of certain tangible, physical reality and personality. If the employer has acquired through the use of his contributions in capital certain rights and equities in the mill he controls, then the party on the other side of the fulcrum in the meantime has acquired, by his labor, certain rights which should be recognized. Apparently there was some thought similar to this in the minds of those who drafted Section 1 (a) of the National Industrial Recovery Act in encouraging collective bargaining, for collective bargaining would be a nullity unless the bargaining parties were on an equal basis at the time of the bargaining.

It is doubtful that any court at the present time would go as far as labor in its contention relative to the right or equity in a job. Rights of the employer, commonly called property rights, have been given first place in our legal system and in our philosophy of government. One of the chief reasons for this is that it requires much less effort to make articulate and, by the mastery of dialectics, explain or justify the concept of a right in or equity in a tangible object that can be seen or experienced with the physical senses than it is to make articulate and clearly define intangible personal rights.

One of labor's chief causes of dissatisfaction with the Textile Labor Relations Board is that after it has rendered a decision the Board has no practical means of enforcing it. The Board may ask the N. R. A. for removal of the Blue Eagle, but this means very little to the employer unless he is receiving Government contracts, for the Government will not let a contract to a manufacturer who has lost the Blue Eagle.

The National Labor Relations Board filed a report of its activities for the six months period ending January 9, 1935. Section 7 of this report dealing with the enforcement of the decisions of the National Labor Relations Board is pertinent to the enforcement of the decisions of the Textile Labor Relations Board, as both have in effect the same power in their respective fields. This report of enforcement of decisions of the Board is in part as follows:

"The Board is powerless to enforce its own decisions. In the ultimate analysis its 'findings' and 'orders' are nothing more than recommendations. If they are not followed, the
Board sends its recommendations to the N. R. A. for removal of the Blue Eagle, and/or to the Attorney General for appropriate action. Under the present practice the N. R. A. Compliance Division gives the employer five days to show cause why his Blue Eagle should not be removed. In a number of cases, where the particular employer would feel the loss of the Blue Eagle, the actual removal of the Blue Eagle has been temporarily restrained by injunction proceedings in the Supreme Court of the District of Columbia. In many industries, however, the loss of the Blue Eagle has little practical effect.

"Court enforcement under the present machinery is slow, uncertain and cumbersome. The proceeding may be by bill in equity to force the employer to bargain collectively, or indictment for violation of Section 7 (a) as embodied in the particular code under which he may be operating. The record before the Board serves as nothing more than the basis for the Attorney General to proceed. It cannot be filed or used in court, and the case must be tried de novo. After a bill in equity is filed the employer has thirty days in which to answer, or he may move to dismiss, or for a bill of particulars. The case cannot, necessarily, be tried at once. As it must be brought in the district in which the defendant resides, or where, if a corporation, it is incorporated, there is often the burden and inconvenience of bringing witnesses from a distance".

The recalcitrant employer who is hostile to organized labor and does not desire to carry out the decisions of the Board realizes these defects in the enforcement of the decisions of the Board and is taking advantage of them in not obeying the decisions. The decisions of the Textile Labor Relations Board are of little practical effect in formulating or defining a uniform body of administrative interpretation and practice with respect to the rights of the employee. It has performed its greatest service in bringing to the attention of the public, through the numerous investigations and hearings held before the Examiner and before the Board, the conditions in the textile industry as a whole and the means some employers have adopted in order to thwart at every stage the development of organized labor in order that the employer might be free to carry out his own selfish desires. The creation of the Board has for this reason been justified.

The reports of the hearings and the decisions rendered by the Board contain documentary evidence that will be of inestimable value to the student of social relations and to legislators attempt-
ing to formulate policies for the benefit of the working man. Labor hopes that through legislative acts or otherwise it will be decided that the employee has some right or equity in his job. If labor is given the right to bargain collectively and if the employer is actually required to bargain collectively, then terms and conditions of employment can be decided upon, which collective agreements can be so arranged as to, by contract, give the employee during the term of that contract, a definite right in the job operated by him. This is the hope of labor in advocating laws guaranteeing the right to bargain collectively. Very little progress, however, has been made in these collective bargaining agreements.