

The Mergott Sit-Down



How a U.S. Supreme Court decision impacted a 1939 Newark labor strike.

Gordon Bond

New Jersey's nickname as the Garden State reflects a deep agricultural heritage going back to the colonial era. Following the industrial revolution, however, the state evolved an equally robust manufacturing base that would sustain its growth until the deindustrialization of the late 20th century. Urban centers across the Hudson River from Manhattan and the Delaware River from Philadelphia were especially packed with factories of all sorts. Places such as Jersey City, Newark, Paterson, and Camden became reflections of the best and worst of American capitalism. Perhaps the best-known New Jersey example of the sometimes adversarial relationship between capital and labor is the five-month long 1913 strikes and work stoppages by Peterson's silk mill workers. Less recalled, however, was a smaller Newark labor conflict shortly before World War II that came as a consequence of a U.S. Supreme Court ruling.

J. E. MERGOTT CO.

I learned about this strike in a roundabout way, because of my interest in collecting antique cameras. Since I moved to Newark six years ago, I became particularly interested in cameras manufactured here by the J. E. Mergott Company in the 1940s. The pressed-metal box camera was just one of a wide range of various metal products the company was making by that time. It all began more humbly when Prussian immigrant and machinist (born March 14, 1850) Julius Eugene Mergott opened his one-man shop at 19 Green Street, Newark, in 1878. By 1889 the enterprise had grown large enough to be incorporated and moved to larger quarters at 10–12 Ward Street, where it further grew until an even

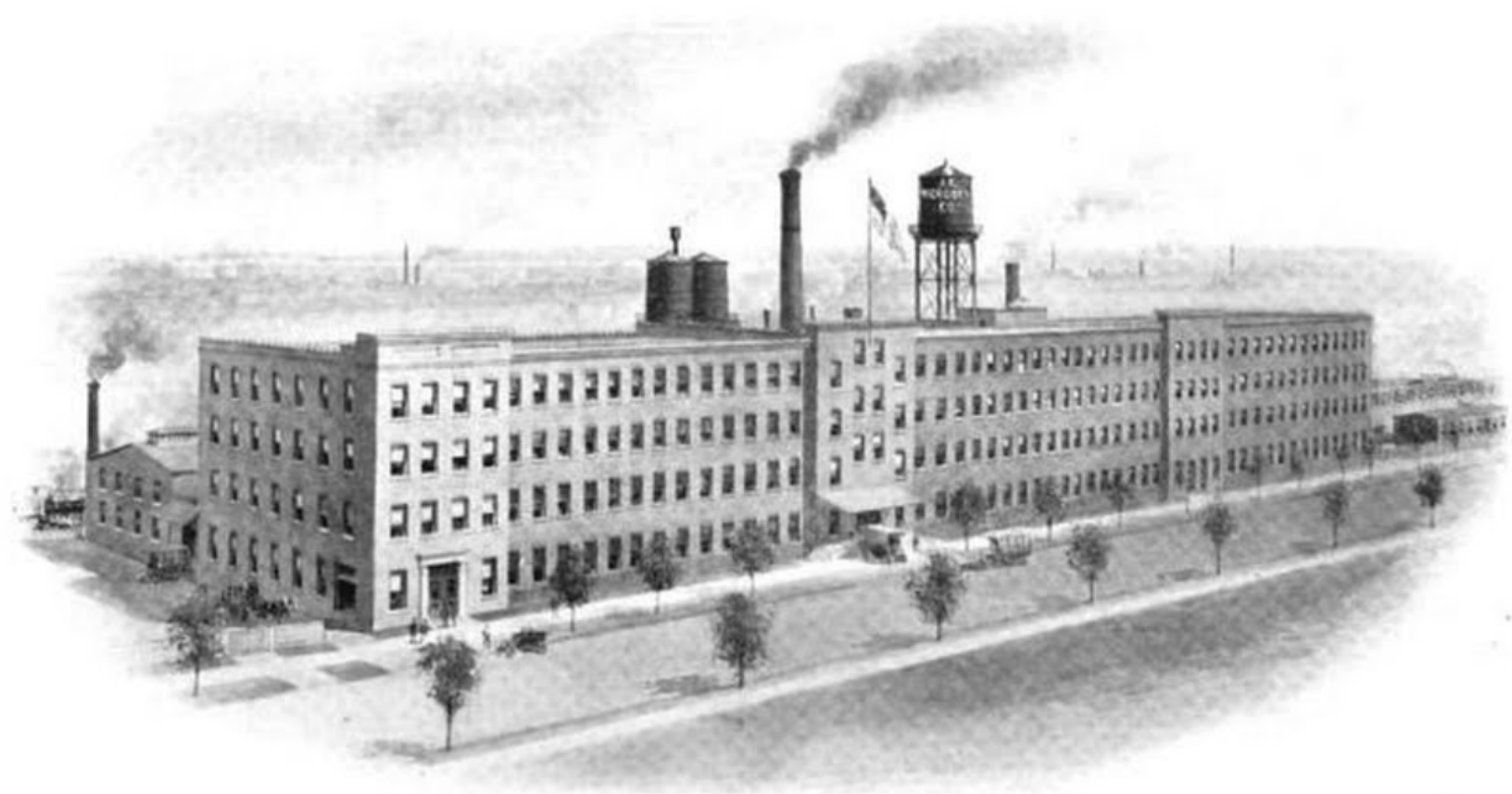


Illustration of the J. E. Mergott Company factory on Jelliff Avenue, Newark appearing in "Newark, the City of Industry: Facts and Figures Concerning the Metropolis of New Jersey, Published under auspices of Newark Board of Trade, 1912."

larger factory was needed. They next moved to Coit Street in neighboring Irvington, advertised as "a manufacturer of brass novelties." Disaster struck on January 15, 1905 when the plant was destroyed by a fire, totaling a \$300,000 loss. Undaunted, Mergott returned to Newark, where a huge four-story factory was built on a block fronting onto Jelliff Avenue, between W. Runyon and W. Bigelow Streets, and backing onto a small freight yard of the Pennsylvania Railroad's West Newark Branch. The property encompassed several other buildings and its own power plant—this time all protected by the latest in automatic sprinkler and fire alarm systems. Here they would employ some 600 workers until acquired by Fedders-Quigan in 1950.

Their main business had been producing the metal frames and clasps needed by the manufacturers of bags, purses, and pocketbooks, who would hang their soft cloth or leather from the rigid frames. By the early 20th century, they expanded to include a wide range of other metal products. A search on the Mergott name these days turns up their most common products on eBay and other collector sites. Spring-loaded transit and trade token holders come up a lot. So do a variety of "advertising specialty" items—inexpensive things companies print their name or logo on and then give away or otherwise use as promotions—brass desk organizers, blotter paper clasps, perpetual calendars, folding knives, corkscrews, trays, matchbook and matchbox holders, cigarette pack holders, mini steel tape measures, etc. They published newspaper ads across the country, looking for salesmen to expand into a national market. They also produced brass buttons for the U.S. Army and badges for police and fire departments. The



Top: New York themed matchbook holders. Bottom: Salesman's samples of a fire department badge, matchbox holder, and tape measure. *Author's collection*

line of JEM Jr. 120 cameras were perhaps their most mechanically complex products, including flash models and a special green Girl Scout model with their logo as a small metal badge on the front.

When Julius E. Mergott died October 1, 1905 at age 55, his brother, older Ludwig Ferdinand Mergott, took over as company president until his death in 1921 at age 78. The company continued under different management, but still using the established J. E. Mergott name.



Left to Right: JEM Jr. 120 with flash (duplicate behind without flash); JEM Jr. 120 no flash; JEM Jr. 120 Girl Scout special; JEM Flash. Author's collection

SIT-DOWN STRIKE

Mergott's employees were represented by the Steel Workers' Organizing Committee under the Congress of Industrial Organizations (the CIO, before they joined the American Federation of Labor in 1955 to form the present AFL-CIO). Their contract was set to expire February 1, 1939, but Mergott refused to renew it, pressing the union for a new vote first, asking whether workers still wanted CIO representation. Since their members had not called for such a vote, the CIO eyed this as an attempt at undermining the union. With the contract running out, some women were said to have begun a work slowdown in protest. Ten were fired by Mergott management who alleged they had "willfully and deliberately embarked on a slowdown campaign." In response to the dismissals of the ten women, some 240 employees staged a two-day sit-down occupation of the factory.

Such action was not unique at the time. Many saw in the unemployment and worker exploitation of the Great Depression an inevitable end of capitalism and the desperate need for the working class to organize in their own self-interests. That need was popularly met by everything from resurgent labor union activism to embrace of communism. Sit-down strikes became an increasingly common form of civil disobedience in which an organized group of workers seize unauthorized or illegal possession of the workplace by "sitting down" at their stations and refusing to leave, sometimes even locking themselves inside. Employers are then unable to replace them with strikebreakers or move production elsewhere. The company's own valuable machinery is essentially held hostage. The tactic had been

successfully first used in the U.S. by the Industrial Workers of the World (IWW) on December 10, 1906, when some 3,000 strikers at the General Electric Works in Schenectady, New York, stopped production to protest the dismissal of three fellow IWW members, who were ultimately rehired as a result of the action. The United Auto Workers staged sit-down strikes in the 1930s; including the Flint (Michigan) Sit-Down Strike of 1936–1937 that occupied several General Motors plants over forty days, even repulsing efforts of the police and National Guard to evict them. Such large scale successes inspired many smaller actions throughout the 1930s, including the one at Mergott.



United Auto Workers making themselves at home during their Flint sit-down strike. Tying up production gave them leverage but, because they were seizing private property, such tactics would be ruled illegal by the 1939 U. S. Supreme Court ruling.

Library of Congress

Faced with such crippling labor strikes and frequent violence in the middle of an already faltering economy, Franklin D. Roosevelt's New Deal administration responded with the National Industrial Recovery Act of 1933 (NIRA) which authorized the President to regulate industry for fair wages and prices with the goal it would stimulate economic recovery. While the NIRA was ruled unconstitutional in 1935, among the several agencies and reorganizations it spawned was the National Labor Board (NLB), administered by the National Recovery Administration (NRA). Its purpose was to continue a surviving section of the act that had empowered NIRA to protect collective bargaining rights for unions by facilitating fair arbitration. The NLB, however, proved ineffective against a vast backlog of cases. On June 19, 1934, Congress passed legislation empowering the president to appoint a new labor board with added authority to issue subpoenas, hold elections, and mediate labor disputes. On June 29, Roosevelt abolished the NLB and replaced it with a new, three-member National Labor Relations Board (NLRB).

Then as now, the degree to which it is constitutionally proper for the government to intervene in the private sector for public good was subject to debate. As luck would have it, just such a challenge had made its way to the U.S. Supreme Court in time for the decision to impact what happened next at Mergott.

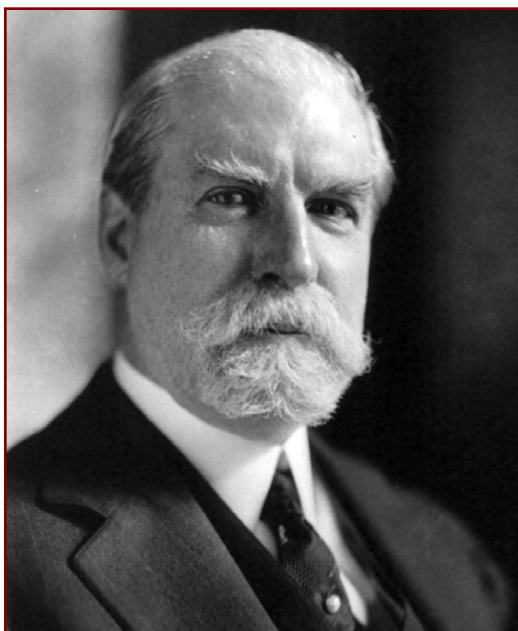
NLRB v. FANSTEEL METALLURGICAL CORP.

In the summer of 1936, workers at Fansteel Metallurgical Corporation's plant near Chicago, Illinois, attempted to form a union. What they didn't know was an antiunion spy had infiltrated their ranks. Fansteel management not only rebuffed several attempts by the nascent union to negotiate a contract, but tried forming a company-run union to undermine support for an independent one. While that tactic failed, it did frustrate the



Top: Photography was - and still is - prohibited in the U.S. Supreme Court when in session. In 1937, Erich Salomon, who specialized in "candid" photographs and unposed portraits, faked having a broken arm and hid a camera in his cast, managing to take this photo of the Hughes Court.

Bottom: Charles Evans Hughes, Chief Justice of the U.S. Supreme Court, serving February 24, 1930 to June 30, 1941. Both wikipedia



independent union's ambitions, though not enough to give up. On February 17, 1937, pro-union workers staged a sit-down strike, occupying a portion of the plant. Ignoring a court injunction ordering them to vacate, sheriff's deputies made a failed attempt at forcefully evicting them two days after the strike began. A second attempt on the 26th, however, was successful. The case was brought before the NLRB, who on March 14, 1938, ordered that Fansteel had to reinstate with back pay 90 of the workers fired for the sit-down strike because the company's actions had precipitated the strike through actions that violated the National Labor Relations Act.

Fansteel tried but failed to get an injunction against the NLRB order from the lower district court, and so it ended up on appeal before the U.S. Supreme Court, argued January 12th and 13th, 1939, and decided February 27, 1939. They ruled in Fansteel's favor five to two, with one abstention. The majority opinion was written by Chief Justice Charles Evans Hughes, joined by Associate Justices James Clark McReynolds, Pierce Butler, and Owen Roberts. In brief, the forceful seizure of property by the strikers and those who helped them in their trespass and occupation of the plant rendered the strike illegal, so their dismissal was lawful and they forfeited NLRB protection. The NLRB did not have authority to compel Fansteel to restore their employment, even if the employer were found to have engaged in illegal labor practices themselves. Associate Justice Harlan F. Stone concurred with the majority, only differing on inclusion of those who had not directly participated in the sit-down. Associated Justice Stanley Forman Reed dissented, joined by Justice Hugo Black. They argued that since the majority opinion had not considered punishment for Fansteel's illegal labor practices, Congress intended the NLRB to have the power to restore things to the *status quo ante*—Latin for "the way things were before"—by ordering the reinstatement of all workers.

SIT-DOWNERS MAY COME BACK

Forgiveness and Reinstatement May Follow Newark Dismissals.

EDGEWATER. — Charles Casey, president of the Aluminum Workers Protective Association, composed of employes of the Edgewater plant of the Aluminum Company of America, charged before 300 members at Enoch's Tavern, Edgewater, that the recent sit-down strike of 250 CIO employes had so interfered with production at the plant, that some employes will not be able to get more than three or four days work at the plant for the time being.

Casey said that alloy cannot be produced fast enough to keep employes of some departments busy for a five-day week. A number of sit-down strikers were discharged this week at Edgewater.

Two hundred and forty persons, discharged from the J. E. Mergott Co. Factory for what company officials termed participation in a two-day sit-down strike last week, today were offered opportunities to apply for reinstatement.

Some requests for reinstatement had already been received, Emanuel P. Scheck, counsel-spokesman for the company, said today, adding that some of the workers asserted they had not joined the sit-down voluntarily.

"We have explained," Scheck said, "that it is not our intention to follow a vindictive course, and that we will consider each application on its merits in relation to the needs of the company's operations."

Scheck said the wholesale dismissals were made after the United States Supreme Court ruled in another case that an employer could not be forced to reinstate employes discharged for sit-down striking.

The strike, called at 8 a. m. Feb. 23, was executed, Scheck said, by members of the Steel Workers Organizing Committee (CIO) and slowed operations at the plant where metal novelties are manufactured.

Watching the outcome of this case was J. E. Mergott Company's legal counsel as they considered their response to the sit-down strike at their Newark plant.

240

National Labor Relations Board v. Fansteel Metallurgical Corporation is considered by legal scholars to be among the top three important labor law decisions of the New Deal era, setting the limits of the National Labor Relations Board powers. It established two relevant precedents. One was to affirm sit-down strikes were illegal. The other was an employer could legally fire such strikers and the NLRB was not empowered to force reinstatement, even if the employer had also broken the law in precipitating the strike.

According to Mergott's counsel, Emanuel P. Scheck, anticipating such a decision, the paperwork had already prepared—240 proverbial pink slips. The Court announced its decision on a Monday and by Wednesday the 240 Mergott employees who participated in the sit-down strike out of around 600 had received notices of termination of employment. As the first such action in the nation following the Court's ruling, news of it found its way into newspapers across the country.

CIO lawyer Samuel L. Rothbard was dismissive, telling reporters, "We are not going to pay attention to the letters [of dismissal]. This is a strike and we are going to win it." The reality, of course, was they couldn't—at least not without quixotically expending inordinate resources while workers' families went without income during a depression. Some workers began individually appealing to Mergott for reinstatement, asserting they had not joined the strike willingly. While it could be said management ultimately won, it paid a heavy price. The truth was they *needed* those 240 employees.

By March 3rd, negotiations began anew, with Scheck telling reporters, "it is not our intention to follow a vindictive course, and we will consider each application on its merits in relation to the needs of the company's operations." By the following day alone, 46 fired strikers had been rehired, though the terms of employment were not made public.

Nothing remains of the J. E. Mergott factory today. The block of Jelliff Avenue it fronted onto is now Belmont Runyon Way, a pedestrian walkway between Belmont Runyon Elementary school, which is on the factory site, and New Dawn Baptist Church. The name, of course, lives on among collectors of the items they used to manufacture. While Mergott itself might be a footnote to an obscure bit of labor law history, the events were anything but minor to the workers whose livelihoods were on the line—something I now keep in mind when indulging in my Mergott Newark collection.

The Jersey Journal from March 3, 1939 reported the J. E. Mergott Company was starting to reinstate strikers. Note also how the Supreme Court ruling impacted a second sit-down strike in Edgewater, NJ.

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