

In the Matter of **HYMIE SCHWARTZ**, DOING BUSINESS AS **LION BRAND MANUFACTURING COMPANY** and **UNITED GARMENT WORKERS OF AMERICA**

Case No. 16-C-976.—Decided March 29, 1944

DECISION

AND

ORDER

On January 8, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices affecting commerce, and recommending that he cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the respondent filed exceptions to the Intermediate Report. No request for oral argument before the Board at Washington, D. C., was made by any of the parties. The Board has reviewed the rulings of the Trial Examiner, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions, and the entire record in the case, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner, with the following addition:

We agree with the Trial Examiner's finding that the respondent discharged and thereafter failed to reinstate Presley because of her union activities, thereby discouraging membership in a labor organization. Forelady Norris admitted that Presley's discharge was motivated, at least in part, by her belief that Presley was organizing a movement among the employees to secure overtime work. However, the respondent contends in his exceptions that such a discharge is not violative of the Act. As we have held in several recent cases,² such

¹ In his concluding findings the Trial Examiner erroneously found that Norris' admission of the discriminatory nature of Presley's discharge was overheard by Norton. We find that the admission was overheard by Jeffrey, as the Trial Examiner correctly found in a previous section of his Intermediate Report.

² *Matter of The Sandy Hill Iron & Brass Works*, 55 N. L. R. B. 1, *Matter of Ever Ready Label Corporation*, 54 N. L. R. B. 551. See also *N. L. R. B. v Tovrea Packing Company*, 111 F. (2d) 626 (C. C. A. 9), cert denied, 311 U. S. 668, modifying and enforcing 12 N. L. R. B. 1063. In *N. L. R. B. v Central Steel Tube Company*, 139 F. (2d) 489 55 N. L. R. B., No. 145.

activity comes within the meaning of Section 7 of the Act, and a discharge for such activity also discourages membership in a labor organization, in violation of both Section 8 (1) and (3) of the Act.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (e) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Hymie Schwartz, doing business as Lion Brand Manufacturing Company, Dallas, Texas, and his agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Garment Workers of America, affiliated with the American Federation of Labor, or any other labor organization of his employees, by discharging or refusing to reinstate any of his employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Offer Leona Presley immediate and full reinstatement to her former or a substantially equivalent position, without prejudice to her seniority or other rights and privileges;

(b) Make whole Leona Presley for any loss of pay she has suffered by reason of the respondent's discrimination against her, by payment to her of a sum of money equal to the amount which she normally would have earned as wages during the period from the date of her discharge to the date of the respondent's offer of reinstatement, less her net earnings during such period;

(c) Post immediately in conspicuous places throughout his plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to his employees stating: (1) that the respondent will not engage in the conduct from which he is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) of this Order; and (3) that the respondent's employees

(C C A 8) ent'g 48 N L R B 604, the Court sustained the Board's 8 (1) and (3) finding as to an employee discharged for "attempting to initiate concerted action" to secure a wage increase.

are free to become and remain members of United Garment Workers of America, affiliated with the American Federation of Labor, or any other labor organization, and that the respondent will not discriminate against any employee because of his membership or activity in such organization;

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

INTERMEDIATE REPORT

Mr. Robert F. Proctor, for the Board

Mr. Emil Corenbleth, of Dallas, Texas, for the respondent

Mrs. Irene Greathouse, of Dallas, Texas, for the Union.

STATEMENT OF THE CASE

Upon a first amended charge duly filed on November 16, 1943, by United Garment Workers of America, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Sixteenth Region (Fort Worth, Texas), issued its complaint dated November 19, 1943, against Hymie Schwartz, doing business as Lion Brand Manufacturing Company, herein called the respondent, 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 National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and notices of the hearing thereon were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that: (1) the respondent through his named agents and employees has disparaged and expressed disapproval of the Union, has interrogated his employees concerning their union affiliation and has urged, persuaded, threatened and warned his employees to refrain from assisting or becoming members or remaining members of the Union; and (2) the respondent on or about June 29, 1943, discharged Mrs. Leona Presley and has since failed or refused to reinstate her because she joined or assisted the Union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

On or about November 29, the respondent filed his answer in which he admits certain facts as to the nature of his business but denies that he engaged in any unfair labor practices as alleged in the complaint. The answer avers as an affirmative defense that Presley was discharged because she was a slow operator and refused and failed in her employment to work or produce in accordance with the instructions of the respondent.

Pursuant to notice, a hearing was held in Dallas, Texas, on December 2, 1943, before the undersigned, Charles E. Persons, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by one of its officials. All parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence was afforded all parties.

At the opening of the hearing the respondent moved that all witnesses be excluded from the hearing room until called to testify. This motion was granted without objection subject to the Board's established policy which excepts the complaining witness from the operation of this rule. The respondent moved to dis

miss the complaint generally because its allegations did not conform to those in the first amended charge and specifically to dismiss paragraphs 7, 7 (a) and 7 (b) for the same reason. This motion was denied. At the close of the hearing the respondent renewed his motion to dismiss the complaint on the ground that the evidence did not sustain its allegations. This motion was taken under advisement and is now denied. The Board moved to conform the pleadings to the proof. The respondent joined in this motion so far as it affected his answer and it was granted by the undersigned. At the conclusion of the hearing the parties were notified that they might participate in oral argument before the undersigned. All parties waived oral argument. The parties were duly advised that they were entitled, upon request made before the close of the hearing, to file briefs for the consideration of the Trial Examiner. No such request was made and no briefs have been received.

Upon the entire record in the case and from his observation of the witnesses the undersigned makes the following:

FINDINGS OF FACT

I THE BUSINESS OF THE RESPONDENT¹

The respondent, Hymie Schwartz, an individual doing business as Lion Brand Manufacturing Company, is engaged in the manufacture, distribution and sale of men's wearing apparel at his plant in Dallas, Texas. His present operations are on contracts for the United States Government in the manufacture of clothing for the Armed Forces. During the year preceding the hearing the respondent purchased raw materials consisting of cloth, thread, related products and supplies valued at approximately \$300,000, of which approximately 95 percent was transported in interstate commerce to the respondent's plant from outside the State of Texas. During the same period the respondent's sales of manufactured products were approximately \$500,000, of which about 65 percent were made to customers in States other than Texas. The respondent admits that he is engaged in interstate commerce within the meaning of the Act.

II THE ORGANIZATION INVOLVED

United Garment Workers of America is a labor organization affiliated with the American Federation of Labor and admits to membership employees of the respondent.

III THE UNFAIR LABOR PRACTICES

A. *Sequence of events; interference, restraint, and coercion; the discharge of Leona Presley*

Agents of the Union began passing out leaflets each week before the respondent's plant about May 1, 1943. Bi-monthly meetings were held and employees of the plant were solicited to sign authorization cards. Some signatures were secured in May and the organizational effort continued at least through June.

Mrs. Susie Westerman, an employee of the respondent from January to August 1943, testified relative to a conversation, in May or June 1943, with Mrs. Orea Norris, her forelady, as follows.

She called me and said, "Sue, come here". and then she said, "Did you hear about Conroe² having another union election. I hear they went

¹ These findings are based on a stipulation of the parties incorporated in the record and on allegations in the complaint admitted by the respondent in his answer.

² The correct name is Conro.

union—C I O.” And, I said I didn’t hear about it, but that I was working down there at about the time of that election and then she asked me if I knew Myriel Vining and I said I knew her well and she said, “You know she came down here and applied for a job and I was fixing to put her on and Mrs Cowan [Abbie Cowan a forelady] called me aside and told me she was a C. I O and then I told her I didn’t need her right then and asked her to leave her telephone number and I would call her, and then I went to Mr Fisher [Joe Fisher, superintendent of the factory] and told him what I had done and he said that I had done the right thing that they didn’t want anything like that in the shop

As shown by the Board’s records an election was held on March 4, 1943, after public hearing on January 27, 1943. The union concerned was the Amalgamated Clothing Workers of America, C I O. It was certified as exclusive bargaining agent at the Conro plant on March 20, 1943.³

Norris denied that she had this conversation with Westerman and also that ascribed to her by Westerman with Cowan. Cowan also denied that the latter conversation took place. Norris was not questioned specifically regarding the reference to Fisher, nor was Fisher questioned about it when he appeared as a witness. Norris testified that she did not have a place open when Vining applied for a job. After giving Vining a try out Norris took her application promising to call her if a certain operator did not prove satisfactory. Vining was not called thereafter.

Westerman was in every respect a ready and truthful witness. Testimony given by her as to other matters was fully substantiated. Norris was badly discredited on cross-examination as appears hereinafter. She had frequent lapses of memory and her testimony was at times highly selective. Under these circumstances the undersigned credits the testimony of Westerman and finds that the conversation above set forth occurred substantially as stated by her.

Mrs Leona Presley was hired by the respondent on April 7, 1943, and discharged on June 29, 1943. She first worked on second banding, and first banding. Line number 4, of which Norris was forelady, had been reorganized from sport shirt production to pants manufacture about October 1, 1942. On May 7, 1943, this line began the manufacture of pants on a United States Government contract for army clothing. There were 47 machine operators on this line and 6 inspectors. At this time Presley was given a station stitching front pockets on the right side of the pants. This work she continued until her discharge.

Presley did not actively engage in union activities until very shortly before her discharge. On June 27 certain employees on line number 4 asked Presley if she could get some of the Union authorization cards. She agreed to do so and asked Hattie Norton, an employee on line number 4 who had told Presley that she was a member of the Union, to get them. Norton in turn asked Mrs Marie N. Bailey, a representative of the Union actively engaged in the organizational campaign, for a supply of the authorization cards. Bailey gave Norton the cards in a plain white envelope on the 27th. The next morning before the power was on, Norton placed the cards on Presley’s machine. Presley put the envelope in the pocket of her machine and told one of the employees during the 10 o’clock rest period that they were there. The employees individually took cards, signed them and replaced them. That evening, the 28th, Presley took the cards home. The next day she placed them on Norton’s machine, who

³ See *Matter of Conro Manufacturing Company and Amalgamated Clothing Workers of America (C I O)* February 12, 1943, 47 N L R B. 456. The Board’s Certification of Representatives is unpublished. It bears date March 20, 1943.

in turn delivered them to Bailey. Ten or eleven cards had been signed. This number includes one signed by Presley dated June 28, 1943.⁴

On the evening of June 29, after the signed cards had been handed to Norton and before Presley had punched out on the time clock she was notified of her discharge by Norris. What was then said is sharply in dispute. Presley's version in her testimony was as follows:

She [Norris] called me and said, "Leona, I want to speak to you and I understand that you have been passing out cards for the girls to get more money and also a petition", and she told me the girl who had gotten one

Q Now who was that girl?

A. Lucille.

Q That girl had told her that you were passing out cards to get more money?

A Yes sir, and also that she [Norris] had gotten orders to check me out. And I said I had passed out cards and signed one myself

Q. You didn't deny that you had passed out cards to get more money—is that right?

A That is right. But I couldn't say that I passed out a petition when I had not.

* * * * *

Q Was there anything said about the union?

A. No, sir.

Norris testified on direct examination as to this conversation: "I told her that I was not going to use her any more and she wanted to know why and I told her I had to have somebody to keep the work going on there so that we could get out our production." Norris further testified that this was the whole conversation; that she did not remember whether or not she told Presley she had instructions to check her out, but she did not think so. Norris further stated that she did not remember whether Presley said anything or not.

During cross-examination Norris was confronted with her sworn statement given to a Field Examiner for the Board on August 25, 1943, less than 2 months after Presley's discharge. In this statement Norris averred as she admitted during her cross examination:

On or about June 29, 1943, becoming exasperated with Mrs. Presley's work I fired her, after talking it over with Mr. Fisher. At the time I fired Mrs. Presley, I said: "Mrs. Presley, I want to speak to you a minute." I told her that she was holding up the work and that I would have to let her go. During the conversation I said to Mrs. Presley, "You are getting the operators stirred up to go down to ask for an hour overtime every afternoon." One of the girls, Louise Hazelwood had told me that the girls were getting together to go down and ask Mr. Schwartz for an hour overtime every afternoon.

The account given by Presley, as well as Norris' sworn statement, is supported by an incident which occurred on June 30 in the morning, before the power came on. Westerman testified as follows:

She [Norris] told me, "I discharged Mrs. Presley yesterday. She is telling now that I discharged her because of her passing union cards around".

* * * * *

⁴ This account is based on testimony by Presley, Norton and Bailey. Some discrepancies developed as to the exact manner of handling the cards, but the material facts are not in dispute.

I said, "Well is that so?" And, she said, "Yes I didn't discharge her for that, I discharged her because she was taking up a petition to go down and ask Mr Schwartz for more money and you know if she went down there with a petition and asked for more money Mr. Schwartz would close this line down and you know Leona is telling around that we are paying you and Audrey in order to hold you up here, fifty cents an hour," and I said, "Mrs. Norris you know that is not so."

The reference to "Audrey" was to Audrey Jeffrey, an employee on line number 4. Jeffrey testified that she overheard part of Norris' conversation with Westerman that morning to the effect that "the reason she let Mrs Presley go was because she was getting up a petition to take down to Mr Schwartz to get more money and Mrs. Norris told her not to because any time she did that Mr. Schwartz would close down the line."⁵

Further substantiation for the account given by Presley is found in Norton's testimony, which is credited by the undersigned that on meeting Norton in the plant on the morning of June 30, Presley told her: "They laid me off for signing those cards." Norton replied that she would report the matter to Bailey.

After considering the record, the demeanor of the witnesses, the detailed and direct character of Presley's testimony, in contrast with the vague and contradictory character of Norris' testimony⁶ together with her frequent lapses of

⁵ These references to a petition for a wage increase are not clearly explained in the record. None of the witnesses called disclosed any knowledge of such a petition. It is clear that if such a document was circulated Presley had no responsibility for it. Norton told of an incident which may have furnished the basis for Norris' reference to a petition. This testimony reads: "One morning Mrs White [an employee] was there and one of the finishing girls, I do not know her name, and she came along there asking the girls to go downstairs to ask for more money and when she left Mrs Norris asked me what she said and I told her."

⁶ The character of Norris' testimony is indicated by the following extract from her reduced examination by respondent's counsel: Norris had testified that several of the employees had talked to her about their desire to work an hour's overtime each day and their intention to take the matter up with Schwartz. Norris' testimony continues:

Q. How did Mrs. Presley fit in that picture about this hour overtime? About what was said or anything about it? As far as she was concerned prior to the time she was discharged is what I am talking about?

A. I do not recall.

Q. I am talking about that petition asking for one hour overtime.

A. No, not that I recall.

Q. But you had had such a conversation with some of the other girls?

A. Yes, sir.

Q. Did you know or did you not know when you fired her that she was having anything to do with this demand or whatever you want to call it for this hour's overtime?

A. I do not remember.

Q. You cannot recall whether Mrs Presley was mixed up in that?

A. I don't remember.

Q. You cannot now recall or do you recall that Mrs Presley had been agitating among the girls for this hour's overtime?

A. I don't remember.

Q. It was stated in this statement of yours something about a Mrs Hazelwood—now who was Mrs. Hazelwood?

A. She was one of my operators.

Q. Was she working there at the time Mrs Presley was?

A. Yes, sir.

Q. You stated in this statement you asked Mrs Hazelwood who started it. Do you recall talking to Mrs Hazelwood about this overtime?

A. I don't remember just exactly what was said.

Q. But you do recall having had a conversation with her?

A. Yes, sir.

Q. What was the purpose of that conversation so far as you were concerned?

A. I was trying to get the girls to go to work to get cut that forty-five dozen per day and then they would get more money.

memory, the undersigned concludes and finds that the account given by Presley of the conversation at the time of her discharge is substantially correct

B. Respondent's affirmative defense for the Presley discharge

Norris hired Presley and was primarily responsible for her discharge. She testified on direct examination that Presley "was slow for one thing and she didn't stay at her machine as she should have" When pressed for further detail as to Presley's conduct Norris testified: "She would go to her machine and work for a while and then when my back was turned, she would be away from the machine again." Under cross examination Norris admitted that there was no rule against leaving the machine nor against talking to other employees, and that there were other operators who talked. She averred, however, that Presley "right then" was the only one who was slow in the operation on that line. Norris' testimony was that she asked Presley "once or twice" not to talk with other operators. Norris further stated that after consulting Fisher she discharged Presley for "holding up production," and that this was the sole reason.

Fisher corroborated Norris fully testifying: "I would always keep after her [Presley] about being away from her machine . . . and I told her if she [Norris] couldn't keep her at her machine and to speed up production more we would have to get somebody in her place." Fisher stated that Presley was discharged either on the day of this conversation or on the following day. Under cross examination Fisher further stated that he told Norris "to coach her [Presley] along and see if she could help her." His first acquaintance with Presley was when he called Norris' attention to her. He was unable to state her exact function on the production line. He admitted that other operators held up production at times and specified "those who worked on the pockets and on the back and front" and "occasionally the side seamers."

Schwartz supported the testimony of Norris and Fisher to the extent that he testified that when the charges were under investigation by the Board's Field Examiner he was given substantially the same explanation of the Presley discharge by Norris and Fisher as that stated in their testimony.

Presley testified positively that she kept work ahead and that no stoppage of the flow of work was occasioned by delay ascribable to her. She declared further that she never left her machine to talk with other operators and that she had never been reprimanded or criticized by her supervisors. She testified that she had been praised by Superintendent Fisher on the morning of the day of her discharge and that on inquiring of him about her work "he said it was good work and to keep it up"⁷

Presley's testimony regarding her assiduous attention to her duties and keeping ahead of her work was substantiated by that of three fellow employees on line number 4, all of whom were so situated that they had her under easy observation. Westerman, whose experience in garment factories dates from 1923, was a side seamer and depended on Presley for her fronts. Westerman testified that Presley was very seldom absent from her machine, never fell behind in her work and usually had three or four bundles ahead. It was Westerman's testimony that stoppages on the line were due to slowness on the

⁷ This testimony of Presley was corroborated by employee Norton whose testimony reads: "He was right there back of me beside her machine and she asked him about her work and he said it was good work and she should keep it up." When questioned as to the date, Norton replied: "I think it was the day before she was fired." Fisher when asked about this incident answered, "I do not remember it"

part of operators on the backs. Westerman had known Presley for 9 years and had worked with her in four different factories. She said of her work: "I would say she was good. Not on the average. She was a number one operator."

Jeffrey, also a side seamer, worked on the line within 8 feet of Presley. Jeffrey testified that Presley did not leave her machine to talk to others, and that she always had plenty of work ahead. Jeffrey agreed with Westerman in ascribing the cause for delay to operators on "the left side of the back."

Norton, whose machine was within 4 or 5 feet of Presley's, testified that Presley "never left her machine except to go to the rest room or something like that." She further stated when asked whether Presley was holding up production: "On her side she was considerably ahead I would say. They were piled up there in front of her on all sides." As to the cause of slow production Norton testified: "Well it was the backs that we were waiting on. Our side sewed on backs several days and we were pulled off our work and helped the other side."

Schwartz admitted that since Presley's discharge line number 4 "had several ups and downs on the production which I cannot explain myself. There were times when we jumped from forty-five, forty-six, seventy-one, and eighty-two dozen per day and we paid off and then all of a sudden it dropped back down." The output fell as low as 40 dozen per day. However, no one was discharged on these occasions as Schwartz freely admitted. Schwartz testified that 45 dozen output per day should be regarded as the minimum output for line number 4 and that 60 dozen was a normal production expectation. Normal production should have been reached within 12 weeks after the reorganization of the line from sport shirt production to operation on pants. This would mean that the line should have been in full production by January 1, 1943. The record does not disclose how much reorganization was necessary when the line began production of pants for the army. The transfer of Presley to a station on line number 4 at that time suggests that some reorganization took place.

Production figures by weeks for June and July do not indicate that gain in production resulted from the discharge of Presley. These data are:

	<i>Dozen</i>		<i>Dozen</i>
June 4	187	July 2	160
June 11	133	July 9	117
June 18	140	July 16	104
June 25	157	July 23	122
	—	July 30	164
Av. per week	154		—
		Av. per week	133

Thus the average weekly production during Presley's employment in June was 154 dozen. For the month of July after her discharge the average fell to 133 dozen. Even with full allowance for the loss of production due to the July 4 holiday, production performance was distinctly better during Presley's employment in June than during the month following. It should be remembered that Presley was a well experienced operator. Since Fisher admitted that line number 4 had only a few experienced operators and "most of them were trained right there," some slowness in production must have resulted from this schooling of green operatives.

After considering the full record, the demeanor of the witnesses and the substantiation or modification of their testimony resulting from cross examination,

³ This week included July 4th, a holiday

the undersigned concludes and finds that the respondent's allegations that Presley was in inattentive and inefficient operator are not sustained by the record.

Both Norris and Fisher denied knowledge of Presley's union activity. Indeed they denied knowledge of any union activity at the plant Schwartz, however, readily admitted that he had seen union leaflets distributed both before and after Presley was discharged. He stated, "I got one every time I passed there." Cowan also frankly testified that union leaflets had frequently been distributed before the plant and stated that she had discussed them with Norris while "going up and down the steps." Since, as found above, Norris made reference to Presley's passing out cards when notifying Presley of her discharge, the undersigned places no credence in Norris' denial of knowledge of Presley's union activities. Further Norris' sworn statement, the truth of which she confirmed in her testimony, ascribes Presley's discharge in part to her alleged concerted activity in organizing a movement to seek an hours overtime work daily. At the close of her testimony Norris was asked :

Mrs Norris, following the line of testimony I would take it you stated you fired Mrs. Presley for two reasons, . one because she was slow in holding up production and the other because she **was** agitating for that overtime Is that correct?

A. Yes, sir.

The undersigned finds it significant that Presley's discharge followed immediately upon her activity in securing signatures to union authorization cards. This unrefuted fact together with Norris' statements on notifying Presley of her discharge and respondent's failure to substantiate its affirmative defense make it clear that the discharge and subsequent failure to reinstate Presley was not for inattention to her duties and for inefficiency but rather because of her union activities. The undersigned so finds

C. Conclusions

The undersigned finds that the respondent has discouraged membership in a labor organization by discriminating in regard to the hire and tenure of employment of Leona Presley and has thereby interfered with, restrained, and coerced his employees in the exercise of rights guaranteed in Section 7 of the Act. The undersigned further finds that by the statements of Norris relative to the application for employment of Vining above described and by Norris' explanation of the reason for Presley's discharge as stated to Westerman and overheard by Norton, the respondent has interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed in Section 7 of the Act

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

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

V. THE REMEDY

Having found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that he cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act

It has been found that the respondent discharged Leona Presley for the reason that she joined and assisted a labor organization and engaged in concerted ac-

tivities for the purposes of collective bargaining and other mutual aid and protection. It will be recommended that the respondent offer to Presley immediate and full reinstatement to her former or a substantially equivalent position without prejudice to any seniority or other rights and privileges she may have. It will be further recommended that the respondent make Presley whole for any loss of pay she has suffered by reason of her discriminatory discharge by payment to her of a sum of money equal to the amount she would normally have earned as wages from the date of her discharge to the date of the respondent's offer of reinstatement less her net earnings⁹ during said period.

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

CONCLUSIONS OF LAW

1. United Garment Workers of America, affiliated with the A. F. of L., is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Leona Presley, thereby discouraging membership in a labor organization, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing his 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.

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

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Hymie Schwartz, doing business as Lion Brand Manufacturing Company, Dallas, Texas, and his agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in United Garment Workers of America, affiliated with the American Federation of Labor, or in any other labor organization by discriminating in regard to the hire and tenure of employment, or any terms or conditions of employment of his employees;

(b) In any other manner interfering with, restraining or coercing his employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Offer to Leona Presley immediate and full reinstatement to her former or a substantially equivalent position without prejudice to her seniority or other rights and privileges;

⁹ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v N L R. B.*, 311 U. S. 7.

(b) Make whole Leona Presley for any loss of pay she may have suffered by reason of the respondent's discrimination against her by payment to her of a sum of money equal to the amount which she would normally have earned as wages from the date of her discharge to the date of the respondent's offer of reinstatement less her net earnings¹⁰ during such period

(c) Post immediately in conspicuous places throughout his plant and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to the employees stating (1) that the respondent will not engage in the conduct from which it is recommended that he cease and desist in paragraph 1 (a) and (b) of these recommendations; (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) and (b) of these recommendations; and (3) that the respondent's employees are free to remain or become members of United Garment Workers of America, or any other labor organization, and that the respondent will not discriminate against any employee because of his membership or activity in such organization;

(d) File with the Regional Director for the Sixteenth Region on or before ten (10) days from the date of the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing recommendations.

It is further recommended that unless on or before ten (10) days from the receipt of this Intermediate Report the respondent notifies said Regional Director in writing that he has complied with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 33, effective November 26, 1943, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

CHARLES E. PERSONS,
Trial Examiner.

Dated January 8, 1944.

¹⁰ See footnote 9, *supra*.