

In the Matter of JULIUS COHN D/B/A COMAS MANUFACTURING COMPANY  
and INTERNATIONAL LADIES GARMENT WORKERS UNION, AFFILIATED  
WITH THE AMERICAN FEDERATION OF LABOR

*No. 15-C-953.—Decided November 13, 1944*

DECISION  
AND  
ORDER

On July 15, 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 and that it had not engaged in certain other unfair labor practices, and recommending that he cease and desist from the unfair labor practices found and take certain affirmative action, as set out in the copy of the Intermediate Report attached hereto, and that the complaint be dismissed as to the remaining allegations. Thereafter, the respondent and the Union filed exceptions to the Intermediate Report and supporting briefs. Oral argument before the Board at Washington, D. C., was waived by the parties. The Board has considered the rulings of the Trial Examiner at the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the briefs and exceptions of the respondent and the Union, and the entire record in the case, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner, with the additions noted below:

We agree with the Trial Examiner that the respondent's conduct on February 4, 1944, was violative of Section 8 (1) of the Act. During working hours on that day, the respondent, Julius Cohn, called together his employees and read a prepared speech to them.<sup>1</sup> Interrupting and following the reading of the speech, Cohn answered a number of questions raised by several of the assembled employees. The respondent contends, in his brief before the Board, that his statements on that occasion are privileged as free speech. Viewing Cohn's remarks during his prepared speech and answers together as a whole, we find no merit in this contention.

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<sup>1</sup> The full text of the speech is set forth in the copy of the Intermediate Report attached hereto.

The burden of the respondent's remarks was a plea to his employees to continue to bargain directly with him on an individual or group basis as opposed to collective bargaining through the Union. To buttress this plea, Cohn declared that "wages cannot be increased today except by permission of the War Labor Board"; that the Company itself was already taking steps to secure that permission; and that "it is impossible to have a union here or raise wages." By such statements Cohn indicated to the employees that there was little or no use in their having a union to represent them.<sup>2</sup> Then, after raising a question in the minds of the employees as to whether the Union was a "proper union" to represent them in view of the Company's "discontinuance" of the manufacture of ladies' garments, the respondent implied that the selection of the Union might result in serious economic disadvantage to the employees. In answering a question of one of the employees, Cohn made clear what was implicit in these remarks by openly threatening to close the plant before paying union wages. The respondent then went on to state, in effect, that he would never agree to a closed shop even if the Union were selected by the employees as their exclusive bargaining representative. Such a statement, as we have declared in two recent decisions,<sup>3</sup> is itself unlawful for it bespeaks a determination not to bargain with the Union on so vital a matter as the closed shop, "a frequent subject of negotiations between employers and employees."<sup>4</sup> Finally, in answering the questions of several employees during and after the reading of the prepared speech, Cohn made other threatening and coercive statements such as that the employees could quit if they did not like the conditions in the respondent's plant.

It is manifest from the above brief description of Cohn's talk, and we find, that the respondent's statements to his employees on February 4, 1944, constituted interference, restraint, and coercion within the meaning of the Act.<sup>5</sup>

### ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Julius Cohn d/b/a Comas Manufacturing Company, New Orleans, Louisiana, and his officers, agents, successors, and assigns shall:

<sup>2</sup> See *Matter of Martin Food Products, Inc.*, 52 N. L. R. B. 1131, where substantially similar remarks were found violative of the Act

<sup>3</sup> See *Matter of Tampa Electric Company*, 56 N. L. R. B. 1270 and *Matter of Cameron Can Machinery*, 57 N. L. R. B. 1768.

<sup>4</sup> *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350, 360.

<sup>5</sup> We find that the coercive effect of the respondent's statements, as well as of the respondent's conduct as a whole, was not neutralized by the casual remark at the opening of Cohn's speech that the "Company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the Company" See *Matter of Agar Packing & Provision Corporation*, 58 N. L. R. B. 738

1. Cease and desist from in any manner interfering with, restraining, or coercing his employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Ladies Garment Workers Union, affiliated with the American Federation of Labor, or any other labor organization, 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) Post immediately in conspicuous places at his plant at New Orleans, Louisiana, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to his employees stating the respondent will not engage in the conduct from which he is ordered to cease and desist in paragraph 1 of this Order;

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

IT IS FURTHER ORDERED that the complaint, insofar as it alleges that the respondent discriminated against Clemence Solares, Lena LaVite, Rosalie Dumon, and Marguerite Ortolano, within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

MR. JOHN M. HOUSTON took no part in the consideration of the above Decision and Order.

#### INTERMEDIATE REPORT

*Mr. Marcel Mallet-Prevost*, for the Board.

*Mr. Lawrence A. McLony*, of New Orleans, La., for the respondent.

*Mrs. Beulah Irwin*, of Chattanooga, Tenn., for the Union.

#### STATEMENT OF THE CASE

Upon an amended charge duly filed on March 29, 1944, by International Ladies Garment Workers Union, affiliated with American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued its complaint dated March 30, 1944, against Julius Cohn, doing business as Comas 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 notice of hearing were duly served upon the respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that the respondent: (1) on or about February 4, 1944, discharged Clemence Solares, and thereafter refused to reinstate said employee, because of her ad-

herence to and activities in behalf of the Union; and (2) by these acts, and from on or about January 27, 1944, to date through his officers, agents and employees, by disparaging and expressing disapproval of the Union; by urging, persuading, threatening and warning his employees to refrain from joining or assisting the Union; and by urging his employees to withdraw from membership in the Union, had interfered with, restrained and coerced and was interfering with, restraining and coercing his employees in the exercise of the rights guaranteed in Section 7 of the Act.

On or about April 10, 1944, the respondent filed an answer, admitting certain allegations of the complaint as to the nature of his business but denying that he had committed any unfair labor practices.

Pursuant to notice, a hearing was held at New Orleans, Louisiana, from April 12 to April 15, 1944, inclusive, before the undersigned Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel and the Union by its representative. All of the parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties.

At the opening of the case, counsel for the Board moved to amend the complaint so as to further allege that the respondent on or about March 13, 1944, laid off and discharged Lena LaVite, and thereafter refused to reinstate said employee, and on or about March 23, 1944, failed and refused to increase the wage rates of Rosalie Dumon and Marguerite Ortolono, and thereafter refused to increase the wage rates of said employees, solely by reason of their adherence to and activities in behalf of the Union. The respondent's counsel requested about a week's continuance of the hearing in order to prepare the defense to the new allegations. The request for a continuance was denied. The motion to amend the complaint was granted over respondent's objection. The respondent filed at the first day of hearing a supplemental answer in which he denied the commission of any unfair labor practices as alleged in the amended complaint.

At the conclusion of the case, counsel for the Board and counsel for the respondent argued orally before the undersigned. Although offered an opportunity to do so, none of the parties filed briefs.

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 RESPONDENT

The respondent is an individual doing business under the trade name and style of Comas Manufacturing Company, in a plant located at New Orleans, Louisiana. The respondent is engaged in the manufacture of men's pants and slacks for civilian use. The respondent is also engaged in the manufacture of work clothes for use by the United States Army. For a number of years prior to February 1944, the respondent also engaged in seasonal manufacture of women's jodhpurs and slacks. The raw materials used during the 12-month period preceding April 1944, amounted in value to more than \$50,000, of which more than 60 percent was shipped to the plant from points outside the State of Louisiana. The finished products produced during the same period of time amounted in value to more than \$50,000, of which more than 60 percent was sold and transported to points outside the State of Louisiana.

The respondent employs approximately 60 to 70 persons in the operation of his plant.

## II. THE LABOR ORGANIZATION INVOLVED

International Ladies Garment Workers Union, affiliated with the American Federation of Labor, is a labor organization which admits to membership employees of the respondent.

## III. THE UNFAIR LABOR PRACTICES

A. *Interference, restraint, and coercion*

Organizational activities in the respondent's plant were first started by the Union in the first part of October 1943, and it does not appear that any other union had ever attempted to organize the plant Octavia Mack,<sup>1</sup> the floorlady, was told by another employee concerning this union activity when it first started or shortly thereafter.

At some time in January 1944, Mack was talking to some unidentified employees while in the dressing room. During the conversation Mack stated, "I don't see why they want to join the union. I think it is stupid. It is humbug."<sup>2</sup>

The evidence shows that by January of 1944, a considerable number of employees had become members of the Union. On or about January 27, 1944, the respondent posted a notice on the bulletin board in its plant to the effect that the respondent would no longer engage in the manufacture of ladies' garments.<sup>3</sup>

The first union meeting of employees was held on February 1, 1944. On February 4, the respondent, Julius Cohn, read the following speech to his employees in the plant during working hours:<sup>4</sup>

.. Some of you have asked that I call you together to explain the position of the Company with respect to a statement that has been made to the employees to the effect that if you do not join the International Ladies' Garment Workers' Union you will lose your jobs. I will state the position of the Company on this question unequivocally. This is an open shop in a true sense of the word. Members of labor unions and non-members of labor unions are employed without any discrimination whatever, and so long as I am connected with the management of this Company the policy will continue the same. The Company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the Company. On the other hand, we feel that it should be made equally clear to each employee that it is not at all necessary for her or him to join any labor organization in order to hold his job, despite anything that he may be told to the contrary. If you join such an organization, you must realize that you will be forced to pay dues to the Union thereafter.

The Company has always dealt with its employees in full recognition of the right of every individual employee or group of employees to deal directly

<sup>1</sup> Mack supervises the sewing department.

<sup>2</sup> Angelina Prior testified that she heard Mack make the above statements and the undersigned credits her testimony in this respect. Mack denied the statement attributed to her.

<sup>3</sup> For at least 6 years prior to 1944, the respondent manufactured ladies' garments for about 6 weeks in the late fall. At about the time of the posting of the above notice, the respondent had just completed an order for ladies' garments. No such notice had ever been posted by the respondent during prior years.

<sup>4</sup> Cohn testified; in substance, that he read the above speech from a paper, that he first told his employees that he was reading it so that he would not be misquoted, and that he did not make any statements other than the above during his speech except to answer questions of employees when interrupted by them some three or four times during the course of or after the speech. The undersigned credits Cohn's testimony in this respect. Witnesses for the Board testified that Cohn, while making his speech, sometimes looked at a paper he was holding and at other times did not.

with me with respect to matters affecting their interest. If you, individually or as a group, at any time have any matters which you wish to discuss with us, we will be glad, as we have always been, to meet with you and discuss them frankly and fully. It is our earnest desire to straighten out in a friendly manner, as we have done in the past, any questions that you may have in mind.

Of course, the important thing that all of us are thinking about is wages, so let's talk about them a little. Where do they come from? They come from the money received from the sales of our product to our customers, and, in order that sales may be made to provide the money for wages, we must be very careful how we set the price of our product. If the price is too high, we lose orders. If the price is too low, we lose money; and in either event, the money for wages is not there. You have a right to know, I believe, just what the Company's wage policy is. Our wage policy is to pay wages as high as possible and still continue to be able to sell our product, get repeat orders and keep as many people employed as we possibly can. Finally, it is to pay wages as high as possible and keep the business sound financially so that when the period of slack time comes after the War, we will have a strong company and be able to go out and fight for the business that is going to be so hard to get at that time. As you know, wages cannot be increased today except by permission of the War Labor Board. The Company, in cooperation with the other firms engaged in the manufacture of men's garments, has been taking steps for the last two months to have wage brackets established in Dallas under which we hope to get permission from the War Labor Board to install a system which will result in higher wages for you. These plans were finally agreed upon at a convention of the Garment Industry which took place this last week-end, and should become effective at an early date. The International Ladies' Garment Workers' Union has had no part in these plans. It has been a voluntary action on the part of the manufacturers of men's garments.

As you know, this Company has discontinued the manufacture of ladies' garments. We are and will continue to be engaged in the manufacture of men's garments. You will have to ask yourself, in reaching a decision as to whether you wish to join this union, whether a union which by its name discloses that it is interested in ladies' garment workers is a proper union to represent you. As I have stated above, we must compete with the other manufacturers of men's garments. In order to do so, our expenses and costs of manufacture must not exceed theirs. If, on the other hand, all of us make more favorable arrangements for our employees at the same time, such as have been under contemplation, we can go forward with that plan without injury to any of us or our employees. If we are forced to deal with a union that has had no part in these plans and who are primarily engaged in the representation of workers on ladies' garments, we may be put at a very great disadvantage. As I have stated above, we cannot pay higher wages than our competitors pay and continue to be able to sell our products in competition with them. We hope that, by the continuance of this policy, we will have a strong organization when the War has terminated and thus be able to continue a fair wage rate for you when business is slack.

It is reasonable to believe that our interests are mutual and can best be promoted through confidence and cooperation.

In conclusion, I wish to again emphasize that you do not have to join any union in order to keep your job in this plant, and there is nothing that can be done by the union or anyone else which would change this situation. Even if the union should represent a majority of you and become the bargaining

agent, we cannot be forced to sign a contract which makes it necessary that you join the union in order to keep your job.

It is undisputed that during Cohn's speech, Mack told Cohn to tell the employees that they could have their releases if they were not satisfied.

It is also undisputed that Cohn was interrupted during his speech, that the employees were told they could ask questions at the end of his speech and that either during or immediately after his speech, Cohn answered the questions of certain employees. The testimony identifies the employees who interrupted or asked questions as Angelina Prior, Rosalie Dumon, Margaret Duval, and Clemence Solares. Prior testified, and the undersigned finds, that at the end of his speech she had the following conversation with Cohn:<sup>5</sup>

... So after his speech I raised my hand to talk, and he recognized me, and he asked me what was my name, and I told him, I started talking, and I told him that I had joined the Union, not to hurt him or anybody, but I wanted to better myself; that I couldn't live on the wages that he was paying; and so he told me that there was no union factory in this town.

\* \* \* \* \*

He told me that there was no union factory in this town, and if I wanted to quit he would give me my release. So I told him no, I had to work. I can't quit. . . . he told me that he couldn't pay those wages here in New Orleans. I told him, not far from here they have a factory. It has a union, and they pay twice more than they are paying here. I says, "I don't see why we can't have a union in New Orleans." I told him Mobile, Alabama, and he says, "Why don't you go to Mobile to work?" So I told him I had my home here. I couldn't leave it. So then he told me again if I wanted my release, I would get it. So I told him again, no, I had to work. So then he started telling me it was impossible to have a union here or to raise wages. So I finally told him, "Mr. Cohn, you and I can't agree on that, so I will sit down."

At some point in his speech Cohn said, "Why on God's green earth did you pick on me to be the first.;" and, "I will close my doors before I do that (pay union wages)." He further stated that "a government man" had come to see him and told him . . . just who was in the union and who was not in the union." The undersigned finds that Cohn made the above statements either when interrupted in his speech by employees or when answering their questions at the end of his speech.<sup>6</sup>

<sup>5</sup> The substance of the above conversation was also testified to by Rosalie Dumon. As to this conversation, Cohn testified that Prior said that she could not work for the wages that he paid; that he then explained that he hoped to be able to make some wage adjustments; that Prior mentioned she could get better wages in Alabama; that he replied that he did not "know anything about that" but that he could not pay more at that time; and that Prior then said, "\* \* \* you and I don't see it the same way."

<sup>6</sup> At the start of the hearing, the respondent requested a segregation of witnesses. The undersigned granted this request over the objection of Board's counsel and, accordingly, no witness prior to her own testimony heard the testimony of another witness. The testimony of several of the Board's witnesses concerning Cohn's speech was similar in many respects. For example, Ortolono and Corolla testified to the statement concerning "a government man" and that Cohn said he would close his doors before paying union wages; Dumon and Corolla testified to the statement concerning "God's green earth." The undersigned credits the testimony of the above witnesses, especially since the statements are altogether dissimilar to the wording of Cohn's speech, as found above, and therefore could not be construed as interpretations of statements made in the speech.

Cohn and a number of other witnesses for the respondent denied all of the above statements attributed to Cohn. All of these witnesses were still in the employ of the respondent and the undersigned got the definite impression that these employees were anxious to please Cohn and Mack by their testimony, who were present throughout the hearing. In numerous instances this attitude is apparent in the record. Moreover, Cohn's admission that he had conferred with a conciliator of the U. S. Department of Labor shortly before the day of his speech is noteworthy. Accordingly, the undersigned does not credit the denials of Cohn and other witnesses of the respondent in this respect.

As will be hereinafter discussed, Clemance Solares was discharged at the conclusion of Cohn's speech on February 4. On Saturday, February 5, Amelia Ursin had prepared a mass resignation letter addressed to the Union<sup>7</sup>. On Saturday night and all day on Sunday Ursin took this resignation letter to the homes of employees and asked them to sign it. On Monday, February 7, Ursin brought the resignation letter to the plant and asked other employees to sign it. She then gave it to Ida Thomas,<sup>8</sup> who solicited some further signatures. On February 7, Ursin sent the resignation letter to the Union by registered mail.

#### Concluding findings

The undersigned believes and finds that the notice of employees of January 27 concerning the discontinuance of the manufacture of ladies' garments was posted by the respondent solely for the purpose of discouraging membership in and activities on behalf of the Union.<sup>9</sup> Cohn's explanation is moreover unconvincing since the employees would not have expected to work on women's apparel for many months. The following part of Cohn's speech, in the undersigned's opinion, confirms this purpose:

As you know, this Company has discontinued the manufacture of ladies' garments. We are and will continue to be engaged in the manufacture of men's garments. You will have to ask yourself, in reaching a decision as to whether you wish to join this union, whether a union which by its

<sup>7</sup> The above letter was received in evidence. It contains the names of 17 employees, one of which has been scratched out, and is dated February 7, 1944. Ursin testified that she had the resignation prepared by her brother-in-law when one of the employees expressed regret at having joined the Union.

<sup>8</sup> Respondent's witnesses testified, in substance, that Ursin and Thomas, together with some few other employees, are "utility" operators (capable of operating all types of machines), and that Thomas does not give orders to or otherwise supervise the work of any employees. Dumon testified that Ursin at one time took charge of the sewing department during Mack's absence; that for one-half day in December 1943, and on one other occasion, Thomas took charge during Mack's absence; and that on December 31, 1943, she heard Mack tell Thomas to take her "place" if she (Mack) did not come to work on the following Monday. Mack denied that she had ever asked Thomas to take her place or that Thomas or any other employee had taken charge during her absences. Thomas also denied Dumon's testimony in this respect. Ursin, in effect, denied that she had ever taken charge during Mack's absence. The undersigned does not credit Dumon's testimony in this connection, believing that if Thomas and Ursin had actually taken charge during Mack's absence, the facts could have been easily established by a number of witnesses. The undersigned does not attach any significance to the testimony of Board's witnesses to the effect that Thomas gave out or told employees where to find work or bundles on the Government line, especially since it does not appear from their testimony she gave any orders to employees or otherwise supervised their work.

<sup>9</sup> As stated above, no such notice had been posted at the conclusion of orders for ladies' garments in previous years. The testimony of several of the Board's witnesses reveals that at the time of the posting of the notice they thought it was directed against the Union.

As to the reason for this notice, Cohn testified as follows:

The purpose of it was that we heard several complaints, they didn't like to make jodhpurs, and we had a late order, and we then made some in January, later than usual; and we were having considerable trouble getting help, and we thought that would be one way to let them know that we would not make them, particularly so because we did not need to make jodhpurs at all; we only made them when seasons was slack, and now we had so much work, I was very anxious to put the production into the most desirable things, and I thought that would be one means of satisfying the girls, that they would not have to work on that, and thereby make the most of them determine to stay on the job, if they were being influenced by that particular feature of it.

That portion of Cohn's speech quoted above so clearly contradicts Cohn's testimony as to his reason for discontinuance of the manufacture of ladies' garments that the undersigned feels that further comment on the point is unnecessary.

name discloses that it is interested in ladies' garment workers is a proper union to represent you. As I have stated above, we must compete with the other manufacturers of men's garments. In order to do so, our expenses and costs of manufacture must not exceed theirs. If, on the other hand, all of us make more favorable arrangements for our employees at the same time, such as have been under contemplation, we can go forward with that plan without injury to any of us or our employees. If we are forced to deal with a union that has had no part in these plans and who are primarily engaged in the representation of workers on ladies' garments, we may be put at a very great disadvantage.

The undersigned further finds that, Cohn's speech of February 4 was made for the purpose and had the effect on employees of discouraging membership in and activities on behalf of the Union. In this connection the record indicates that the respondent's employees were not experienced concerning their rights to self-organization and collective bargaining. The wording of the speech itself clearly transcends expressions of personal opinion or freedom of speech. It is coercive in that it subtly argues against membership in the Union, such argument containing the implied threat that the plant at a future date might close if forced to bargain with the Union. This threat is self-evident from the following portions of the speech:

. . . we must be very careful how we set the price of our product. If the price is too high, we lose orders. If the price is too low, we lose money; and in either event, the money for wages is not there.

\* \* \* \* \*

. . . If we are forced to deal with a union . . . who are primarily engaged in the representation of workers on ladies' garments, we may be put at a very great disadvantage. As I have stated above, we cannot pay higher wages than our competitors pay and continue to be able to sell our products in competition with them. We hope that, by the continuance of this policy, we will have a strong organization when the War has terminated and thus be able to continue a fair wage rate for you when business is slack.

In order to make sure that his employees understood the import of his speech, in addition to the above Cohn made the direct threat that he would close his doors before paying union wages, together with other statements directed against the Union, as has been heretofore found.

That the notice of January 27 and Cohn's speech and statements of February 4, had the desired effect on the employees is apparent from the successful efforts of Ursin and Thomas on February 5, 6 and 7 in securing the resignations of 16 employees as members of the Union. In this connection it is noteworthy that the respondent only employs between 60 and 70 persons.

Accordingly, the undersigned finds that the respondent, by Mack's statement concerning the Union, by the posting of the notice of January 27, by Cohn's speech on February 4, and by his statements when interrupted or in answer to employees' questions, has interfered with, restrained, and coerced his employees in the exercise of the rights guaranteed them in Section 7 of the Act.<sup>10</sup>

The undersigned finds that Ursin and Thomas were not supervisory employees.<sup>11</sup> Further, there is no showing nor can any proper legal inferences be drawn from

<sup>10</sup> In making the above finding, the undersigned is not unmindful of decisions by the courts in the *American Tube Bending* case, 134 F. (2d) 993, (C C A. 2), cert denied 320 U. S. 768. From the facts set forth above, the undersigned believes that the instant case is clearly distinguishable from *American Tube Bending*.

<sup>11</sup> See footnote 8, *infra*.

the facts that they were acting with the knowledge and consent, or were otherwise acting as the agent of the respondent in securing the resignations. While it is difficult to believe that they would have engaged in such activities on their own initiative, nevertheless the undersigned feels that the Board has failed in its proof in this connection, especially since there is no evidence that either Mack or Cohn knew of the mass resignation letter. Therefore, the undersigned finds that the respondent did not interfere with, restrain, or coerce his employees through Ursin's and Thomas' efforts to secure resignations of employees from the Union.

*B The alleged discharge of Clemence Solares*

Except for a short period about 4 years ago, Solares was employed by the respondent for about twelve years prior to her discharge. In December of 1943 she joined the Union. The record does not disclose any noteworthy activities by her on behalf of the Union.

On February 4, 1944, while Cohn was making his speech to the assembled employees, Solares interrupted him, commenting that Cohn was "a very good boss." Towards the close of Cohn's speech when he mentioned cooperation, Solares again interrupted him, saying that the girls in the plant did not "stick together." At the end of the speech, some three or four employees asked questions, including Prior, whose conversation with Cohn has been heretofore related.

After these employees had asked their questions, Solares said that there were "too many tales being carried." She also mentioned at that time that she had joined the Union. Mack then made some statement to the effect that she had given Solares her job, which Solares denied.<sup>12</sup> At the conclusion of this argument, Mack told Cohn, "It will either be she goes or I will go." Cohn then discharged Solares.<sup>13</sup>

It is undisputed that immediately after discharging Solares, Cohn told her that he would ask Mack to give Solares her job back if she would apologize to Mack; that Solares said she would apologize; that Cohn then told Mack of his conversation with Solares; and that Mack refused to reconsider her stand, maintaining that either Solares would have to leave the respondent's employ or she would.

Upon due consideration of all the facts the undersigned is of the opinion that Solares was discharged because of her personal differences with Mack, and therefore finds that she was not discharged because of her membership in and activities on behalf of the Union. It is undisputed that Solares and Mack had had a number of arguments over "tale carrying." Mack had warned Solares that she would discharge her on the next occasion. The testimony of both the Board's witnesses and those for the respondent clearly show that their argument on February 4 was confined to their personal differences. It is true that Solares mentioned that she had joined the Union, but the evidence does not disclose that she previ-

<sup>12</sup> Solares at one time had left the employment of the respondent. She testified that she had been rehired by a Mr. Lehman.

<sup>13</sup> The above facts have been found in accordance with the testimony of Solares, Corolla, Dumon and Ortolono, all of whom were Board witnesses. However, only Solares and Ortolono testified that Solares said she joined the Union. In some respects, especially as to the sequence of events, the testimony of these four witnesses differ. Witnesses for the respondent testified to substantially the same facts, excepting that their testimony shows a more heated argument between Mack and Solares and that they did not testify that Solares mentioned her union membership. From the testimony of all witnesses, both for the Board and the respondent, it is apparent that the argument between Mack and Solares was over "tale carrying" in the plant. It is undisputed that Mack and Solares previously had had arguments over "tale carrying", the last of which occurred about six weeks before February 4, 1944. On that occasion Mack warned Solares that she (Mack) would fire her "the next time."

ously had been active on behalf of the Union. Further, the evidence shows that immediately preceding Solares' discharge Prior told Cohn that she had joined the Union and made other statements showing that she favored unionization. There is no indication that Prior was in any manner discriminated against by the respondent because of these statements. The undersigned is also impressed by the fact that Cohn asked Mack to give Solares her job back. It does not appear reasonable that he would have made this effort if Solares had been discharged because of her union propensities.

*C. The alleged lay-off or discharge of Lena LaVite*

LaVite was employed by the respondent from July 1943, until her lay-off on March 13, 1944. Except for the month of October 1943, when she operated a sewing machine, LaVite's work was confined to pressing. She joined the Union on February 1, 1944.

On March 13, 1944, Cohn told LaVite that since Army goods were not being pressed,<sup>14</sup> there would be no more pressing work for her until March 25. He told her, however, to see Mack who probably would have some work for her. LaVite told Cohn that she did not want any work "upstairs." On March 14 or 15, LaVite returned to the plant and asked Cohn for her release and on March 16 she secured employment elsewhere. About March 30, LaVite telephoned Cohn and asked him if any work was available for her, to which he replied that there was none but that he would call her if he needed her. As of the date of the hearing, the respondent had not recalled LaVite to work.<sup>15</sup>

From the above facts the undersigned concludes and finds that the respondent, by the lay-off on March 13, did not discriminate against LaVite because of her membership in or activities on behalf of the Union. The Board contends that discrimination is shown by reason of the undisputed facts to the effect that other pressers were employed by the respondent after March 13 and that some few days prior to the hearing there was a sign advertising for pressers in front of the respondent's plant. However, there is no showing that LaVite was active in behalf of the Union or even that the respondent had knowledge of LaVite's membership in the Union. Moreover, Cohn testified without contradiction that the respondent's commercial work required very little pressing and that pressers hired after LaVite's lay-off did not work steadily.

*D. The alleged discriminations in regard to wages against Rosalie Dumon and Marguerite Ortolono*

Ortolono had been employed by the respondent about 7 years and Dumon about 2 years prior to the hearing. At all times while employed by the respondent, Ortolono operated a bar tacking machine. Dumon, during her employment, operated looping, button holing and serging machines, but about two weeks prior to the hearing she was transferred to bar tacking. Ortolano and Dumon both joined the Union in December 1943.

On March 8, 1944, the respondent filed an application for an increased wage scale with the War Labor Board. By letter dated March 21, 1944, the War Labor Board approved the following hourly rates for machine operators: first-class, \$50; second-class, \$45; third-class, \$40. In accordance with this scale, the

<sup>14</sup> Shortly before or at about this time, Cohn had received a letter, dated March 8, 1944, from the Army advising him that the specifications governing his contract for trousers did not require pressing. Prior to receipt of this letter, the respondent had been pressing Army trousers.

<sup>15</sup> The above facts were testified to, in substance, both by Cohn and LaVite.

respondent immediately granted increases to most of his employees. The first increases took place for the pay-roll week ending March 29.

The employees are paid on an hourly basis, and individual production records are not maintained by the respondent. The decision as to whether or not an employee's production under a standard set for the respondent's plant entitled her to an increase was solely Mack's responsibility. As of the date of the hearing, neither Dumon nor Ortolano, who each were paid \$.45 per hour prior to the increase, had received an increase to \$ 50 per hour.

The undersigned is convinced and finds that the respondent by not granting increases to \$ 50 per hour to Dumon and Ortolano prior to the hearing did not discriminate against them by reason of their membership in or activities on behalf of the Union. Although the evidence shows that the standard was not maintained in the stream line or commercial line, in which both Ortolano and Dumon worked as bar tackers, it is Mack's uncontradicted testimony that Ortolano and Dumon were behind the line's production and that as a consequence the work piled up in front of their machines. Dumon and Ortolano were the only bar tackers in this line. It is undisputed that Mack questioned Ortolano in an effort to discover who was responsible for the bottleneck and that Ortolano did not give her any information that would aid her in arriving at a decision as to increases. Since she could not obtain the necessary information from Ortolano, her only alternative was to constantly observe the work of the two employees, which observation the respondent contends was going on at the time of the hearing.

The Board contends, in effect, that significance should be attached to the fact that Dumon was changed to bar tacking at about the time the first increases took place. In this connection, the Board proved that Dumon kept up with the line while operating the three machines to which she had been assigned previously. However, Mack testified, in substance, and without contradiction, that those three machines were not part of the "stream line," in that the operations were performed before the garments went into the stream line; that the operations could be performed at odd hours by extra employees such as herself; and that Dumon was transferred to bar tacking for the reason that it was difficult to employ regular operators with experience for the line. Moreover, it is undisputed that four employees, other than Dumon and Ortolano, also did not receive increases as of the time of the hearing. At least two of these employees were not members of the Union.

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

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

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that he cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

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

#### CONCLUSIONS OF LAW

1. International Ladies Garment Workers Union, affiliated with American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

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

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

4. The respondent, by discharging Clemence Solares on February 4, 1944, by the lay-off of Lena LaVite on March 13, 1944, and by failing to increase the wage rates of Rosalie Dumun and Marguerite Ortolano on or about March 23, 1944, did not violate Section 8 (3) of the Act.

### RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that Julius Cohn, doing business as Comas Manufacturing Company, his officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing his employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist International Ladies Garment Workers Union or any other organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and 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) Post immediately in conspicuous places at this plant at New Orleans, Louisiana, and keep posted for at least sixty (60) consecutive days from the date of posting, notices to his employees stating that the respondent will not engage in the conduct from which it is recommended that he cease and desist in paragraph 1 (a) of these recommendations:

(b) File with the Regional Director for the Fifteenth Region, on or before ten (10) days from 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 the complaint be dismissed insofar as it alleges that the respondent violated Section 8 (3) of the Act.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, 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.

JOHN H. EADE,  
*Trial Examiner.*

Dated July 15, 1944.