

In the Matter of PEERLESS WOOLEN MILLS and TEXTILE WORKERS
UNION OF AMERICA, CIO

Case No. 10-C-2039.—Decided September 23, 1949

DECISION
AND
ORDER

On March 23, 1949, Trial Examiner James H. Eadie issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in unfair labor practices, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief; the Respondent also filed a brief in support of the Intermediate Report.¹

The Board² has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except as hereinafter modified.

1. We cannot agree with our dissenting colleague that the preponderance of the evidence warrants a finding that Respondent's invocation of its rule against unauthorized collections during working hours was advanced as a mere pretext, and that the Respondent discriminatorily discharged Phillips for his union activity. On the contrary, we believe and find, like the Trial Examiner, that there was no discriminatory application of the rule, and that Phillips was properly discharged for violating it.

The Board has long held that an Employer may, without violating the Act, forbid collections during working hours whether or not spon-

¹ The General Counsel's motion to dismiss the Respondent's brief on the ground that it was not timely filed is hereby denied.

² Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Gray].

sored by or on behalf of a union. The Trial Examiner found that there was in existence and in effect, at the time of Phillips' discharge, a rule stating in substance that no collection shall be taken up in the weave room without permission of the weave room foreman. The Trial Examiner found further that the weave room employees generally either had knowledge of the rule or of the customary procedure pertaining thereto, and that there was no evidence that the Respondent had specific knowledge of any prior unauthorized collections. When the Respondent first learned of Phillips' unauthorized collection it treated him no differently than other *known* violators. The only other person whom Supervisor Hawkins knew had assisted Phillips in the collection was employee Davis.³ Hawkins gave both Phillips and Davis an opportunity to remedy their breach of the rule by turning over the funds collected without authorization and commingling them with the authorized collection. Davis, also a known union adherent, who had already turned over his collection to Phillips and therefore did not have it in his possession, took advantage of this opportunity by admitting his error and promising not to violate the rule in the future. On the other hand, Phillips refused to remedy his breach whereupon Supervisor Hawkins properly exercised his right to enforce the rule by discharging Phillips for its violation.

2. In determining whether President Hutcheson's statement to a committee of employees that ". . . we don't recognize any organization and, by God, we never will" was a violation of Section 8 (a) (1) of the Act, we must look to the surrounding circumstances and the context in which it was made. The day following Phillips' discharge a committee of employees headed by W. A. Swafford, president of the Union, went to the mill office to protest the discharge. In the absence of President Hutcheson, there was some discussion with another Respondent's official as to whether the Respondent recognized the Peerless Woolen Mills Workers Association. When President Hutcheson arrived, he was told that Swafford "had come in a very belligerent and antagonistic attitude." At that time President Hutcheson asked Swafford whether he had called him "the biggest goddam liar in the United States." Although Swafford denied this, he did say that "any man that said the Peerless Woolen Mills don't recognize an organization is a damn liar." It was then that President Hutcheson made the alleged violative statement, prefacing it with the following: "Swafford, I don't give a goddam what union or church or what organization you people want to join. It's your privilege." Viewed in the context of this heated argument and in the light of the simultaneous assurance

³ Phillips refused to disclose to Hawkins the names of the other employees who had assisted him.

to the employees of their privilege to belong to any union or organization, we are of the opinion, contrary to our dissenting colleague, that the statement may not reasonably be regarded as a "fixed determination never to recognize any labor organization as its employees' bargaining representative." Under these circumstances, such statement did not reasonably tend to discourage and restrain the employees in the exercise of their self-organizational rights within the meaning of Section 8 (a) (1) of the Act.

3. We agree with our dissenting colleague as to the coercive nature of Foreman Green's statement to employee Beasley. However, we also agree with the Trial Examiner, and in accord with Board precedents, that this isolated statement, standing alone, is insufficient to warrant a finding of interference, restraint, and coercion in violation of the Act.⁴

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein against Peerless Woolen Mills, Rossville, Georgia, be, and it hereby is, dismissed.

CHAIRMAN HERZOG, dissenting:

With great respect for my colleagues' views, I must record disagreement with the finding of the majority that the Respondent did not discriminatorily discharge employee Oattie B. Phillips. I further believe, unlike them, that Respondent violated Section 8 (a) (1) of the Act by President Hutcheson's statement to a union committee and by Foreman Green's warning to employee Beasley.

1. My colleagues, in agreement with the Trial Examiner, find that the Respondent discharged Phillips for violation of a rule forbidding unauthorized collections on company time. The evidence shows that this rule, limited to the weave room, was promulgated by the weave room foreman on his own initiative. For approximately 4 years before Phillips' discharge, the rule had not been publicized and consequently many employees, including Phillips, had never heard of it. The Respondent tolerated overt violations without taking disciplinary action against violators, including, significantly, the very four employees who assisted Phillips in his collection and who were equally guilty with him in violating the rule. In contrast to the Respondent's drastic action in discharging Phillips, an old employee whose active union leadership was well known to the Respondent, it took no action against

⁴ *Matter of Sunway Oil Corporation*, 82 N. L. R. B. 942. *Matter of Rice-Stix of Arkansas, Inc.*, 79 N. L. R. B. 1333; *Matter of Goldblatt Bros., Inc.*, 77 N. L. R. B. 1262.

other known violators. I believe that the Respondent's invocation of this long dormant rule to discharge Phillips was merely a pretext.

I am satisfied that the real reason for Phillips' discharge was his refusal to pool the Union's collection with that sponsored by the Respondent. To his foreman, Sumner Hawkins, this apparent insistence on a separate union charitable fund meant that Phillips was encouraging the separation of the weave room into union and nonunion employees, a situation that Hawkins was determined to prevent.⁵ It was for that reason that Hawkins discharged Phillips, and not because of the alleged violation of a rule. This conclusion is strengthened, not weakened, by the different treatment accorded Davis, the employee who apologized for having engaged in a lawful concerted activity.

2. The majority also find that President Hutcheson's statement to a committee of employees protesting Phillips' discharge that "we don't recognize any organization, and, by God, we never will" did not violate Section 8 (a) (1) of the Act. I disagree. Whatever the provocation, such a statement from the Respondent's top official, indicating as it did a fixed determination never to recognize any labor organization as its employees' bargaining representative, was bound to discourage and restrain those employees in their organizational activities, in violation of Section 8 (a) (1).⁶ I find no merit in the Respondent's contention that the statement was privileged under Section 8 (c) of the Act. It was not an expression of "views, argument, or opinion," but announced an intention to follow an unlawful course of conduct toward employees who desired the benefits of self-organization.

3. In view of the foregoing, Foreman Green's statement to employee Beasley that "If you care anything about your job you won't fool with the Union" was not an isolated one. I would therefore also hold it to have been a violation of Section 8 (a) (1).

INTERMEDIATE REPORT

Mr. Morgan C. Stanford, for the General Counsel.

Gleason & Painter, by *Mr. Frank Gleason*, of Rossville, Ga., and *Mr. Frank A. Constangy*, of Atlanta, Ga., for the Respondent.

Mr. H. W. Denton, of Chattanooga, Tenn., and *Mr. W. A. Swafford*, of Rossville, Ga., for the Union.

⁵ Thus Hawkins told employee Davis, who participated with Phillips in making the collection, that: ". . . he did not have any intention of putting up with their [Union] activities . . . he didn't intend . . . the weave shop to be separated into union and non-union."

⁶ *N. L. R. B. v. Illinois Tool Works*, 153 F. (2d) 811 (C. A. 7), enfg. 61 N. L. R. B. 1129; *Matter of Federal Engineering Company, Inc.*, 60 N. L. R. B. 592, enforced as modified, 153 F. (2d) 233 (C. A. 6); *Matter of American Book-Stratford Press, Inc.*, 80 N. L. R. B. 914; *Matter of Goldblatt Bros.*, 77 N. L. R. B. 1262.

STATEMENT OF THE CASE

Upon an amended charge duly filed by Textile Workers Union of America, CIO, herein called the Union, the General Counsel of the National Labor Relations Board,¹ by the Regional Director for the Tenth Region (Atlanta, Georgia), issued an amended complaint, dated November 23, 1948, against Peerless Woolen Mills, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices 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, and Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Labor Relations Act of 1947, 61 Stat. 136, herein called the amended Act. Copies of the amended complaint, the amended charge and notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the amended complaint alleges in substance: (1) That the Respondent discharged Lonnie M. Holloway on July 25, 1946, Mac A. Shambaugh on August 26, 1947, and Oattie B. Phillips on April 13, 1948, and has at all times since failed and refused to reinstate them; (2) that the Respondent discharged said Holloway, Shambaugh, and Phillips, and has since failed and refused to reinstate them, because of their membership in and activities on behalf of the Union, and because they engaged in concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection; and (3) that the Respondent from on or about May 1, 1946, by certain specified acts interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and the same section of the amended Act. In its answer, duly filed, the Respondent admitted the jurisdictional allegations of the complaint, but denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Chattanooga, Tennessee, from November 30 to December 8, 1948, inclusive, at Chicago, Illinois, on January 13, 1949, and at Atlanta, Georgia, on January 24, 1949, before the undersigned Trial Examiner. The General Counsel and the Respondent were represented by counsel, and the Union by its representatives. 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 hearing, the General Counsel moved to amend the amended complaint by adding the name of Tom Green to the paragraph in which specific acts of interference were alleged. The motion was granted. Also at the opening of the hearing, the Respondent moved to dismiss certain allegations of the amended complaint upon grounds set forth in Section 10 (b) of the amended Act.² Ruling on the motion was reserved. Since it appears from the undisputed evidence that the original charge and the amended charges, pertaining to the allegations of unfair labor practices in the amended complaint, were filed and served within the period of 6 months, either from August 22, 1947, the effective date of the amended Act, or from the date of the alleged unfair labor practice, the undersigned believes the Respondent's motion to be without merit. Accordingly, the motion is hereby denied.

¹The General Counsel and his representative at the hearing are referred to as the General Counsel, and the National Labor Relations Board as the Board.

²Before the hearing the Respondent made a formal motion to dismiss under Section 10 (b). The motion was referred to Trial Examiner Sidney Lindner for ruling. By order dated October 21, 1948, the Trial Examiner denied the motion "without prejudice to its renewal at the hearing, if copies of the charges were not served on the Respondent within 6 months after August 22, 1947."

At the close of the General Counsel's case the Respondent moved separately to dismiss the amended complaint as to Lonnie M. Holloway, Mac A. Shambaugh and Ottie B. Phillips. Ruling was reserved in the cases of Holloway and Shambaugh, and denied in the case of Phillips. The Respondent at that time also made separate motions to dismiss portions of the amended complaint which alleged interference, restraint, and coercion. One of such motions was granted on the other motions either ruling was reserved or they were denied.

At the close of the whole case, the Respondent renewed the motions made at the close of the General Counsel's case. Motions to dismiss the cases of Holloway and Shambaugh were granted. Ruling was reserved on the motion to dismiss in the case of Phillips. All but three of the Respondent's motions to dismiss allegations of interference, restraint, and coercion were granted. Ruling was reserved on those three motions and on the Respondent's general motion to dismiss the amended complaint as a whole for lack of proof. Motions upon which ruling was reserved are disposed of as hereinafter indicated. The General Counsel moved to conform the pleadings to the proof. The motion was granted without objection.

All parties were afforded an opportunity to file briefs or proposed findings of fact and conclusions of law, or both. The Respondent has filed a brief with the Trial Examiner.

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 a Georgia corporation, maintaining its principal office and place of business at Rossville, Georgia, where it is engaged in the manufacture, sale, and distribution of woolen piece goods and roll cloth.

In the course and conduct of its business operations at its Rossville plant and at all times material herein, the Respondent purchases annually raw materials, consisting principally of wool and having a value in excess of \$1,000,000. Of this amount approximately 90 percent was purchased outside of the State of Georgia and shipped in interstate commerce to the Respondent's plant at Rossville, Georgia. The Respondent manufactures, sells and distributes finished products, consisting principally of piece goods and roll cloth and valued annually in excess of \$1,000,000. Of this amount approximately 90 percent was sold and shipped to customers outside of the State of Georgia.

At the hearing, the Respondent admitted that it is engaged in commerce within the meaning of the Act and the amended Act.

II. THE ORGANIZATION INVOLVED

Textile Workers Union of America, CIO, is a labor organization which admits to membership employees of the Respondent.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The discharge of Ottie B. Phillips*

Phillips was employed intermittently by the Respondent since about 1924, and at the time of his discharge on April 13, 1948, was a weaver on the second shift under Second Hand Sumner Hawkins.

About 1932 or 1933 Phillips joined the American Federation of Labor and was active as a picket when that union engaged in a strike against the Respondent. Phillips rejoined the American Federation of Labor about 1943 and became President of its local union. About April, 1947, the Union (CIO) commenced organization of the Respondent's employees. Phillips, who became a member on May 10, 1947, was one of the most active employees in the organizational efforts. At least two of the early meetings of the Union were held at Phillips' home. Circulars announcing that fact were distributed in front of Respondent's plant. At one of the early meetings Phillips was elected temporary chairman of the Union. Later he was elected second vice president and W. A. Swafford, also an employee in the Respondent's weave room on the second shift, was elected president. Commencing about August 1, 1947, and continuing until about April 1, 1948, Phillips distributed circulars, approximating 22 in number, to employees at the gate of Respondent's plant. Distribution took place during the change in shifts, and Phillips at times gave circulars to supervisory employees, including Hawkins and James Watters, foreman over the weaving department. At the time of and for some time before his discharge, Phillips while at work in the plant wore a button designating him an adherent of the Union. He also served on the Union's grievance committee which protested to management the discharges of several employees.

At some time before April 13, Phillips was appointed chairman of the Union's Welfare Committee by Swafford. On April 13 Swafford directed Phillips as chairman of that committee to take up a collection for flowers in the weaving department for an employee's father-in-law who had died. Phillips delegated about four employees in the weave room to assist him in the collection. He personally solicited contributions from about 18 employees who worked in the near vicinity of his looms and not over 60 feet away, and he returned to his looms from time to time in order to check on his work. The four employees who assisted Phillips turned over to him the money they had collected. Employees were solicited regardless of their membership or nonmembership in the Union. The taking up of the collection required about 2½ hours, or from about 6 to 8:30 p. m.

At about the times mentioned above or shortly after, employee Mary Phillips, a sister-in-law of Ottie Phillips, also solicited contributions for the same cause from employees in the weave room. She had been designated to make the collection by Second Hand Hawkins, in accordance with plant custom and a rule of the Respondent which will be hereinafter discussed. After Mary Phillips completed the collection, she turned over the money to Hawkins. Upon being questioned by Hawkins as to the reason for the collection being smaller than usual in such cases, she told him about the Union's collection. Although she refused to name the person responsible for that collection, she told Hawkins to ask employee Cecil Davis about it.³ Thereafter Hawkins spoke to Davis and learned from him that Ottie Phillips was in charge of the Union's collection.⁴ After his conversation with Davis and at about 10 p. m., Hawkins went to Phillips and asked him to report to his desk. At the time, Phillips' looms were stopped and he was talking to weaver Fred Bonner.⁵ About 15 minutes later Phillips went

³ Davis was one of the four employees who assisted Ottie Phillips in the Union's collection.

⁴ During the above conversation, Davis stated in substance that he knew he was violating the Respondent's rule concerning collections and promised not to do it again.

⁵ It appears that Phillips had finished with the collection at the above time. Phillips testified that he kept his looms running while he solicited employees.

to Hawkins' desk. Second Hand John Houston was present during the ensuing conversation between Hawkins and Phillips. Concerning the conversation Phillips testified as follows:

Q. What happened after you got over to Mr. Hawkins' desk?

A. He sat down and told me to sit down too and then he talked to me. I sat down and he said, "O. B., have you been taking up collections in here?"

I said "Yes, sir, thrèe or four or five of them."

He says "Who are they?"

I said "Well, I ain't calling anybody's name because I don't do that."

He said "Why, if you know who they are, why you know who they are."

I said "I am not calling anybody's name who helped me." I said, "I did take up a collection."

Q. What did Mr. Hawkins say then?

A. He said "Well, didn't you know it was against the rules to take up a collection in the mill during working hours?"

I said "No, I didn't." I said "When did that happen—when did that take effect?" I said "That is the first I ever heard of it."

* * * * *

A. I told him, I says, "Well, I don't break company's rules or other rules if I know anything about it that I know of. I don't break the laws, either that I know of."

Q. Then what happened?

A. He said "Well, I think you are mighty dirty to take up a collection and not get my permission." I told him I didn't know I had to do it.

Q. Was anything mentioned about the union at that time?

A. Yes. He went on and talked. He said "I don't have to put up with a lot of talk from you union guys here." He said "I am going to have to put a stop to it. You have been taking up collections under union activities and I am going to put a stop to it. I am not going to have it out of you or nobody else".

* * * * *

A. He said he thought it was mighty dirty of me and he wanted me to put my collection in with one that he had. I said "Well, I will see what W. S. Swafford, the President of the Local, has to say about it. If he tells me to put it in, I will; if he don't, why I won't."

Q. What happened then?

A. Summer said "No, I am not going to have no separation between the help in here"—talking about the union and the non-union employees. He said "Separation, I am not going to put up with it." He said "We have all got to take up a collection as a whole and do other things that way."

Q. Then what did you do?

A. Well, along about that time somebody came up a little ways from us and motioned for Summer Hawkins and he got up and went to him, and when he got up and walked over to where he was at, why I went on back to my looms.

The following testimony of Hawkins concerns the same conversation:

Q. What did you observe about him when he came up to the desk?

A. Well, I just asked him if he had left his looms to take up a collection and he said he did. I said, "Why, don't you know it is against the rules for you to stop your looms and take a collection?"

A. He said yes. I said "You well understand our procedure for taking up these collections," and he said yes. I said "Well, don't you think you have done wrong?" He said "I don't know whether I have done wrong or not. I will ask W. A. Swafford. I had taken up this collection for him and I will see him about it."

Q. Then what did you say?

A. Well, I explained to Mr. Phillips why we had such rule there that we shouldn't take up from a little group over here and a group over here; we all put our offering together, such as a love offering like that and let it go as one in the weave room.

Q. Was there any further conversation from Phillips with respect to giving you the money?

A. Yes. He stated "Well, I'll see W. A. and if he wants me to give you the money I will".

Q. What did you say?

A. I told him I didn't want the money. "I didn't ask you for the money."

Q. Then what happened?

A. Then Mr. Beasley, the second hand from the machine shop walked up to my desk. I'd say six or eight feet, then he kept standing there and I just turned, making a half-quarter turn and said, "Mr. Beasley, I am very busy. I would like for you to see me later" and turned back to take up with Mr. Phillips and he walked off—gone.

Houston testified substantially the same as did Hawkins in this connection. However, Houston testified that Phillips made the statement, "I wouldn't know for sure about the rules," when questioned by Hawkins.⁶

The undersigned credits Phillips' version of the above conversation. Houston at first testified that Phillips stated that he was not sure about the rules and later testified that Phillips admitted knowledge of the rules. To this extent Houston's testimony is in conflict with that of Hawkins. Moreover, concerning his conversation with Hawkins that same night, related above, Davis testified credibly that Hawkins stated that he would not permit the weave room to be divided into union and non-union factions and that Hawkins asked him if he would be willing to add his collection to the one taken up with Respondent's permission. Since Hawkins asked Davis to turn over his collection, it logically follows that he would have made the same request of Phillips.

At about 10:45 p. m. Hawkins again came to Phillips' place of work. He told Phillips, "I would rather for you to check out and quit." Phillips replied, "I didn't come here to quit. I came here to work. I am not quitting until quitting time and I am not going to stop them looms until then and you better not." Hawkins then told Phillips that he was discharged.⁷ Phillips disregarded Hawkins' statement and continued his work until the close of the shift or until 11 p. m. W. A. Swafford, president of the Union, spoke to Hawkins

⁶ Houston also testified that Phillips admitted knowledge of the rules.

⁷ Phillips testified credibly to the above conversation. Concerning the conversation at the time of the discharge, Hawkins testified as follows:

And told Phillips, I says, "I think since you have taken—you have just taken the attitude of not having any notice for the company rules and regulations and referred to Swafford as your overseer, or foreman, I think it would be best for you to get through." He looked up at the clock and he said, "I have thirty minutes to work yet." I said "In case you didn't understand me, you are discharged. You don't have any job. The best thing for you to do is just cut your motors off and go on out," and he just looked at me with a kind of sarcastic grin and didn't say anything.

before the end of the shift and asked him to reconsider Phillips' discharge. Hawkins refused to reinstate Phillips.

Conclusions

The Respondent contends that Phillips was discharged for stopping productive machinery and for violation of a rule which prohibited unauthorized collections in the weave room.

The undersigned finds that the Respondent at the time of Phillips' discharge had in effect in the weave room a rule prohibiting the taking up of collections, unless approved by the foreman. James Watters, foreman over the weaving department, testified credibly that about late 1942 he posted a notice on the main bulletin board in the weave room, stating in substance . . . "no one shall be allowed to take up collections in this room unless a committee of three weavers and two loom fixers have made inquiries and a petition presented to me and I would sign it and appoint someone to go around and take up the collections."; that the notice remained posted for about 1½ years; and that the notice was destroyed when the bulletin board was removed. Employees Winnie Owens and Margaret Fitzgerald, witnesses for the Respondent, testified credibly that they saw the rule posted. Although witnesses for the General Counsel, including Phillips, testified that they did not see such a rule posted and were never told of it by any supervisory employee, the testimony of Davis and employees Floyd Ladd and William Oswalt indicates that the employees generally either had knowledge of the rule or of the customary procedure. It is undisputed that numerous collections were taken up in the weave room which had been authorized by a supervisor, and that such collections were made exclusively by employees who were paid on an hourly rate basis and who were not weavers.⁸ The General Counsel adduced evidence showing that in several instances employees in the weave room were solicited to take chances on punch boards, that employees in the weave room sold various articles during working hours and that the employees responsible for these activities were not reprimanded by management. Phillips testified that he made several collections for which he had not obtained permission from any supervisory employee in the early part of 1948 and that he was not reprimanded at the time. Swafford also testified that in January 1948 he took up a collection for flowers without authorization from a supervisory employee and that he was not criticized or reprimanded. The undersigned does not believe that this evidence is sufficient to show a discriminatory application of the rule. There is no evidence that the Respondent had knowledge that unauthorized collections had been made. Assuming that the Respondent did have knowledge of such collections, nevertheless the record conclusively shows that the Respondent knew of Phillips' and Swafford's adherence to the Union at the time mentioned. The selling of articles by employees or the solicitation of punch board chances clearly are distinguishable from collections for flowers or for other similar purposes.

⁸ Weavers were paid on a piece-rate basis. Respondent contended, in effect, that weavers were not permitted to act as collectors or designated as such for the reason that their looms needed constant attention while running or defective cloth would result. Although the evidence shows that weavers were permitted at times to leave their looms unattended for various purposes, such as going to the rest room, I believe after consideration of the record as a whole that the Respondent's contention has merit. Necessarily weavers had to leave their looms unattended at times, unless the Respondent provided relief or shut down the looms, thereby losing production. Under the circumstances it appears reasonable that the Respondent would not permit weavers to take up collections which would require an hour or two of their time when other employees were available for the purpose.

While it is apparent that the Respondent did not publicize the above rule to any great extent and was lax in its enforcement, nevertheless on all the evidence the undersigned is convinced and finds that the General Counsel has failed to prove that Phillips was discharged because of his membership in or activities on behalf of the Union, or because of his concerted activities with other employees. It is undisputed that the Respondent had knowledge of his adherence to the Union and that Hawkins mentioned the rule to Phillips at the time of his discharge. While the conversation found and related above indicates that Hawkins was concerned about possible separation of the weave room employees into Union and non-Union groups and about Phillips' refusal to turn over his collection without consulting Swafford, Phillips was discharged for violation of the rule. The Respondent's motives in discharging Phillips are not free from suspicion, particularly in view of the fact that he was one of the most active adherents of the Union. The penalty of discharge appears drastic, since Phillips at the time of discharge stated that he did not have knowledge of the rule. However, the evidence strongly indicates that Hawkins would not have discharged Phillips if he had acknowledged his wrong or agreed to pool the collection. This is supported by the case of Davis who was not discharged by Hawkins after he admitted he was wrong and promised not to violate the rule again.

Accordingly, the undersigned finds that the Respondent did not discriminatorily discharge Phillips, and that the Respondent did not discriminate against a union employee for taking up a collection on the job while allowing nonunion employees to take up collections on the jobs, as alleged in the complaint.

B. Alleged interference, restraint, and coercion

On the day following the discharge of Phillips, related above, a committee of the Union, including Swafford and Ladd, met with management to protest Phillips' discharge. It is the uncontradicted testimony of Swafford that John L. Hutcheson, president of Respondent, made the following statement:⁹

Swafford, I don't give a good . . . what Union or church or what organization you people want to join. It is your privilege. . . . We hire who we want to down here and we fire who we want to down here and we are damn sick and tired of having to explain to you every time we fire somebody. . . . We don't recognize any organization and, . . . we never will.

The undersigned does not believe that the above statements of Hutcheson constitute interference, restraint, or coercion within the meaning of the Act or the amended Act, and so finds. They do not contain any threat of reprisal or promise of benefit.

Othell Beasley, a "folder" operator in the Respondent's finishing department, worked under Foreman Tom Green. Beasley started working for Respondent on March 19, 1948. At sometime shortly after he was hired, Beasley accosted Green and asked him if he planned to attend a meeting of the Union which had been scheduled. Beasley also stated, "I think the Union would be a pretty good thing, don't you?" Green replied, "If you care anything about your job you won't fool with the Union."

Considering the questions propounded by Beasley immediately before Green's statement, it loses some of its force as an implied threat. It may be considered

⁹ Hutcheson did not appear as a witness. Ladd testified substantially the same as did Swafford concerning the above conversation. However, Ladd testified that Hutcheson stated that he was "not recognizing any Union."

more in the nature of an expression of opinion. In any event it was a single isolated incident of the type that the Board has held to be insufficient to warrant a finding of interference, restraint, or coercion.¹⁰

Accordingly, the undersigned finds that by the above statement of Green the Respondent did not interfere with, restrain, or coerce its employees.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth in Section III, above, occurring in connection with the operation of the Respondent's business 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 not engaged in unfair labor practices, it will be recommended that the amended complaint be dismissed in its entirety. 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. Textile Workers Union of America, CIO, is a labor organization within the meaning of Section 2 (5) of the Act and the same section of the amended Act.
2. By discharging Oattie B. Phillips, the Respondent has not engaged in unfair labor practices.
3. The Respondent has not interfered with, restrained, or coerced its employees within the meaning of the Act or the amended Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law the undersigned recommends that the amended complaint against the Respondent, Peerless Woolen Mills, be dismissed.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order 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 six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board,

¹⁰ In the *Matter of Rice-Stitz of Arkansas, Inc.*, 79 N. L. R. B. 1333.

request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 23rd day of March 1949.

JOHN H. EADIE,
Trial Examiner.