

In the Matter of SWIFT AND COMPANY¹ and FEDERAL LABOR UNION, No. 22685, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR, AND ANGUS TILLIS

Case No. 10-C-1470.—Decided July 20, 1945

DECISION

AND

ORDER

On December 7, 1944, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had not engaged in the unfair labor practices alleged in the complaint, and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, counsel for the Board filed exceptions to the Intermediate Report and a supporting brief, and the respondent filed a brief in reply thereto. No request was made for oral argument before the Board at Washington, D. C., and none was held. 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 exceptions and briefs of the parties, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner insofar as they are consistent with our Decision and Order.²

We agree with the Trial Examiner that Tillis' separation was not violative of the Act and that the complaint should be dismissed in its entirety.

¹ The amended charge, complaint and notice of hearing thereon, incorrectly designated the respondent as Swift and Company, Fertilizer Works. At the beginning of the hearing, Board's counsel moved to amend the complaint to read Swift and Company. The motion was granted by the Trial Examiner, without objection.

² The correct citation for Case No. R-3657, referred to in footnote 5 of the Intermediate Report, is 40 N L R B 931 and not 49 N L R B, No. 163. Also, on page 1364, line 17 of the report, the Trial Examiner inadvertently indicated that Tillis was selected by the Union as a member of its negotiating committee in December 1943 instead of December 1942.

However, since the evidence in the record, especially Tillis' own testimony,⁸ supports the respondent's claim that, at the time it refused to modify the proposed work schedule to meet Tillis' objection, he quit his job, it appears that no situation giving rise to an issue of discrimination ever arose. Accordingly, we find it unnecessary to pass upon the other questions discussed by the Trial Examiner.

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 complaint against the respondent, Swift and Company, Agricola, Florida, be, and it hereby is, dismissed.

INTERMEDIATE REPORT

Mr. T. Lowry Whittaker, for the Board.

Messrs. John P. Staley and William F. Joy, of Chicago, Ill., for the respondent.

Mr. Harry Shields, of Ft. Meade, Fla., for Local 22685

Mr. R O Stewart, of Mulberry, Fla, for Chemical Workers District Council #1

Mr. Angus L. Tillis, of Ft. Meade, Fla, for Angus L. Tillis

STATEMENT OF THE CASE

Upon an amended charge duly filed on August 19, 1944, by Federal Labor Union No. 22685, affiliated with the American Federation of Labor, herem called the Union, and Angus Tillis, the National Labor Relations Board, herein called the Board, by the Regional Director for the Tenth Region (Atlanta, Georgia), issued its complaint dated August 22, 1944, against Swift and Company, Fertilizer Works, Agricola, Florida, 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 accompanied by notice of hearing thereon, were duly served upon the respondent, the Union, and Angus Tillis.

With respect to the unfair labor practices, the amended complaint alleged in substance that the respondent: (1) from about December 1942, by its officers, agents, representatives, and employees more particularly by D. M. Wright, Warren M. Doke,¹ W. A. Hodges, W. L. Willis, and W. D. Calverley, committed, authorized, instigated, and acquiesced in statements and conversations discouraging its employees in their membership and activities in the Union, and their concerted activities for the purposes of collective bargaining; (2) discharged employee Angus Tillis on or about October 16, 1943, and thereafter refused to reinstate him because he engaged in concerted activities with other flotation plant operators, or employees, or maintained his membership and was active in the Union; and (3) by such acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

⁸ Tillis' testimony concerning his position at the time in question, included a statement that, if the "boys didn't work" the new schedule, it was his intenton to quit and go to work somewhere else. ". . . It might be taken as though I was going to quit because I said, I wouldn't work that schedule. I couldn't work it" This testimony is also consistent with the otherwise corroborated testimony of Manager Wright, whom the Trial Examiner generally credits, that Tillis stated that "he would work one more shift, that then he was through."

¹ The complaint incorrectly referred to these individuals as R. C. Wright and Warren E. Doke.

Pursuant to notice, a hearing was held at Ft Meade, Florida, on September 28, 29, and 30, and October 2 and 3, 1944, before the undersigned, W. P. Webb, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondent were represented by counsel, the Union by its representatives, Angus Tillis by himself, and 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 the parties. On September 9, 1944, the respondent filed its answer with the Regional Director, admitting certain allegations of the complaint in respect to the character and operation of its business, but denying the commission of any unfair labor practice. The answer averred that Angus Tillis voluntarily resigned his position with the respondent and has not subsequently requested reinstatement but did submit a written application to the respondent for a position as a new employee.

On September 11, 1944, the respondent filed with the Regional Director written motions: (a) to dismiss the complaint on the ground that it fails to state any material facts constituting any unfair labor practice within the meaning of the Act, and (b) to make the complaint more specific, definite and certain. These motions were referred to the Trial Examiner for ruling. Ruling on the first motion was reserved and is disposed of as indicated hereinafter. The second motion was denied.

A motion by the Board's counsel to conform the pleadings to the proof in respect to formal matters was granted by the Trial Examiner over the objection of the respondent's counsel. The opportunity to argue orally before the Trial Examiner at the conclusion of the hearing was waived by the parties. A brief was filed with the Trial Examiner by counsel for the respondent on October 23, 1944. During the course of the hearing, counsel for the respondent requested permission to file an application to take the deposition of one W. L. Willis at Houston, Texas. The request was granted and the deposition of Willis was taken at Houston, Texas, on October 25, 1944, and has been made part of the record in this case.

Upon the record thus made and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT²

The respondent, Swift and Company, is an Illinois corporation, having its principal office and place of business in Chicago, Illinois, where it is engaged in the general packinghouse and fertilizer business. The respondent owns and operates a phosphate mine and fertilizer works at Agricola, Florida, where it is engaged in the mining and processing of phosphate rock and the manufacture of fertilizer. From 1938 until about July 1944, the respondent was duly authorized to do business in the State of Florida under the trade name and style of Swift and Company, Fertilizer Works, which is a division of Swift and Company. Since July 1944, the mine has been known as Swift and Company Rock Mine, and the fertilizer works as Swift and Company, Plant Food Division. The principal raw materials purchased and used by the respondent at its Agricola plant are super-phosphate, sulphate of ammonia, nitrate of soda, tankage, sulphate of potash, muriate of potash, etc. Purchases of such material for the preceding 12-month period exceeding \$130,000 in value, of which approximately 80 percent was obtained from sources outside Florida. Phosphate rock produced at the plant during that period exceeded \$500,000 in value, of which approximately 85 percent was shipped and distributed to points outside Florida. During the same period, fertilizer was manufactured in excess of \$300,000 in value, of which none was shipped

² The following facts were stipulated by the parties.

to points outside Florida. The respondent's Agricola plant is not engaged in the production of war material. The respondent employs approximately 300 persons at its Agricola plant. The respondent admits for the purpose of the instant proceedings that it is engaged in commerce within the meaning of the Act. The instant proceedings are concerned only with the Agricola plant.³

II. THE ORGANIZATION INVOLVED

Federal Labor Union No. 22685, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the respondent.⁴

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

In the Board's Decision and Direction of Election, issued on April 28, 1942, Case No. R-3657,⁵ the Board ordered an election in the respondent's Agricola plant. In determining the appropriate unit, the Board stated, in respect to the *Flotation Plant Shift Foremen*, as follows:

In the flotation plant, phosphate sand is separated from ordinary sand by flotation agglomeration. The plant is in the charge of one W. D. Wilson, whom the Company and the United have stipulated to exclude. Under Wilson are four shift foremen, each with a crew of four or five men. The shift foremen have the same authority to discharge or make recommendations as do the other supervisors. They are responsible for the operation of the plant on their shifts. In view of their supervisory character, they will be excluded from the bargaining unit.

On May 22, 1942, an election was held in the Agricola plant, which was won by the Union. On July 10, 1942, the Union was certified by the Board as the exclusive representative of the respondent's employees, within the appropriate unit,⁶ for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

³ The Agricola plant consists of a fertilizer plant, dryers, quarters, rock storage, machine shops, storeroom, electric shop, carpenters shop, laboratory, commissary, filling station and office and clerical forces. The respondent's phosphate mine is about 10 miles from the Agricola plant and they are connected by the respondent's own railroad line.

⁴ About 1939 the American Federation of Labor issued a Federal Labor Charter known as Phosphate Workers Local Unions. Later there was established by the A. F. of L. what was known as International Council of Chemical and Allied Industries unions to cover employees in the Chemical industry. In September 1944, this Council became International Chemical Workers Union, which was chartered by the A. F. of L. Seven locals, in the phosphate area, have been set up by this International. These locals have formed what is known as Chemical Workers District Council #1, which is composed of representatives from each local. Local 22685 was set up for the respondent's employees only.

⁵ In the *Matter of Swift & Company, Fertilizer Works, and United Phosphate Workers' Local Union No. 22685, A. F. of L.*, 40 N. L. R. B. 931.

⁶ The Board found the appropriate unit to be as follows:

All employees of the Company, including sample men, the construction-department working foreman (McCauley), the mechanical-department working foreman (Collier), dragline operators, and prospectors, but excluding managerial, clerical, and supervisory employees, firemen and engineers and the flagman Pierce, the Works Manager, the sales force, commissary and filling station employees, chemists, the chief electrician, the mining engineer, horticulturists, foremen in the rock-dryer plant, the construction foreman, master mechanic, the assistant master mechanic, the mine superintendent, the assistant mine superintendent, the chief supervisor of the flotation plant, the prospector foreman, the truck-repair crew foreman, the supervisors in the fertilizer plant (Denham, Wright and Manley), the assistant foreman of the construction department (Yarborough), the mine-pit foremen (Lund and Drawdy), and the *flotation-plant shift foremen*, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. (Emphasis supplied.)

On February 1, 1943, the respondent and the Union entered into a written agreement covering the employees certified by the Board on July 10, 1942, as constituting the appropriate unit. It will be noted that flotation-plant shift foremen were excluded from the appropriate unit. This agreement provided, *inter alia*, for a procedure for handling grievances.⁷ This agreement was to remain in effect for 1 year, with automatic renewal from year to year, subject to reopening by either party on 30 days' notice prior to the expiration of any year. On April 4, 1944, the respondent and the Union entered into a similar contract, except that the latter contract contained a maintenance of membership clause. This contract was in force and effect at the time of the instant hearing.

B. Events leading up to the discharge of Angus Tillis

Tillis was first employed by the respondent in December 1941, as a mixer man in the flotation plant at the mine. He joined the Union soon after going to work, and voted in the plant election which was held on May 22, 1942. In the fall of 1942, he was promoted to flotation plant shift foreman. After this promotion he was no longer within the bargaining unit as certified by the Board on July 10, 1942. In December 1943, subsequent to his promotion, he was selected by the Union as a member of a committee to negotiate a contract with the respondent. The committee, consisting of *Moffitt*, a representative of the Union, *Tillis* and two other employees, went to the plant office and met with *D. M. Wright*, the respondent's general manager, and *W. D. Calverley*, general superintendent of the mine. *Wright* asked *Tillis* what he was doing there. *Tillis* replied that he came to help negotiate a contract. *Wright* told *Tillis* that he was a supervisory employee and that he could not represent both the respondent and the Union, and that he did not know he belonged to the Union. *Tillis* replied that he did not know he was not supposed to belong to the Union. *Wright* then told *Tillis* that if he insisted on remaining a member of the Union, he would have to demote him to a job within the bargaining unit, and that he could not hold his present job and remain a member of the Union.⁸ At *Moffitt's* request *Tillis* then left the meeting and took no further part in the negotiations. *Tillis* did not withdraw from the Union but he did cease all union activities, except, as he expressed it, to "sit in on the meetings." *Tillis* never informed *Wright* or *Calverley* that he had decided to remain in the Union.

The grievance procedure outlined in the Union's contract of February 1, 1943, was not strictly followed in the plant. Such grievances as arose were of minor importance and in order to expedite the settlement of them, *Calverley* and employee *Harry Shields*, a drag line and locomotive crane operator, also president of the Union, arranged for periodical meetings to be held at *Shields' home*⁹ at night, for the purpose of discussing and settling whatever grievances the employees might have. The Union authorized this procedure. The meetings were open to any member of the Union, whether he had a grievance or not. *Calverley* attended on behalf of the respondent

⁷ The grievance procedure provided for in the contract was, in substance, as follows: There shall be no strike or stoppage of work by members of Local 22685 or lockout by the respondent until the grievance procedure has been exhausted, an employee having a grievance should first take it up with his foreman, then, if no settlement has been reached, a committee of 2, with or without the employee, may take it up with the Division Superintendent, then a committee of 3, with or without the employee may go to the plant superintendent, then, if it is still unsettled it should be referred to a grievance committee of not more than 4 union representatives which can take it up with management. Any individual employee may handle his own grievance.

⁸ Employee *W. E. Duke*, track foreman, had also joined the Union, but he resigned in the summer of 1943, after having been told by *Wright* that he could not continue in the Union and be a foreman at the same time.

⁹ *Shields* lived very near to the mine and flotation plant.

and Shields represented the Union. Occasionally Warren Doke, the mine superintendent, would be present. Tillis also attended these meetings. Theo Matthews and L. B. Fussell, flotation plant shift foremen, were present on occasions as spectators. On one occasion after one of the meetings, Tillis said to Calverley "Mr. Calverley, I don't want you to think that I am taking up all these grievances on myself, just picking it up for the boys and trying to make a star out of myself. The boys came to me with their grievances and asked me to see what can be done about it." Calverley said that he did not care who the grievances came from so long as they were legitimate grievances.¹⁰ Tillis was not a member of the Union's grievance committee, and had no authority from the Union to handle grievances of the employees.

Prior to about September 18, 1943, the flotation plant ordinarily operated with three shifts, 6 days a week and each shift foreman had his own crew. The shifts were 8:00 a. m. to 4:00 p. m., 4:00 p. m. to midnight; midnight to 8:00 a. m. None of the men worked more than 6 days a week. The plant did not run one day a week. About September 18, 1943, the respondent found it necessary to change the schedule in order to effect necessary repairs and because of a lack of feed in the deposit they were then mining. More work was done at night in order to leave the day shift period free for repairs. None of the men were laid off, and none worked more than 6 days a week, although the plant was working 7 days a week. Neither the Union nor any of the flotation plant employees made any complaint about this change in the schedule.¹¹ In the first part of October 1943, the respondent's head office in Chicago called for increased production, and about that time the mining operation had gotten into a much heavier feed area, therefore the respondent decided to operate the flotation plant 4 hours a day and 7 days a week, and still not work the men over 6 days a week. In order to do this, it became necessary to change the schedule of work in the flotation plant. About Wednesday October 13, 1943, Wright prepared a new schedule, herein called the new schedule, and instructed W. R. Hodges, the respondent's research chemist, to show it to the flotation plant shift foremen, who, at that time, were Tillis, Matthews and Fussell. Under the new schedule, Hyde, a feed tender, would become a shift foreman for 3 days a week, making an extra half shift. Hodges told the foremen to show the new schedule to the men and if there were any objections to report them to Doke, the mine superintendent. That night, when Tillis came to work at midnight, Foreman Fussell, whom Tillis was relieving, gave him a copy of the new schedule, and told him what Hodges had said. They discussed the new schedule and both decided that they did not like it.¹² The next morning, Thursday, October 14, Tillis and Hyde informed Mine Superintendent Doke that if there was not some change made in the new schedule, they could not work it. Doke said that he had not seen the new schedule and he would see Calverley about it. Tillis then went home. Doke called up Calverley and told him what Tillis and Hyde had said. Calverley then reported to Wright that there were objections to the new schedule. Wright instructed Calverley to call a meeting of the shift foremen for 4.00 p.m. that day. The shift

¹⁰ Calverley testified that he did not have Wright's approval for Tillis to attend these meetings, but that he saw no harm in it as Tillis was a friend of Shield's and he could not very well object to Tillis coming to Shields home. Calverley told Tillis not to be present if Wright should happen to come to one of the meetings.

¹¹ Under the terms of the contract between the respondent and the Union, the right to determine the work schedules was vested exclusively in the respondent.

¹² Under the new schedule, Tillis' shifts for the week would be from midnight Saturday, October 16, to 8:00 a.m. Sunday, then from 4:00 p.m. to midnight on Sunday, Monday, Tuesday, Wednesday, Thursday, and Saturday, with Friday off. This would give him 6 days of 8-hours a day. The other shift foremen would work the same number of days and hours. The crews would work for different foremen during the week.

foremen were notified¹³ and the meeting was held at the flotation plant. Those present at the meeting were Wright, Calverley, Doke and the shift foremen, Tillis, Matthews and Fussell. Wright and Tillis did most of the talking. Wright's testimony in respect to this meeting reads as follows:

Mr. Tillis said that they didn't like the schedule, and that—I believe the expression was they couldn't work under it. We probably talked to a considerable extent about the merits of the schedule. He [Tillis] expressed the opinion that the schedule was for the purpose of avoiding the presidential order, requiring payment of double time on the 7th day, giving the impression that he considered that a violation of the law, or something unethical. We argued back and forth considerably on that thing. It took a very firm stand that we did not—that I did not personally believe that men should work 7 days a week, and it was my opinion that the presidential order was for the purpose of giving men one days rest a week. He started calling in Mr. Hyde there, and I told him not to get Mr. Hyde in, that we didn't want any others there; that this was—that I was talking strictly to the flotation plant shift foremen . . . I think all your men belong to the Union¹⁴ . . . I then stated that it was up to the union to represent the men in any negotiations; that I was trying to work out a schedule satisfactory to the flotation plant shift foremen; that the question of whether it is unsatisfactory to the flotation plant shift foremen, that the question of whether it is satisfactory to the men would be taken up later. I was unable to convince Mr. Tillis that that schedule that I had made out would be satisfactory to them—the operators. I then suggested to Mr. Tillis that he and the other flotation plant shift foremen try to work out a schedule which would be satisfactory. Mr. Tillis stated that the schedule they all wanted was a straight 7-day week. I believe Mr. Matthews and Mr. Fussell agreed with Mr. Tillis that that is what they wanted. I told Mr. Tillis that I would not agree to a 7-day work week; and I told him it was necessary to operate that plant 7 days a week, 24 hours a day, to get our production, but that I could not work the men 7 days a week. And I told him that I would agree to any schedule satisfactory to the operators and the men which covered those two features, namely 24 hours' operation of the plant 7 days a week, and one day rest per week for the men in the plant. Mr. Tillis said that unless we gave them—that they operate the plant 24 hours a day 7 days a week, we would either have to give him 7 days' work a week or he would quit. I asked him to reconsider the matter and he refused to consider the matter; insisted that he would—that if we operated the plant 7 days a week, 24 hours a day, that he would quit. He then shook hands with me, told me how he had enjoyed working with me, and hoped that we were parting friends¹⁵. . . he stated that he would work one more shift, that then he was through.

The foregoing testimony of Wright was corroborated by Calverley, Hodges and Doke. According to Calverley, Wright stated at that meeting that he would be glad to accept any schedule that provided for the operation of the plant 7 days a week, but not over 6 days a week for each man. Tillis stated that "If we don't get the 7 days

¹³ Calverley contacted Tillis at the home of Tillis' mother. Tillis first declined to attend the meeting because he was busy making some repairs to the house. Calverley offered to pay him for 2 hours extra if he would attend. Tillis agreed and went to the meeting. Tillis was due to go to work at midnight that night.

¹⁴ Wright was referring to the men who worked under the flotation plant shift foremen.

¹⁵ Tillis admitted that he shook hands with Wright when the meeting terminated, but stated that it was Wright who said "I have enjoyed working with you."

and run the plant 7 days, I am quitting; I will finish the week, one more shift,¹⁶ and I am through." Doke testified that after Wright told Tillis that he would not let any of them work 7 days a week, Tillis replied, "Well, if you are going to do that I am going to work one more shift and if you don't work me 7 days, I am going to quit" Tillis then shook hands with Wright and told him "how glad he was he had worked for him and appreciated what he had done for him." Hodges testified that Wright assured the men that the plant was going to run 7 days a week but the men would work only 6 days a week; that Tillis said if they were going to do that he would work one more shift and quit.¹⁷

The following is Tillis' version of what transpired at the meeting. Wright asked him what were the objections to the new schedule. Tillis replied that he did not like it because he had to work different men on his shifts and the men did not like it because they had to work with different shift foremen. Wright told him that it was his duty to sell the idea to the men. Tillis said that he could not do it because they could not work with different foremen. Tillis said that they would bargain with Wright but the latter refused. Wright told Tillis that they were being pushed for production and had to operate the plant 7 days a week. Tillis replied, "Well let us work the 7 days, keep our own shift, work 7 days, and get paid for it, time and a half time for the 6th day and double time for the 7th day." Wright refused and said that no double time would be paid. Tillis then wanted to go back on the old schedule. Wright emphasized that the plant had to run 7 days. Tillis replied, "Well, Mr. Wright, I don't know what you are going to do . . . the men just are not going to work that shift . . . I am not, because I can't get the production that you are pushing me for—the results. And if something goes wrong out there, why you come out here and jump on me, you won't go to my feed tender, you will want to know about my shift, what was the matter I didn't get the results." Wright then asked Foreman Matthews and Fussell what they thought about the new schedule. Matthews replied, "Just mark me down No" Fussell said "Well I think about like they do." Wright said that a man just could not work 7 days a week, it had been tried in Russia and proved to be a failure. Tillis then said that he had been told by some employees of another plant near there that they were working 7 days a week. Tillis said that his idea of the new schedule was that the respondent was just trying to evade Executive Order No. 9240. Wright then said "Well what do you propose to do—what do you all propose?—You boys belong to the Union, all of you, don't you?" All three of the foremen replied in the affirmative. Tillis said "I tell you Mr. Wright, just make out a new schedule, that the boys will be satisfied with, or let us work the same schedule that we are now working" Tillis then called Hyde, and when he started to come over, Wright said "No, no . . . go back, Frank, we just want the operators—The Union will take care of you boys."¹⁸ Calverley then said "Mr. Wright, maybe we better sleep on this." Wright replied "Yes, I think so . . . we will want you boys to think this idea over." Tillis said, "Mr. Wright, I have thought it over, my men have thought it over, and they just can't see how they can work it and get along with these men . . . I can't work the different men and get those results . . . just make us out a new schedule or else continue working on this old one." Wright said, "They are pushing us for production, I wish you all would think it over." Doke said, "Well Angus, I can tell you one damned thing now . . . a man can't work 7 days a week because I know, I have tried it." Tillis told Doke that if they would let them try a 7-day week and they failed to get results, they would

¹⁶ Tillis lacked one shift to complete his week.

¹⁷ The other two foremen, Matthews and Fussell, objected to the new schedule but they did not say they would quit if it were put into effect.

¹⁸ Frank Hyde was a feed tender at that time

try the new schedule. Doke replied that Wright would not agree to it. As the meeting was breaking up, Wright said that he had an idea in mind that would get them a raise in pay, and for them to be patient. Tillis further testified that if the "boys" did not work the new schedule, it was his intention to quit and go to work somewhere else. ". . . It might be taken as though I was going to quit because I said, I wouldn't work that schedule. I couldn't work it."

After the meeting was over, both Calverley and Doke advised Wright to release Tillis, as he had quit. Calverley's testimony in this connection, reads as follows:

Thursday night I believe, I actually suggested to Mr. Wright that we—and if I may take Mr. Tillis up—I told Mr. Wright that he had quit or threatened to quit on four preceding occasions that I could definitely remember; and it got kind of monotonous. I knew he had expressed this complete dissatisfaction with the company, and his working conditions; and a man that wants to quit that often, inside of a period of two or three months, I think he should be recognized. I had tried to smoothe over his attempted resignations on all previous occasions; but that I believed was the first Mr. Wright had heard of those previous attempts.

That night Wright instructed Calverley to release Tillis. Wright testified that the reasons for dispensing with the services of Tillis was "because we had decided to accept his resignation, and we were glad to get rid of him; we didn't want him to change his mind—Because he had demonstrated quite conclusively that he didn't meet up with the requirements of a supervisor." The next morning, Friday, October 15, Hodges made up another schedule which also provided for the operation of the flotation plant 24 hours a day and 7 days a week, but the men would work only 6 days a week. The only practical difference between this schedule and the previous new one, was that the crews worked under the same formen each shift. Hodges showed the schedule to Matthews and Fussell and their crews. Tillis and his crew were not working that day, therefore Hodges did not submit the schedule to them. There was no serious objection made to the schedule by the men who saw it, except that they did not altogether like one shift which worked 12 hours. This schedule was never put into effect due to subsequent events.

During that day, Friday, Calverley instructed Jones, the respondent's paymaster to make up Tillis' time and to leave it at his, Calverley's home that night, so that he could give it to Tillis the next morning. When Tillis returned to the plant Friday night, October 15, at midnight to relieve Fussell, the latter told Tillis about Hodges' schedule. Tillis worked his shift that night. During the night, Hyde, one of Tillis' crew, said to Tillis "I heard something today; are you quitting"? Tillis replied "Not that I know of." Hyde then told Tillis that he heard that Calverley had instructed Jones to make up his time. About 7:15 Saturday morning, October 16, Calverley came to the plant and gave Tillis his pay and release. Calverley told Tillis that he could fill out the release any way he wanted to. Tillis took his pay and release and, before signing the receipt, asked Calverley if it included the 2 extra hours that he had been promised for attending the meeting on Thursday. Calverley assured him that it did. Tillis then signed the receipt which was for his full pay up to that time. The receipt was made out in ink by Adella Clark, the pay-roll clerk. The reason shown on the receipt for the payment was "Quit." Tillis testified that the word "quit" was not on the receipt when he signed it. Clark testified that under instructions from Jones she wrote in the word "quit," at the time she made out the receipt, and that she had not seen the receipt since, until it was shown to her at the hearing. Calverley also testified that the receipt contained the word "quit" at the time that Tillis signed it. Tillis did not ask Calverley why he had been given his time.

According to Doke, just after Tillis had been released, Foreman Matthews said to him "If you don't put Tillis back to work, we are all going to quit." Matthews testified that he told Doke he would not work if they were going to treat Tillis like that, but did not say he was going to quit his job for good. Just before Tillis and Matthews left the plant, Doke asked Tillis if he had got his time, Tillis replied in the affirmative. Doke then told him to get off the property. Tillis and Matthews, also Matthews' crew, except Claude Wilson, then left the plant, although Matthews' shift was due to start at 8.00 a.m. that day. The flotation plant did not work that day. After the men had left the plant, Calverley contacted Shields, president of the Union, and asked him to assist him in getting the men back to work. Shields then, at the request of Calverley, contacted all of the flotation plant employees, including Tillis,¹⁹ and requested them to attend a meeting at the plant at 4:00 p.m. that day, Saturday. Shields told Calverley that the work stoppage had not been authorized by the Union, but he would help him to get it straightened out. At the appointed time all of the flotation men, including Tillis, arrived at the plant for the meeting.²⁰ Calverley objected to Tillis' being present, and he informed the men that there would be no meeting if Tillis insisted on remaining. The men refused to go into the meeting unless Tillis was permitted to be present. Finally shields secured Calverley's permission for Tillis to sit in at the meeting, provided he would have nothing to say, and he so informed Tillis and the men. Tillis refused the offer and stated that if he remained at the meeting he would talk. The men stated that if Tillis were not allowed in the meeting, they would not remain. The meeting was not held. Shields then asked the men if they wanted a conciliator and they replied in the affirmative. That night Shields informed R. L. Cahall, financial secretary of Chemical Workers District Council #1, about the trouble in the plant. They immediately sent a telegram to Dr. John R. Steelman, Director of Conciliation, Washington, D. C., asking for a conciliator.²¹ The plant was operated on Sunday and Monday with a "make shift" crew. On Monday Calverley and Shields contacted all of the flotation plant employees, except Tillis, and requested them to come back to work that afternoon. The men were told that if any one employee refused to return to work, the others would be notified and they need not return. All of the men agreed to return to work except one, therefore, according to agreement, the others were notified not to come back.

On Monday morning, Cahall was advised that O. W. Schaeffer, a conciliator, from St. Petersburg, Florida, would arrive the next morning. That night a meeting of the Union was held and Cahall told all of the flotation plant employees that they must report for work at the plant the next morning, as the conciliator would be there and it would be necessary for the men to meet him there. The next day, Tuesday, the men, including Tillis, went to the plant, and a preliminary meeting with the conciliator and Cahall was held in the warehouse. The employees informed Schaeffer about the new schedule, release of Tillis, and the work stoppage. The conciliator told them that he would take the matters up with the management but, before doing so, it would be necessary for the men to go back to work. The men then went back to work: Schaeffer selected Matthews, Hyde and Lyle²² as a committee to accompany him to the office. A meeting was held in the plant office at 1:00 p.m. Those present were Schaeffer, Cahall, Shields, the committee, Wright, Calverley and Doke.²³ They first discussed the new

¹⁹ Calverley testified that, through an oversight, he had neglected to tell Shields not to invite Tillis to the meeting.

²⁰ There were approximately 12 employees at this meeting.

²¹ Shields had already sent one telegram to Steelman before he saw Cahall.

²² Matthews and Hyde were flotation plant foremen. Lyle was not a supervisory employee. Hyde had just been made foreman to replace Tillis.

²³ Tillis did not go into the meeting, but remained nearby in a motor car. Schaeffer had instructed him to be available if they wanted him.

schedule and then drew up another schedule, which was satisfactory to all concerned Cahall then asked Wright if he would discuss the case of Tillis. Wright refused on the ground that Tillis was not within the union bargaining unit. Schaeffer made no attempt to discuss Tillis' case. After Schaeffer and Wright had left the meeting, there was a discussion between Cahall and Calverley concerning Tillis. Cahall said to Calverley, "Regardless of representation, we are here to get this thing stttled. If there is some way we can talk over this Tillis matter . . . I have got to know some reason . . . Well as far as the bargaining is concerned I don't see that there is any relationship." Calverley replied "We accepted his resignation because we wanted to." Calverley further told Cahall that Tillis was a good workman, but that he "had too much mouth," talked too much and was a trouble maker; that whenever it was necessary to make any changes around the plant, Tillis always had something to say about it. Also that Tillis had complained about Wilson, the previous mine superintendent, which had resulted in Wilson's transfer.²⁴ The meeting then adjourned.

On January 14, 1944, Tillis wrote the following letter to the respondent, but he never received a reply:

I would like to place my application with your firm for a job as a Flotation Supervisor are (sic) some job similar. I think my record as a supervisor with Swift and Company in the past will prove that I am familiar with the job and can hold it down. Any consideration you will give me will be greatly appreciated.

Cahall testified that while attending a meeting of the Safety Council at the Southern Phosphate Company at Ridgewood, Florida, on July 24, 1944, he was talking to W. L. Willis, superintendent of the respondent's fertilizer plant; that he said to Willis "It is too bad about Angus Tillis being discharged down at your place"; that Willis replied "Yes, it was. Angus was a good boy and I liked Angus, but Angus' trouble didn't start at the time he was discharged. It was a well known fact that the Company was out to get rid of him." Willis admitted that he said Tillis was a good boy and that he liked him, but denied having said that the Company was out to get rid of him. The undersigned is of the opinion and finds that it is unnecessary to resolve this conflict in testimony.

Concluding findings

In general, the testimony of Wright and Calverley concerning the events leading up to the termination of Tillis' employment with the respondent is accepted by the undersigned as an accurate statement of the facts. In the last analysis Tillis was discharged for conduct unbecoming a supervisory employee.²⁵ Tillis had retained his membership in the Union without the knowledge or consent of the respondent; however, he was responsible to management and was definitely excluded from representation by the Union, insofar as the designated appropriate unit was concerned. In stating that he would not cooperate with management and endeavor to work the new schedule, Tillis invited his discharge. Tillis owed his job loyalty to management and when he defied his superiors and refused to carry out their proper and legitimate orders and work the new schedule, they had no option but to discharge him. There was no question of the respondent attempting to discourage union activities.

The evidence fails to support the Board's contention that Tillis was discharged and refused reinstatement because he engaged in concerted activities with other flotation plant foremen or employees for the purposes of collective bargaining. After Tillis

²⁴ The record shows that the complaints made against Wilson, by Tillis, were more or less justified.

²⁵ The undersigned finds that Tillis was discharged by the respondent, notwithstanding the respondent's contention that he quit his job.

had become a foreman, he endeavored to inject himself into the discussions concerning grievances held between Superintendent Calverley and Shields, president of the Union, at the latter's home. Tillis had no authority from the respondent or the Union to represent the employees. The latter was fully protected in the grievance procedure provided for in the contract. The record is also clear that Tillis did not represent the other two flotation foremen in the discussions concerning the new schedule or any other working conditions. The new schedule was presented to the other two foremen on the morning of Wednesday, October 13, and Tillis did not see it until that night. The next day, the three flotation foremen were notified by Calverley that a meeting of the foremen would be held that afternoon to discuss the new schedule. Tillis, at first, refused to attend this meeting because he was busy making repairs to his mother's home, but he finally consented provided he received 2 hours' overtime, which was given to him. Tillis made no such demand for the other two foremen. Tillis attended the meeting and argued against the adoption of the new schedule, principally because it did not permit him to work 7 days a week, thereby substantially increasing his weekly wage. He also argued that the shift employees did not like the idea of working with different foremen. Tillis' main concern was for himself only. The other two foremen voiced their disapproval of the new schedule, but they did not select Tillis to represent them.

The undersigned finds from the entire record in the case, that Angus Tillis was discharged by the respondent on October 16, 1943, and thereafter refused reinstatement for reasons other than those alleged in the complaint and that in discharging him the respondent has not engaged in any unfair labor practice within the meaning of Section 8 (3) of the Act.

C. Alleged interference, restraint, and coercion

The allegations of the amended complaint that from December 1942, the respondent, by its officers, agents, representatives and employees, more particularly by D. M. Wright, Warren M. Doke, W. A. Hodges, W. L. Willis and W. D. Calverley, committed, authorized, instigated, and acquiesced in statements and conversations discouraging its employees in their membership and activities in the Union and their concerted activities for the purposes of collective bargaining, are not supported by the evidence and therefore the undersigned finds that the respondent has not engaged in unfair labor practices within the meaning of Section 8 (1) of the Act.

CONCLUSIONS OF LAW

1. The operations of the respondent, Swift and Company, Ft. Meade, Florida, occur in commerce, within the meaning of Section 2 (6) of the Act.
2. Federal Labor Union, No. 22685, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the Act.
3. The respondent, Swift and Company, Ft. Meade, Florida, has not engaged in unfair labor practices within the meaning of Section 8 (1) or (3) of the Act, as alleged in the amended complaint.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, the undersigned hereby recommends that the amended complaint, issued herein against the respondent, Swift and Company, Ft. Meade, Florida, be dismissed in its entirety.

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.

W. P. WEBB
Trial Examiner

Dated December 7, 1944.