

Train fare to Rochester, N. H.....	\$2. 00
Hotel in Rochester, N. H.—1 night.....	2. 50
Bus fare, Rochester, N. H. to Berlin, N. H.....	4. 00
Hotel in Berlin, N. H.—2 nights.....	5. 00
Auto—100 miles to logging camp.....	8. 50
Boots for logging camp job.....	13 50
Woolen pants for logging camp job.....	16. 00
Woolen shirt for logging camp job.....	7. 00
Woolen socks for logging camp job.....	4. 50
Auto—logging camp to Berlin, N. H.....	8. 50
Hotel in Berlin, N. H.—1 night.....	2 50
Bus fare, Berlin, N. H. to Rumford, Maine.....	1. 50
Hotel in Rumford, Maine—2 nights.....	5. 00
Bus fare, Rumford, Maine to Manchester, N. H.....	3. 00
Hotel, Manchester, N. H.—1 night.....	3. 00
Bus fare, Manchester, N. H. to Holyoke, Mass.....	4. 00
Hotel, Holyoke, Mass.—3 nights.....	7. 50
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	\$98. 00

As in the case of Donnelly and for the reasons expressed in connection therewith, the undersigned rejects a claim by the General Counsel that the amount of the interim earnings of Murphy, which should be credited against his gross loss of earnings in computing the Respondent's net liability, should exclude compensation received by Murphy for working periods with his later employers during which he would have received paid vacations from the Respondent.

As set forth in Appendix C, the undersigned computes the net interim earnings credit to which the Respondent is entitled in the case of Murphy, as being \$5,997.26.

III. CONCLUSIONS AND RECOMMENDATIONS

Upon the foregoing findings and the computations made in accordance therewith in Appendices B and C, the undersigned makes the following determinations, as directed by the Order of the Board entered on October 12, 1950, and recommends their adoption by the Board:

(1) That back pay in the sum of \$3,324.32 is due to George Murphy from the Respondent, Underwood Machinery Company, under the Board's Order in Case No. 1-C-2629 and the Decree of the United States Court of Appeals for the First Circuit enforcing said Order on December 20, 1949.

(2) That back pay in the sum of \$1,839.05 is due to John Donnelly from the Respondent, Underwood Machinery Company, under the Board's Order in Case No. 1-C-2767 and the Decree of the United States Court of Appeals for the First Circuit enforcing the said Order on December 20, 1949.

JOHN WAFFORD D/B/A WAFFORD CABINET COMPANY and FURNITURE
WORKERS LOCAL UNION No. 2081, UNITED BROTHERHOOD OF CAR-
PENTERS AND JOINERS OF AMERICA, AFL. *Case No. 32-CA-130.*
August 28, 1951

Decision and Order

On May 8, 1951, Trial Examiner Charles W. Whittemore issued his Intermediate Report in the above-entitled proceeding, finding that the 95 NLRB No. 190.

Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it be ordered to cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report.

The Board¹ 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 the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.

1. We find, as did the Trial Examiner, that the Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7, thereby violating Section 8 (a) (1) of the Act, by the following conduct, more fully described in the Intermediate Report: (1) Interrogating employees as to their activity and views concerning union organization and union leadership; (2) threatening employees with loss of their jobs if they supported the Union; (3) keeping union meetings under surveillance; (4) promising employees increased wages if they would drop their support of the Union; and (5) requesting an employee to attend union meetings for the purpose of reporting to the Respondent what transpired there.

2. The Trial Examiner found that William Holt, Chris Lewis, F. L. Andrews, Coy Spharler, C. G. Eastwood, LeCledé Ferrell, Woodrow Ferrell, Lester Smith, Frank Wood, and E. L. Ginnett were discriminatorily discharged in violation of Section 8 (a) (3) of the Act. He further found that the evidence did not support the complaint insofar as it alleged a discriminatory discharge of John Conrad. We agree with these findings, and with the Trial Examiner's reasoning in support of these findings.²

3. The Trial Examiner further found that the Respondent had violated Section 8 (a) (5) of the Act by refusing to bargain on and after April 28, 1950. We do not agree.

It is now well established that, absent special circumstances not present here,³ a prerequisite to a finding of a refusal to bargain by an employer is a clear and unequivocal demand for bargaining by

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in respect to this case to a three-member panel [Members Houston, Reynolds, and Styles].

² With respect to the group of seven employees discharged on May 4, the Respondent's sole defense was that these dismissals were necessitated by a shortage of materials and a slump in orders. We have carefully examined the testimony of the Respondent's witnesses, Wafford and Crossett, who testified in support of this defense, and conclude that the Trial Examiner was correct in discrediting their testimony. We further conclude, on the record as a whole, that even if the shortages and business slump did exist, it was the union activities of these individuals and not these business considerations which motivated the Respondent in discharging them.

³ Compare *Old Town Shoe Company*, 91 NLRB 240.

the union.⁴ We find no such demand in the instant case. On April 28, 1950, the Union addressed a letter to the Respondent which, after asserting that the Union had been selected as the collective bargaining representative of the Respondent's employees, requested that the Respondent agree "to a date and place of meeting for the purpose of discussions relative to certification . . . by the National Labor Relations Board . . ." A petition was filed, a conference held, and an election agreed upon and scheduled. Thereafter the Union withdrew its petition and filed the charges which initiated the instant proceeding. The record contains no other evidence of a request to bargain, and we cannot find in its letter of April 28 that kind of clear and unequivocal request by the Union essential to the conclusion that the Respondent refused to bargain.⁵ Accordingly, we shall dismiss the complaint insofar as it alleges that the Respondent violated Section 8 (a) (5) of the Act.

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 Respondent, John Wafford d/b/a Wafford Cabinet Company, Pine Bluff, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Furniture Workers Local Union No. 2081, United Brotherhood of Carpenters and Joiners of America, AFL, or in any other labor organization of its employees by discriminatorily discharging any of them, or by discriminating in any other manner in regard to their hire or tenure of employment, or any term or condition of employment.

(b) Interrogating its employees concerning their union activities or views, threatening reprisal if the Union is selected by the employees, promising benefits if the employees discontinue their support of the Union, engaging directly or indirectly in surveillance of union meetings, and in any other manner interfering with, restraining, or coercing its employees in the right to self-organization, to form labor organizations, to join or assist the above-named labor organization or any other labor organization, to bargain collectively through rep-

⁴ *The Solomon Company*, 84 NLRB 226; *N. L. R. B. v. Columbian Enameling and Stamping Company*, 306 U. S. 292; *N. L. R. B. v. The Valley Broadcasting Company*, 189 F. (2d) 582.

⁵ *The Solomon Company*, *supra*. It may be noted, in passing, that during the hearing the Trial Examiner, referring to the letter in question, stated: "Let me simply point out at this point, I am afraid on the basis of this letter I would not find that there was any legal request to bargain." *Somerville Buick, Inc.*, 93 NLRB 1603, cited by the Trial Examiner, is inapposite. There the respondent's violations of Section 8 (a) (1) were considered in finding that the Respondent refused to bargain. But in that case there was a clear request to bargain, and the case does not therefore establish that no request is necessary in such circumstances.

representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as guaranteed in Section 7 thereof.

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

(a) Offer to William Holt, Chris Lewis, and F. L. Andrews immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges.

(b) Make whole William Holt, Chris Lewis, F. L. Andrews, Coy Spharler, C. G. Eastwood, LeClede Ferrell, Woodrow Ferrell, Lester Smith, Frank Wood, and E. L. Ginnett, in the manner set forth in the Intermediate Report attached hereto, in the section entitled "The remedy."

(c) Upon request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due.

(d) Post at its plant in Pine Bluff, Arkansas, copies of the notice attached hereto and marked "Appendix A."⁶ Copies of such notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) 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 a refusal to bargain and a discriminatory discharge of John Conrad, be, and it hereby is, dismissed.

Appendix A

NOTICE TO ALL EMPLOYEES

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, I hereby notify my employees that:

⁶ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

I WILL NOT discourage membership in FURNITURE WORKERS LOCAL UNION No. 2081, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L., or in any other labor organization by discriminatorily discharging employees or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment.

I WILL NOT interrogate my employees concerning their union activities or views, threaten reprisal if a union is selected by my employees, promise benefits to my employees if they discontinue their support of a union, engage, directly or indirectly, in the surveillance of union meetings, or in any manner interfere with, restrain, or coerce my employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the above-named union, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

I WILL OFFER to William Holt, Chris Lewis, and F. L. Andrews immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them and Coy Spharler, C. G. Eastwood, LeClede Ferrell, Woodrow Ferrell, Lester Smith, Frank Wood, and E. E. Ginnett whole for any loss of pay suffered as a result of the discrimination against them.

All my employees are free to become, remain, or refrain from becoming or remaining members of the above-named Union or any other labor organization except as that right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act. I will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

JOHN WAFFORD, D/B/A WAFFORD CABINET COMPANY,

Employer.

By _____
(Representative) (Title)

Dated _____

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Intermediate Report

STATEMENT OF THE CASE

Upon charges duly filed by Furniture Workers Local Union No. 2081, United Brotherhood of Carpenters and Joiners of America, A.F.L., herein called the Union, the General Counsel of the National Labor Relations Board, herein respectively called General Counsel and the Board, by the Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued a complaint dated February 26, 1951, against John Wafford, d/b/a Wafford Cabinet Company, Pine Bluff, Arkansas, 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 (a) (1), (3); and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charges were duly served upon the Respondent; copies of the complaint and notice of hearing were duly served upon the Respondent and the Union.

With respect to unfair labor practices the complaint, as amended, alleges in substance that the Respondent: (1) During April and May 1950, discriminatorily and because of their union activities discharged certain employees and as to some of them thereafter refused reinstatements; ¹ during the same period through certain officers and agents interrogated employees as to their union membership and activities, made promises of benefit, uttered threats of reprisal, and engaged in surveillance; (3) on or about April 28 refused to bargain collectively with the Union as the exclusive bargaining representative of its employees in an appropriate unit; and (4) by these acts interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

Thereafter the Respondent filed its answer, in which it denied engaging in the alleged unfair labor practices.

Pursuant to notice, a hearing was held at Pine Bluff, Arkansas, on March 20 and 21, 1951, before the undersigned duly designated Trial Examiner. The General Counsel and the Respondent were represented by counsel, the Union by an official. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. Counsel argued orally before the Trial Examiner but waived opportunity to file briefs.

Upon the entire record in the case, and from his observation of the witnesses, the Trial Examiner makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

John Wafford, an individual doing business as Wafford Cabinet Company, has his principal office and place of business in Pine Bluff, Arkansas, where he is

¹ As to the following who were not recalled: William Holt and Chris Lewis discharged on April 25, John Conrad on May 12, and F. L. Andrews on May 26. The following were discharged and recalled on dates set opposite their names:

	Discharged	Recalled
Coy Spharler.....	May 12.....	June 19
C. G. Eastwood.....	May 24.....	June 19
LeCiede Ferrell.....	May 24.....	June 26
Woodrow Ferrell.....	May 24.....	June 26
Lester Smith.....	May 24.....	June 4
Frank Wood.....	May 24.....	June 19
E. I. Ginnett.....	May 24.....	June 6

engaged in the manufacture and sale of furniture. During 1950 the Respondent purchased raw materials, consisting of lumber, glue, paint, varnishes, and metal bolts, valued at about \$50,000, of which approximately 10 percent was purchased and shipped to the plant from outside the State of Arkansas. During the same period, finished products of a value exceeding \$100,000 were sold, of which about 75 percent was sold outside the State of Arkansas. The Respondent concedes that it is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Furniture Workers Local Union No. 2081, United Brotherhood of Carpenters and Joiners of America, A. F. L., is a labor organization admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Background events and issues*

Previously unorganized, so far as the record shows, on April 22, 1950, many of the Respondent's 25 employees met at a union hall and signed cards authorizing the Union to represent them for purposes of collective bargaining. On April 24, the following workday, Wafford told a number of his employees that a shortage of plywood would necessitate layoffs. The next day employees Holt and Lewis were discharged and have not been recalled. Their discharges are in issue. During the next few days, according to credible evidence discussed in the section next following, both Wafford and his superintendent, J. A. Crossett, questioned employees as to their union affiliations and uttered both threats and promises.

On April 28, a union committee of three employees, Spharler, Wood, and Eastwood, by letter informed the Respondent that a majority of the employees had authorized the Union to represent them, and requested a meeting for the purpose of discussing certification by the Board. On May 12 Spharler and another union employee, Conrad, were discharged; their dismissals are in issue.

On May 2 and May 16 the Union filed a petition and an amended petition, respectively, with the Board. The Union and the Respondent signed on the latter date a consent-election agreement. May 26 was set as the election date. On May 21, by wire to the Regional Office, the Union requested withdrawal of its petition, because it was filing unfair labor practice charges. The request was granted and the Respondent informed by wire of May 23. On May 24 charges were filed by the Union. On the same day seven more employees who had signed union cards were dismissed or laid off. These dismissals are in issue.

It is the claim of General Counsel, opposed by counsel for the Respondent, that by intimidation and reprisals, at a time when the Union was seeking to bargain, the Respondent in effect refused to bargain with the Union as the exclusive representative of employees in an appropriate unit.

B. *Interference, restraint, and coercion*

During the afternoon of April 22, following the union meeting, Superintendent Crossett visited employee C. G. Eastwood at his home. Crossett asked the employee what he had been doing at the meeting and who attended.² When

² Although General Counsel does not claim that Crossett's presence near the union hall on April 22 constituted surveillance, the superintendent's own testimony establishes that he saw "three of the Boys" come out, that he spoke to them, and that when they "barely" spoke to him his curiosity was aroused and he then found out that they were organizing the Union.

Eastwood declined to furnish names of employees present, Crossett inquired specifically as to several, including Holt and Lewis, and said he intended to "get rid of the leaders." Crossett then told Eastwood that he was due for a raise the first of the month and if the employee would get out of the Union and "forget about it," he in turn would forget about his attending. On April 24, the following Monday, Crossett asked Eastwood if he was "ready to cross the fence," clearly meaning to withdraw from the Union. The same day Wafford came to Eastwood, said: "I heard you changed your long handles for a pair of Union drawers," and when the employee admitted it, told him, "You'd better get out of them." The questioning by Crossett and Wafford and their remarks to the employee were plainly coercive.³

Early in May Crossett asked employee Woodrow Ferrell if he had attended union meetings, and the employee replied in the affirmative.⁴ Such questioning constituted restraint.

Two days after the first union meeting Crossett asked employee Robert Smith how the "meeting came out" and told him that if he "would pull out of the Union" he would "make it all right." Later during the same conversation Crossett asked Smith to "stay in" and report what went on at the meetings. Smith said he would think about it. On Wednesday of the same week Smith told Crossett of a meeting scheduled for that evening. That night, April 26, both Crossett and Wafford were parked close to the union hall, where each was seen by a number of employees attending the meeting. The presence of Wafford and Crossett at this point and time is admitted. Smith's testimony is uncontradicted both as to Crossett's request that he report union information and as to his informing the superintendent of the impending meeting.⁵ The Trial Examiner concludes and finds that Crossett's above-quoted remarks and inducements to Smith were violative of rights guaranteed employees by the Act, and that the presence outside the union hall of both Crossett and Wafford, under the circumstances revealed by the record, was for the purpose of and constituted illegal surveillance.

Shortly after the first union meeting Wafford asked employee LeClede Ferrell if he had attended, and if he had signed a card. Ferrell admitted the fact. Wafford's questioning of this employee clearly constituted interference prohibited by the Act.

C. The discriminatory discharges

It is General Counsel's contention that the discharges here involved were discriminatory and for the purpose of discouraging membership in the Union. This contention is opposed by the Respondent; it affirmatively claims in some instances that lack of material and orders required a temporary reduction in force and in others that poor workmanship caused dismissals.

William Holt and Chris Lewis. These two employees were the first to be discharged after the union meeting of Saturday, April 22. Both had attended the meeting. It is undisputed that on Saturday afternoon Crossett had specifically asked Eastwood if Holt and Lewis had been present. Both had known well and worked with Wafford in years past at other plants, and were skilled. Both

³ The findings as to Crossett's visit to the employee's home, and the remarks of both the superintendent and Wafford rest upon Eastwood's credible and uncontradicted testimony.

⁴ W. Ferrell's testimony on this point is uncontradicted.

⁵ Crossett's testimony to the effect that he told Smith he did not "want to hear" information brought to him is not considered by the Trial Examiner to be an effective denial of Smith's specific testimony on the matter.

were known by Wafford, at the time of hiring, to have been extra men on the Cotton Belt railroad, holding seniority rights there. In view of the uncontradicted fact that Crossett, immediately after the first union meeting, vigorously endeavored to ascertain who was present and who was leading the movement, the Trial Examiner is convinced and finds that Wafford suspected these two railroad men of taking an active part in the organization. On Monday morning, April 24, Wafford told a group of employees, including Holt and Lewis, that lack of plywood would cause him to lay off some of them. The next morning Holt and Lewis were discharged, and since then have not been recalled. Wafford and Crossett claimed, as witnesses, that Holt's work was defective. On the other hand there is no evidence that either had ever complained to Holt about his work. Wafford, when asked why he let Holt go, said he gave him "the excuse" that plywood was lacking, but that he "imagined" Holt knew why he was being dismissed. As to Lewis, Crossett admitted that his work was satisfactory, and Wafford gave as a reason for the dismissal only the fact that Lewis had been the last man hired.⁶ The testimony of Wafford and Crossett as to the dismissals of Holt and Lewis fails to establish reasonable cause. Furthermore, the record contains no credible explanation for the hiring of Irvin Taylor, on May 10, to perform work for which it appears at least Lewis was qualified. Under the circumstances revealed by the record, the Trial Examiner is convinced and finds that Holt and Lewis were discharged on April 25, 1950, in order to discourage membership in the Union.

Coy D. Spharler and John Conrad. These two employees were dismissed on May 12. Conrad has not been recalled. Spharler was offered reinstatement on June 19, but declined to accept the offer. The latter was one of the two leaders of the organization movement, and was the elected secretary-treasurer of the group. It is undenied that he was spoken to by Crossett when coming out of the meeting on April 22. Nor is it contradicted that Crossett told Eastwood, on April 22, that the company would "get rid of the leaders." As noted above, Spharler was the first of the committee of three to sign the letter to the Respondent of April 28, admittedly received, claiming majority representation for the Union. The Respondent's knowledge as to Spharler's union activity is clear and unmistakable. Wafford's sole explanation for dismissing Spharler was that his "work for awhile was good, but the longer he stayed the more defective work he put out for some reason." No credible evidence was submitted to substantiate this claim.⁷ Its lack of merit is made clear by the fact that on June 19 he offered him full reinstatement. The Trial Examiner is convinced and finds that Spharler was discharged discriminatorily on May 12, because of his leadership in the Union. The evidence supporting General Counsel's claim as to Conrad is not convincing. General Counsel moved to strike the only testimony of the employee which might have supported a finding that either Crossett or Wafford knew the employee had signed a union card. It is undisputed that Conrad is physically disabled, that Crossett found him unable to do the work assigned to him, and asked Wafford to dismiss him shortly after he was hired in April. The Trial Examiner finds the evidence insufficient to support a finding that Conrad was discriminatorily discharged because of union activities. It will be recommended that the complaint be dismissed as to him.

⁶ The Respondent's records refute this claim. Lewis was hired March 29, 1950. John Conrad was hired April 10, 1950.

⁷ Furthermore, later in his testimony, Wafford admitted that he was "all mixed up," that Spharler's work was "all right," and he had "never fired Spharler." Thus Wafford negated the only reason advanced either by him or Crossett for Spharler's dismissal.

C. G. Eastwood, Woodrow Ferrell, LeCiede Ferrell, Lester Smith, Frank Wood, F. L. Andrews, and E. L. Ginnet. All of these employees were dismissed on May 24, the day after the Union had signed its original charges of unfair labor practices against Wafford. All had attended the union organizational meeting and had signed cards authorizing the Union to represent them. Wood and Eastwood were officers of the local, and had signed the letter of April 28, described above, a fact clearly establishing the Respondent's knowledge of their union adherence. Smith's part in providing Crossett with union information, and Crossett's questioning of Woodrow Ferrell have been noted above. As previously found, Wafford questioned LeCiede Ferrell as to his signing a union card. Ginnett's testimony is undisputed that he and Spharler, shortly after the first union meeting, were reprimanded by Wafford for watching him and Crossett, and that on that occasion Wafford told them they could "quit, leave, do what you want to and see if your friends up on Main Street can help you." It is reasonably inferred that Wafford had reference to the union hall, which was on Main Street, and that he was aware of Ginnett's union adherence. Crossett testified that Smith told him that Spharler and, as the superintendent recalled, Andrews had threatened him for revealing information about the Union. From Crossett's own testimony, and the established surveillance by both Crossett and Wafford, it is reasonably inferred and the Trial Examiner finds that management was also aware of Andrews' membership in the Union.

The testimony of both Wafford and Crossett as to the dismissals of these seven employees is confused and incredible. In general, they claimed that material supplies were short and orders had slumped. No inventory records were offered to substantiate the claim of material shortage. Wafford referred to his inability to obtain plywood. According to his own testimony, however, this shortage became acute on or about April 22—more than a month before the several dismissals of May 24. As to the business "slump," data submitted by the Respondent to the Regional Office and introduced into evidence fails to support the contention. On the contrary, orders shipped during the week of the layoff on May 24 totaled \$4,691.53 in value, while orders shipped during the comparable week in April totaled only \$2,721.20. Thus the Respondent's own records indicate an increase in business, not a decrease. Wafford's testimony in general is deprived of credibility by his obvious confusion in specific instances. Asked why he laid Wood off, he replied, "The same excuse, lack of material." He denied knowing Wood was "connected" with the Union, until his own counsel reminded him of the letter he had received from Wood and others. As to Lester Smith, both Wafford and Crossett claimed the employee was discharged for "poor workmanship." Wafford replied, when asked by his own counsel why Smith was recalled if his work was poor, that "he hadn't got so bad then." Crossett's testimony as to Smith is scarcely more informative. He said the employee's work "didn't seem so bad until about the time I let him go."

As to Andrews, it was claimed that he was dismissed on April 24 because his work was "bad." Yet he was called back to work the next day, and permitted to work until May 26—the day *after* Wafford received the original charge, naming Andrews among others allegedly discriminated against.

The Trial Examiner concludes and finds that the reasons, and each of them, advanced by the Respondent for the dismissals of the above-named seven employees are wholly without merit. On the contrary, the Trial Examiner is convinced and finds, in view of the Respondent's openly avowed hostility toward

the Union, that each was discharged for the purpose of discouraging membership in the Union.⁸

D. The refusal to bargain

The parties stipulated, and the Trial Examiner finds, that an appropriate unit of the Respondent's employees, for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act, consists of:

All production and maintenance employees excluding all office and clerical employees, guards, professional employees, and supervisors as defined in the Act.

At the hearing the Respondent conceded that on April 22, 1950, 14 employees then on the payroll had authorized the Union to represent them.⁹ By April 26, this total was 15.¹⁰ Data furnished by the Respondent and placed in evidence establishes that on May 1 there were 23 employees on the payroll in the appropriate unit.¹¹ By including Holt and Lewis, the total in the unit is increased to 25. The Trial Examiner therefore concludes and finds that on April 22, a few days before the Union formally claimed majority representation, a majority of the employees in an appropriate unit had designated the Union as their bargaining agent.

It is General Counsel's claim that the Respondent's conduct, designed to discourage union membership and beginning on April 22, the day organization started, constituted an effective refusal to bargain. The Trial Examiner agrees. The coercive remarks of Crossett and Wafford, above described, the surveillance and the discriminatory discharges, all constituted a pattern of intent not to deal with the Union which manifested a refusal to bargain in good faith.¹² The Respondent's claim that it willingly consented to an election fails as a meritorious defense in view of the coercive conduct which coexisted with its consent.

In summary, the Trial Examiner concludes and finds that on April 22, 1950, the Union was and at all times thereafter has been, the exclusive representative of all employees in the above-described appropriate unit for the purposes of collective bargaining. It is further concluded and found that, as alleged in the complaint, since April 28, 1950, the Respondent has refused to bargain collectively with the Union as the exclusive representative of employees in an appropriate unit, and thereby has interfered with, restrained, and coerced employees in the exercise of rights guaranteed by Section 7 of the Act.

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 its operations described in Section I, above, have a close, in-

⁸ Of the discriminatorily discharged employees, Holt, Lewis, and Andrews have not been offered reinstatement; Eastwood and Spharler were offered but declined full reinstatement on June 19, 1950; Smith was reinstated on June 4, Ginnett on June 6, Wood on June 19, and the two Ferrells on June 26. Although Andrews was dismissed with the others on May 24, he was recalled for 2 days. Recommendation for back pay will therefore run from May 26, the day he was finally dismissed.

⁹ This total includes both Holt and Lewis, found discriminatorily discharged on April 25.

¹⁰ Conrad signed on April 26.

¹¹ Three employees, named in the list in evidence, are excluded from the unit count: Crossett, superintendent; Wilson, officer worker; and Taylor, not hired until May 10.

¹² See *Somerville Buick, Inc.*, 93 NLRB 1603.

imate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices, the Trial Examiner will recommend that it cease and desist therefrom and take certain affirmative action which will effectuate the policies of the Act.

Having found that the Respondent has discriminated in regard to the hire and tenure of employment of William Holt, Chris Lewis, and F. L. Andrews, and has refused to reinstate them, it will be recommended that the Respondent offer to them immediate and full reinstatement to their former or substantially equivalent positions.¹³ Having found that the Respondent has discriminated in regard to the hire and tenure of the three above-named employees, and Coy Spharler, C. G. Eastwood, LeClede Ferrell, Woodrow Ferrell, Lester Smith, Frank Wood, and E. L. Ginnett, it will be recommended that the Respondent make them whole for any loss of pay they may have suffered as a result of the discrimination against them by payment to each of them of a sum of money equal to that which he would have earned as wages from the date of discrimination to the date of offer of reinstatement, in the case of Holt, Lewis, and Andrews, and to the date of actual reinstatement or refusal to accept reinstatement in the cases of others above named.¹⁴ Loss of pay will be computed on the basis of each separate calendar quarter or portion thereof during the period from the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which each normally would have earned for each quarter or portion thereof, his net earnings,¹⁵ if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter.¹⁶ In accordance with the *Woolworth* decision, it will be recommended that the Respondent, upon reasonable request, make available to the Board and its agents all records pertinent to an analysis of the amount due as back pay.

It has been found that the Respondent has refused to bargain collectively with the Union. It will therefore be recommended that the Respondent cease and desist therefrom, and also that it bargain collectively with the Union, upon request, with respect to wages, hours, and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed contract.

The unfair labor practices found reveal on the part of the Respondent such a fundamental antipathy to the objectives of the Act as to justify an inference that the commission of other unfair labor practices may be anticipated. The preventive purposes of the Act may be frustrated unless the Respondent is required to take some affirmative action to dispel the threat. It will be recommended, there-

¹³ *The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 NLRB 827.

¹⁴ As to specific individuals, back-pay periods are as follows:

Eastwood, May 24 to June 19.

Spharler, May 12 to June 19.

Smith, May 24 to June 4.

Ginnett, May 24 to June 6.

Wood, May 24 to June 19.

W. Ferrell, May 24 to June 26.

L. Ferrell, May 24 to June 26.

¹⁵ *Crossett Lumber Company*, 8 NLRB 440.

¹⁶ *F. W. Woolworth Company*, 90 NLRB 289.

fore, that the Respondent cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by the Act.

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

CONCLUSIONS OF LAW

1. Furniture Workers Local Union No. 2081, United Brotherhood of Carpenters and Joiners of America, A. F. L., is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of William Holt, Chris Lewis, F. L. Andrews, Coy Spharler, C. G. Eastwood, LeClede Ferrell, Woodrow Ferrell, Lester Smith, Frank Wood, and E. L. Ginnett, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. All of the production and maintenance employees of the Respondent, excluding all office and clerical employees, guards, professional employees, and supervisors as defined by the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. Furniture Workers Local Union No. 2081, United Brotherhood of Carpenters and Joiners of America, A. F. L., was on April 22, 1950, and at all times since has been, the exclusive representative within the meaning of Section 9 (a) of the Act of all employees in the aforesaid unit for purposes of collective bargaining.

5. By refusing to bargain collectively with Furniture Workers Local Union No. 2081, United Brotherhood of Carpenters and Joiners of America, A. F. L., as the exclusive bargaining representative of the employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of 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 (a) (1) of the Act.

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

8. By discharging John Conrad the Respondent has not engaged in unfair labor practices within the meaning of the Act.

[Recommended Order omitted from publication in this volume.]