

In the Matter of FRED P. WEISSMAN COMPANY, A CORPORATION *and*
INTERNATIONAL LADIES' GARMENT WORKERS UNION, A. F. OF L.

Case No. 9-C-2302.—Decided September 30, 1946

Mr. Allen Sinsheimer, Jr., for the Board.

Mr. John L. Davis, of Lexington, Ky., and *Mr. David Leavenworth*,
of New York City, for the respondent.

Mr. Julius Holzberg, of Cincinnati, Ohio, for the Union.

Mr. Herbert C. Kane, of counsel to the Board.

DECISION

AND

ORDER

On August 9, 1946, Trial Examiner Irving Rogosin issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it 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 and a supporting brief.

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 brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

The record in this case, taken together with our Decision in the earlier proceeding against the respondent,¹ shows that Sims was excluded from employment for substantially the same anti-union considerations as motivated the exclusion of five other employees on September 19 and 20 and October 29, 1945, and by substantially the same group of employees. The record further shows that at the time of Sims' exclusion the respondent had made no attempt to restore the previously excluded employees to their jobs and had taken no other action to prevent the recurrence of such misconduct, and that even after

¹ *Matter of Fred P. Weissman, et al.*, 69 N. L. R. B. 1002.

71 N. L. R. B., No. 18.

Sims' exclusion the respondent still did nothing to remedy the situation. Upon these facts, the Trial Examiner found that the respondent was responsible for the exclusion of Sims on March 7, 1946, and he recommended that Sims be reinstated with back pay from that date. We agree.

Had there been no background of unremedied exclusions in this case, we would have ordered the back pay to begin on the date that Sims requested the respondent to reinstate her, rather than on the date of the exclusion. However, by failing to take reasonable measures to prevent the repetition of the earlier exclusions, the respondent encouraged, and contributed to, the exclusion of Sims, as the Trial Examiner found. For this reason we conclude that the respondent became liable for the exclusion on the date it occurred.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Fred P. Weissman Company, a corporation, Harrodsburg, Kentucky, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Ladies' Garment Workers Union, affiliated with the American Federation of Labor, or any other labor organization of its employees, 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;

(b) Discharging or otherwise discriminating against any of its employees because they have given testimony under the Act;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers Union, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Instruct its employees that it will not permit any group of employees to exclude other employees from the plant because of their membership in, or activities on behalf of, International Ladies' Garment Workers Union, affiliated with the American Federation of Labor, or any other labor organization, or because they have given

testimony under the Act, and that physical assaults upon, or threats of physical violence to, their fellow-employees for such purposes, will not be permitted in the plant or upon plant property at any time, and that the respondent will take effective action to enforce these instructions;

(b) Offer Mildred Purdon Sims immediate and full reinstatement to her former or a substantially equivalent position without prejudice to her seniority and other rights and privileges, and make her whole for any loss of pay she may have suffered by reason of the discrimination against her, by payment to her of a sum of money equal to that which she normally would have earned as wages from the date of the discriminatory exclusion to the date of the respondent's offer of reinstatement, less her net earnings during such period;

(c) Post at its plant in Harrodsburg, Kentucky, copies of the notice attached to the Intermediate Report marked "Appendix A."² Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by the respondent's representative, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, 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;

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

INTERMEDIATE REPORT

Mr. Allen Sinsheimer, Jr., for the Board.

Mr. John L. Davis, of Lexington, Ky., and *Mr. David Leavenworth*, of New York, N. Y., for the respondent.

Mr. Julius Holzberg, of Cincinnati, Ohio, for the Union.

STATEMENT OF THE CASE

Upon a charge duly filed by International Ladies' Garment Workers Union, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Ninth Region (Cincinnati, Ohio), issued its complaint dated May 14, 1946, against Fred P. Weissman Company, a corporation, 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), (3), and (4) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat 449, herein called the Act. Copies of the complaint and the charge, accompanied by notice of hearing thereon, were duly served upon the respondent and the Union.

²This notice, however, shall be, and hereby is, amended by striking from the first paragraph thereof the words, "The recommendations of a Trial Examiner," and substituting in lieu thereof the words, "A Decision and Order."

With respect to the unfair labor practices, the complaint alleged, in substance that the respondent, on or about March 7, 1946, discharged Mildred Purdon Sims¹ and has since failed and refused to reinstate her because of her membership in, activities on behalf of, and sympathy for the Union, for the purpose of discouraging, and thereby discouraging membership in the Union, and for the further reason that she gave testimony under the Act at a previous hearing involving the respondent conducted by the Board, on February 20, 1946, in violation of Section 8 (3) and (4) of the Act; and that, by the foregoing conduct, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

The respondent filed no formal answer, but, through its counsel, admitted orally upon the record the allegations respecting its operation in interstate commerce, and the status of the Union as a labor organization. It denied the remaining allegations, particularly those relating to the commission of any unfair labor practices.

Pursuant to notice, a hearing was held at Harrodsburg, Kentucky, on June 6, 1946, before Irving Rogosin, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented by counsel. All parties participated in the hearing, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. At the commencement of the hearing, counsel for the Board moved that the undersigned Trial Examiner await decision by the Board in the prior case, before issuing his Intermediate Report, and that he take "judicial notice" of the Board's Decision and Order in that case. Ruling on this motion was reserved. Inasmuch as the Board has issued its Decision since the close of the hearing in the present case, and the undersigned has taken official notice of that Decision, it is unnecessary to rule upon this motion. All parties availed themselves of the opportunity to argue orally upon the record. Although all were also granted an opportunity to file briefs with the undersigned, only the respondent has filed a brief.

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

FINDINGS OF FACT²

I *THE BUSINESS OF THE RESPONDENT

Fred P. Weissman Company, a Kentucky corporation, with an office and principal place of business in Harrodsburg, Kentucky, is engaged primarily in the manufacture and sale of women's and junior misses' coats. During the 6-month period preceding the date of the hearing, the respondent, in the course of its business, purchased raw materials, consisting of rayon, woolen cloths, assorted cotton cloths, buttons, and thread, valued in excess of \$100,000, of which more than 50 percent was shipped to its plant from points outside the State of Kentucky. During the same period, the respondent manufactured and sold finished products valued in excess of \$100,000, of which more than 50 percent was shipped to points outside the State of Kentucky. The respondent concedes that it is engaged in commerce within the meaning of the Act.³

¹ Also known as Mildred Frances Sims.

² The facts found hereinafter are substantially uncontroverted. The respondent rested at the close of the Board's case without calling any witnesses.

³ These findings are based upon a stipulation of the parties in the instant hearing. See also *Matter of Fred P. Weissman, et al.*, 69 N. L. R. B. 1002.

II. THE ORGANIZATION INVOLVED

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

III. THE UNFAIR LABOR PRACTICES

A. *Background—the prior unfair labor practice case*

The Board, upon an amended charge duly filed by the Union, issued an amended complaint, dated January 9, 1946, and subsequently filed a supplement thereto, alleging that the respondent, and its predecessor,⁴ had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act, by discriminating in regard to the hire and tenure of employment of certain named employees,⁵ thereby discouraging membership in the Union, and that, by the foregoing conduct, and by acquiescing in or permitting the exclusion, by a group of anti-union employees, of the aforesaid employees from the respondent's plant because of their union affiliation, and, by other conduct, had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Pursuant to notice, a hearing was held upon the said amended complaint, and the supplement thereto from February 18 to 20, and March 4 to 6, 1946, inclusive, before David Rein, a duly designated Trial Examiner. On July 31, 1946, the Board issued its Decision and Order, substantially adopting the findings, conclusions, and recommendations of the Trial Examiner, with additions and exceptions noted therein, and finding that the respondent's predecessor had engaged in and was engaging in certain unfair labor practices by discriminating with regard to the hire and tenure of employment of the said employees, and by engaging in certain other unfair labor practices. The Board thereupon ordered the predecessor of the respondent herein, and the respondent, as successor, to cease and desist therefrom and take certain affirmative action as required therein.

B. *Discrimination in regard to the hire and tenure of employment of Mildred Purdon Sims*

Mildred Purdon Sims was employed by the respondent in the finishing department from April 1945 until March 7, 1946, when her employment was terminated under circumstances related hereinafter. In May 1945 she joined the Union and remained a member continuously thereafter until the time of the hearing. She was present at the plant on September 19, 1945, shortly after the employees returned from lunch when 3 employees, Margie Springate, Gladys Drury, and Edna Teater were excluded from the plant by a group of anti-union employees, led by Anne Frances Sallee.⁶ During an altercation which ensued between employees Laura Fuell and Dorothy Hayden, on the one hand, and Edna Teater, on the other, Teater was injured when Fuell and Hayden undertook to prevent her from entering the plant.

⁴The principal respondents named in the earlier proceeding, Case No 9-C-2150, were Fred P. Weissman, an individual d/b/a Fred P. Weissman Company, and Fred P. Weissman Company, a corporation. The complaint was subsequently dismissed as against Mercer Board of Trade, an unincorporated association, originally named as a party respondent. See *Matter of Fred P. Weissman, et al., supra*.

⁵Edna Teater, Margie Springate, Gladys Drury, Floyd Shirley, and Ethel Sallee.

⁶According to the uncontroverted testimony of Sims, which the undersigned credits, employees Elizabeth Jenkins, Anna Frances Sallee, and Laura Fuell participated in the exclusion of these employees from the plant.

Sims, together with substantially all the female employees, remained outside the plant for about 30 or 40 minutes, after which about half of them entered the plant. Shortly afterward, they left the plant and remained outside until Anna Frances Sallee addressed the employees and announced that all those who were not in favor of the Union could return to the plant. Sallee specifically stated that the 3 employees who had been excluded earlier would not be permitted in the plant. Sims thereupon reentered the plant with the remaining employees.

On the following day, September 20, employee Floyd Shirley was excluded from the plant by a group of employees, under circumstances related in the Board's Decision and Order in the former case,⁷ and for which the Board held that the respondent was answerable. Shirley's exclusion from the plant was followed, on October 29, by the exclusion of employee Ethel Sallee⁸ by a group of employees.

On February 20, 1946, the third day of the hearing on the complaint in the prior case, Sims testified as a witness on behalf of the Board. The hearing was adjourned on that day to March 4, and was concluded on March 6, 1946. Sims continued to work at the plant from February 20, the date upon which she testified, until the day after the hearing was concluded.

That day, March 7, Sims checked out of the plant at about 5:00 o'clock p. m. As she left the plant, she was confronted by a group of female employees, comprising substantially the same persons who had participated in the exclusions of the 5 other employees between September 19 and October 29, 1945. Among the group, she identified employees Anna Frances Sallee, Frances Gabhart, Laura Fuell, Maggie Dean, Elizabeth Jenkins, and Martha Weldon. Sallee, apparently the spokesman for the group, told Sims that her services were no longer required, and warned her not to return to work the following morning as she would not be permitted in the plant. Sims made no reply and left.⁹

She made no effort to return to work the following day, Friday, but telephoned the plant on Monday afternoon, March 11, identified herself to the telephone operator, and asked to speak to Fred P. Weissman, the respondent's president and chief executive officer. She was informed that he was out. A request to speak to Peter E. Goodman, the respondent's personnel director and production manager,¹⁰ brought the response that he was busy at the time, but would return her call. Sims telephoned again later that afternoon, again identified herself, asked for both Weissman and Goodman, but received the same reply. She repeated this the following afternoon, telephoning from her home in the presence of Union Organizer Virginia Holcomb, in charge of the organizing campaign at the respondent's plant, with the same result. Later that afternoon, Holcomb telephoned the plant from Sims' home and, upon learning that Weissman was not at the plant, asked for Goodman. Instead of being put through to Goodman, she was connected with George Drimmer, the respondent's general manager, in charge of operations in Weissman's absence. Holcomb identified herself as the union representative, and inquired whether Drimmer was

⁷ See *Matter of Fred P. Weissman, et al.*, cited *supra*, where the events are related in detail.

⁸ Not to be confused with Anna Frances Sallee.

⁹ Sims testified credibly, and without contradiction, that until she testified at the hearing on February 20, she had been on "speaking terms" with the employees who were involved in her exclusion from the plant, but that after she testified at the hearing these employees did not speak to her until the day of her eviction from the plant.

¹⁰ It was stipulated in the instant hearing that Goodman was a time study man; that his duties as personnel director were limited to hiring employees and transferring them from job to job; but that Weissman was the only person who had authority to discharge. There is no doubt, however, that Goodman was a supervisory employee, for whose conduct the respondent is accountable, and the undersigned so finds.

aware that Sims had been excluded from the plant. Drimmer disclaimed all knowledge of the incident; informed her that she would have to take up any matters regarding the exclusion of employees from the plant with Weissman; that he, Drimmer, had nothing to do with it; and that he had been instructed by Weissman not to interfere. Holcomb endeavored to tell Drimmer that Sims had been evicted from the plant, but he refused to discuss the matter. She thereupon asked Drimmer whether, since he was taking Weissman's place during his absence, he was not concerned with absenteeism in the plant, referring to Sims' absence since March 7. Drimmer, however, steadfastly declined to discuss any matters involving the Union. Holcomb then asked him when Weissman would return, and Drimmer replied that he did not know.

The next morning Goodman telephoned Sims at her home, told her that he understood she had been trying to reach him, and asked the reason for her call. Sims asked him if he realized that she had not been at work, and if he knew the reason. He replied that he was aware that she had not been at work, but he did not know why. Sims thereupon told Goodman that when she checked out after work on March 7 she was warned by a group of employees not to return to the plant as she would not be permitted to enter; that she had not left her job voluntarily; that she wanted her job; and asked him if there was anything he could do. Goodman told her that Weissman was the only person who could do anything for her, but that he was out of town.

On March 14, 1946, Sims sent, by registered mail addressed to Weissman, Drimmer, and Goodman at the plant, identical letters, the text of which follows:¹¹

On Thursday March 7, 1946 I was visited by a group of your employees who informed me that my services were no longer needed and that I would not be allowed to enter your plant the next morning to continue my work. Among this group of employees who told me to not report for work were certain members who has previously assaulted other employees of your company and driven them from the plant. This threat was made to me after I had testified before an Examiner of the National Labor Relations Board.

I did not volunteer as a witness and I have tried to give you the best work in my power and it is no fault on my part that I am being prevented from entering your plant to continue working for you.

I want to continue on my job at your plant and will you please see that I can return to work at once. I did not quit my job and I do want to continue to work.

These letters were admittedly received on the same day by the individuals to whom they were addressed. No reply was received by Sims to any of these letters, nor was any communication received by her from any official of the respondent. She made no further effort to obtain reinstatement to her former position, nor has she been offered reinstatement.¹²

Between March 15 and April 2, 1946, counsel for the Board and John L. Davis, counsel for the respondent, engaged in a series of telephone conversations in connection with the former case, during which Sims' eviction from the plant

¹¹ The letters were copied in longhand by Sims from a draft prepared by County attorney I. C. James and Union Organizer Holcomb.

¹² Testimony was elicited from Sims by counsel for the respondent that, on the day following her eviction from the plant, she returned, by another employee, a pair of "snmps" or shears belonging to the respondent, which she used in connection with her work, and obtained a refund of the deposit which she had been required to post for the use of them. Sims further admitted that on the same day, a regular pay day, she called at the plant and obtained her pay check, but said nothing to anyone at the plant regarding what had transpired the day before. The undersigned finds the evidence insufficient to warrant a finding that Sims intended, by the foregoing conduct, to terminate her employment voluntarily, or that that was the legal effect of her conduct, especially in view of her attempts to obtain reinstatement so soon after her eviction from the plant.

was discussed. Davis informed Board counsel that Weissman had left for Florida on March 12; that he would be gone for about two weeks; and that he had left strict instructions that no one was to do anything respecting matters "such as this" except Weissman. On March 26, Weissman had not yet returned, and shortly afterward, counsel for the Board notified Davis that he intended to move to reopen the original hearing or have a new complaint issued. On April 15, at a conference between counsel for the Board and Davis and his associate at Lexington regarding the possibility of compliance with the Intermediate Report in the prior case, Sims' case, and another matter not here material, were discussed. Davis definitely informed counsel for the Board that the respondent did not intend to comply with the Intermediate Report and that it declined to do anything with respect to Sims. Counsel for the respondent had communicated with Weissman, in the interim between April 2 and April 15, and had been informed that, in the interest of preserving harmony at the plant, Weissman was unwilling to interfere in a dispute between an employee on the one hand, and a group of employees on the other, and that he would therefore not reinstate Sims without a Board order.¹³

Contentions; conclusions

The respondent contends here, in effect, as it did at the former hearing, with respect to the other employees who were excluded, that the exclusion or eviction of Sims was the act of an anti-union faction of employees, in which none of the respondent's supervisors or responsible officers participated, and that consequently it is not liable for this eviction. With respect to its subsequent refusal to reinstate Sims upon demand, it contends, as stated by Weissman, that it was unwilling to interfere in a dispute between conflicting groups of employees, and therefore declined, in the interest of preserving harmony at the plant, to reinstate this employee.

While the record in this case may fail to disclose any evidence of participation by any supervisors or officials of the respondent in the eviction of Sims, or that the respondent was aware of Sims' union membership or sympathy,¹⁴ neither of these circumstances affords any justification for the respondent's position. In the first place, apart from the fact that the employees who undertook to evict Sims from the plant obviously did so upon the premise that Sims was a union member or sympathizer, it is clear that at least as early as March 12, when Organizer Holcomb succeeded in reaching General Manager Drimmer, she conveyed to him the information that she was calling in her official capacity in behalf of Sims. Furthermore, it is apparent that Drimmer's refusal to engage in any discussion with Holcomb regarding Sims' eviction from the plant, was based upon Weissman's instructions to Drimmer not to engage in any controversy involving the Union. The events which occurred subsequently leave no room for doubt that the respondent took Sims' union membership or adherence for granted when it refused to reinstate her. Indeed, the respondent's whole defense is based upon the premise that the case arose out of a controversy between an anti-union and a union faction of employees and, by adopting the position which it did, the respondent is estopped to deny that it was aware of Sims' union membership or adherence, either at the time she was evicted from the plant, or when the respondent later refused to reinstate her.

With respect to the contention that there is no evidence of participation by any supervisors or officials of the respondent, and therefore a lack of knowl-

¹³ The above findings are based upon a stipulation of the parties received in evidence in lieu of testimony of the persons involved.

¹⁴ It is not clear that Sims testified at the former hearing respecting her union membership or adherence.

edge on the part of the respondent sufficient to render it liable for the conduct of the non-supervisory employees who engaged in the unlawful conduct, it is obvious that the events which transpired with respect to Sims cannot be considered in isolation, but must be regarded against the background of the events which preceded it. Thus, as the Board found in the prior proceeding, 3 employees were excluded from the plant on September 19, 1945, because of their union activities, by a group of anti-union employees, in the presence of General Manager Drimmer and other supervisors. Another employee was excluded the following day under circumstances which the Board found attributable to the respondent, despite the fact that no supervisors or management officials were present at the time of the actual exclusion. Again on October 29, still another employee was excluded from the plant by the anti-union employees. The respondent's failure to repudiate the acts of these employees in excluding the union employees, following the original exclusions, on September 19, and its refusal to reinstate them thereafter upon demand, encouraged the anti-union employees in persisting in their determination to exclude union adherents from the plant, and in ultimately evicting Sims from the plant, just as they had excluded the others on September 20 and October 29.

It has been held by the Board and the Courts that an employer may not, in the circumstances disclosed by the events which transpired, both with respect to the instant, as well as the prior, hearing, remain aloof and indifferent to the exclusion of a group of employees because of their union activity by a rival group. Indeed, there is an affirmative duty upon the part of an employer to insure that its right of discharge is not delegated to any union or anti-union group, and by relinquishing the exercise of that right to such a group, an employer violates the Act¹⁵. Moreover, it is plain, from the conduct of its supervisors and responsible management officials, as found by the Board in the earlier case, that the respondent manifested an attitude of opposition and hostility to the Union, of which the so-called anti-union employees could hardly have failed to be aware. In these circumstances, the respondent's failure to disavow and repudiate the acts of this group of employees at the very outset, when they first embarked upon an undertaking to exclude union members and sympathizers from the plant, led to Sims' subsequent eviction.

Upon the basis of the foregoing and the entire record, the undersigned concludes and finds that the respondent, by permitting a group of employees to evict her from the plant, and thereafter refusing to reinstate her upon demand, because of her union membership and adherence, has discriminated with regard to the hire and tenure of employment of Mildred Purdon Sims, thereby discouraging membership in a labor organization, in violation of Section 8 (3) of the Act.

C Discrimination against Mildred Purdon Sims for giving testimony under the Act

It has been found above that Sims testified as a witness on behalf of the Board on February 20, 1946¹⁶. According to Sims' uncontradicted testimony, the attitude

¹⁵ See *Matter of Fred P. Weissman, et al*, cited *supra*, and cases cited therein. See also *Matter of Brown Garment Manufacturing Company*, 62 N L R B. 857, 874, where the Board said, "Even where no other unfair labor practices are committed, an employer who takes no action to prevent the exclusion of his employees from work by members of a rival organization is himself responsible for the exclusions, such exclusions being tantamount to discharge" (Cases cited)

¹⁶ It is apparent from the Trial Examiner's Intermediate Report, adopted in substantial part by the Board in its Decision, that he was favorably impressed by Sims' testimony.

toward her of the group of employees who subsequently evicted her became strained following her testimony. Moreover, as the parties stipulated at the instant hearing, Sims was the only witness who gave testimony on behalf of the Board who was still employed by the respondent at the time she testified.¹⁷ On March 7, the day after the hearing in the former case was concluded, Sims was evicted from the plant under the circumstances related above. Her eviction on that date was obviously no mere coincidence, and reflected the resentment of the hostile employees toward her testifying in behalf of the Board. The principles which obtain respecting the responsibility of the respondent for the conduct of the group of employees who evicted or excluded the employees because of their union activity are equally compelling with respect to the eviction of Sims because of her giving testimony under the Act.

The undersigned therefore finds that by permitting a group of employees to evict her from the plant, and thereafter refusing to reinstate her upon demand, because she had given testimony under the Act, the respondent has discriminated against Mildred Purdon Sims within the meaning of Section 8 (4) of the Act.

The undersigned further finds that by discriminating against the said Mildred Purdon Sims within the meaning of Section 8 (3) and (4), the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby violating Section 8 (1) 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 the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

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

It has been found that the respondent discriminated in regard to the hire and tenure of employment of Mildred Purdon Sims, thereby discouraging membership in the Union, and because she gave testimony under the Act. It will therefore be recommended that the respondent offer her immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay she may have suffered by reason of the discrimination against her, by payment to her of a sum of money equal to that which she normally would have earned as wages from the date of her discriminatory discharge to the date of the offer of reinstatement, less her net earnings¹⁸ during such period.

¹⁷ It was stipulated that nine witnesses were called by the Board at the prior hearing in Case No. 9-C-2150. Of these, five were the employees who had been alleged to have been discriminatorily discharged; one was a former employee who had voluntarily left the respondent's employ, two were union representatives, and the last was Sims.

¹⁸ By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

Apart from the fact that the discharge of an employee because of his union membership or adherence has been regarded as one of the most effective weapons in combating the exercise by employees of their right of self-organization, and that a finding that an employer has violated the Act in this respect, justifies an order requiring him to cease and desist from infringing upon the rights guaranteed under the Act, the record discloses that the respondent has manifested the same attitude of hostility to the Union and opposition to the fundamental purpose of the Act, and has persevered in the same type of unlawful conduct as that engaged in by its predecessor. This is especially true, inasmuch as the respondent and his predecessor have not yet remedied, and have given no indication of any intention to remedy, the unfair labor practices in which they have been found to have engaged. There is, therefore, a real danger that the commission of unfair labor practices generally is to be anticipated from the respondent's conduct in the past. It will therefore be recommended that the respondent cease and desist from in any manner interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act²⁹

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

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

3. By discriminating in regard to the hire and tenure of employment of Mildred Purdon Sims, thereby discouraging membership in the Union, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

4. By discriminating against Mildred Purdon Sims because she had given testimony under the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (4) of the Act.

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

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Fred. P. Weissman Company, a corporation, its agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Ladies' Garment Workers Union, affiliated with the American Federation of Labor or any other labor organization of its employees, by discriminatorily discharging employees, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment,

(b) Discharging or otherwise discriminating against any of its employees because they have given testimony under the Act;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organiza-

²⁹ See *N. L. R. B. v. Express Publishing Company*, 312 U. S. 426, *May Department Stores Company v. N. L. R. B.*, 326 U. S. 376.

tions, to join or assist International Ladies' Garment Workers Union, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

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

(a) Instruct its employees that it will not permit any group of employees to exclude other employees, for the purpose of discouraging membership in, or activities on behalf of, International Ladies' Garment Workers Union, affiliated with the American Federation of Labor, or because they have given testimony under the Act, and that physical assaults upon, or threats of physical violence to, their fellow-employees for the purpose of discouraging membership in, or activities on behalf of, said labor organization, or any other labor organization, or because they have given testimony under the Act, will not be permitted in the plant or upon plant property at any time, and take effective action to enforce these instructions;

(b) Offer Mildred Purdon Sims immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority and other rights and privileges, and make her whole for any loss of pay she may have suffered by reason of the discrimination against her, by payment to her of a sum of money equal to that which she normally would have earned as wages from the date of the discriminatory discharge to the date of the respondent's offer of reinstatement, less her net earnings during such period;

(c) Post at its plant in Harrodsburg, Kentucky, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by the respondent, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, 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;

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

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

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective November 27, 1945, 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 25, 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 to the Board within ten (10) days from the date of the order transferring the case to the Board. Any party desiring to submit a brief in support of the Intermediate Report shall do so within fifteen (15) days from the date of the entry of the order transferring the case to the Board, by filing with the Board an original and four copies thereof, and by immediately serving a copy thereof upon each of the other parties and the Regional Director.

IRVING ROGOSIN,
Trial Examiner.

Dated August 9, 1946.

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We will not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers Union, affiliated with the American Federation of Labor, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

We will offer Mildred Purdon Sims immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of pay she may have suffered as a result of the discrimination against her.

All our employees are free to become or remain members of the above-named Union or any other labor organization. We will not discriminate in regard to the 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. We will not discriminate against any employee for giving testimony under the Act. We will not permit any group of employees to exclude or evict other employees from the plant because of their union activity. Nor will we permit any physical assault or threats of physical assault by any group of employees against any other group because of their union activity in the plant or on plant property. If necessary disciplinary action will be taken to enforce this rule.

FRED P. WEISSMAN COMPANY, A CORPORATION

Dated _____ By _____
(Representative) (Title)

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