

WILSON & COMPANY, INC. *and* UNITED PACKINGHOUSE WORKERS OF AMERICA, CIO, LOCAL 227

WILSON & COMPANY, INC. *and* AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL.
Cases Nos. 16-CA-567 and 16-CA-570. August 31, 1953

DECISION AND ORDER

On June 17, 1953, Trial Examiner Howard Myers issued his Intermediate Report in the above-entitled consolidated proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaints and recommending that the complaints be dismissed in their entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, United Packinghouse Workers of America, CIO, Local 227, 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.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaints issued herein against the Respondent Wilson & Company, Inc., be, and they hereby are, dismissed.

¹Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Farmer and Members Murdock and Peterson].

Intermediate Report and Recommended Order

STATEMENT OF THE CASE

Upon charges (being Case No. 16-CA-567) duly filed by United Packinghouse Workers of America and Local 227, each affiliated with Congress of Industrial Organizations, herein called CIO, the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel and the Board, by the Regional Director for the Sixteenth Region (Fort Worth, Texas), issued his complaint, dated February 24, 1953, against Wilson & Company, Inc., Oklahoma City, Oklahoma, herein called Respondent, alleging that Respondent has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act

Upon a charge (being Case No. 16-CA-570) duly filed by Amalgamated Meat Cutters and Butcher Workmen of North America, affiliated with American Federation of Labor, herein called AFL, the General Counsel issued his complaint, dated February 24, 1953, against Respondent alleging that Respondent has engaged in and is engaging in unfair labor prac-

tices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Act ¹

Copies of the charges, complaints, order of consolidation, and notice of hearing were duly served upon Respondent, CIO, and AFL.

The complaint in Case No. 16-CA-567 alleged that Respondent (1) since about March 1, 1952, discriminated against Lucille Caswell, Ocie Cecil, and Earl Roach with regard to their respective employment by not providing them, and each of them, with employment during Respondent's slack season, (2) laid off Caswell and Cecil on or about April 21 and Roach on or about April 28, 1952, and thereafter refused to reinstate them because of their membership and activities in behalf of CIO, and (3) since April 1, 1952, by certain stated acts and conduct, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by the Act

The complaint in Case No. 16-CA-570 alleged that Respondent (1) since about March 1, 1952, discriminated with regard to the employment of Martha Byke by not providing her with employment during Respondent's slack season, (2) on or about April 21, 1952, laid her off, and thereafter refused to reinstate her, because of her membership or activities in behalf of AFL.

On March 9, 1953, Respondent duly filed a separate answer to each complaint denying the commission of the alleged unfair labor practices

Pursuant to due notice, a hearing was held on March 17, 18, and 19, 1953, at Oklahoma City, Oklahoma, before the undersigned, the duly designated Trial Examiner. The General Counsel and Respondent were represented by counsel and each union by officials thereof. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues was afforded the parties. At the conclusion of the General Counsel's case-in-chief, Respondent's counsel moved to dismiss certain portions of each complaint and to strike certain evidence. The motions were denied. At the conclusion of the taking of the evidence, Respondent's counsel renewed the motions he previously had made. In addition, Respondent's counsel moved to dismiss each complaint for lack of proof. Decisions thereon were reserved. The motions are disposed of in accordance with the findings, conclusions, and recommendations hereinafter set forth. The General Counsel then moved to conform the pleadings to the proof with respect to minor inaccuracies. The motion, as confined, was granted. Oral argument was waived. Although afforded an opportunity to file briefs and proposed findings of fact with the undersigned the parties did not avail themselves of this opportunity.

Upon the entire record in the case, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OPERATIONS OF RESPONDENT

Respondent, a Delaware corporation, has its principal offices in Chicago, Illinois, and operates 9 meat-packing plants and about 85 branch houses located throughout the United States. At its Oklahoma City, Oklahoma, plant, the employees of which are the only ones involved in this proceeding, Respondent, during the 12-month period ending January 31, 1953, which period is representative of all times material herein, purchased in excess of \$1,000,000 worth of livestock, hogs, poultry, and related products, about 25 percent of which was shipped to its Oklahoma City plant from points located outside the State of Oklahoma. During the same period, Respondent's sales of meat, poultry, and food exceeded \$100,000, of which more than 50 percent was shipped to points located outside the State of Oklahoma.

Upon the above-admitted facts, the undersigned finds that Respondent is, and during all times material herein was, engaged in commerce within the meaning of the Act.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Meat Cutters and Butcher Workmen of North America, affiliated with American Federation of Labor, and United Packinghouse Workers of America and its Local 227, each affiliated with Congress of Industrial Organizations, are labor organizations admitting to membership employees of Respondent.

¹By order, dated February 24, 1953, the said Regional Director consolidated the above-numbered cases.

III. THE ALLEGED UNFAIR LABOR PRACTICES

**The alleged interference, restraint, and coercion;
the alleged discriminatory layoffs and refusals to rehire²**

Earl E. Roach was employed continuously in Respondent's hog-casing department 1 1/2 years immediately prior to his layoff on April 21, 1952.³ He is a CIO member and took an active part in its organizational campaign. Immediately prior to the Board-conducted election of April 4,⁴ Roach appeared upon CIO's radio program as a singer and guitar player.

Roach testified that 5 or 6 days before the aforesaid election Tom Blaney, his assistant foreman, and he had an argument over the manner in which he was performing a certain job that during said argument Blaney said, in the presence of Bonnie Bothe and several other female employees working at the bench beside him, "Your activities with the union is going to cost your job", and that Blaney further commented, to again quote Roach, "If I would quit straining my voice singing over the radio I would feel more like working."

Roach then testified that "I had been having quite a bit of trouble with my voice. I was taking treatments from the doctor", that he was being treated three times a week by his personal physician, Dr. Carmichael; that when on the days he had an appointment with his doctor his gang had not completed their assigned task he would request permission to leave the plant before the completion of the job, that he would usually request Leland Hicks, his foreman, for permission to leave early, that when Hicks was not available he would request Blaney for the required permission; and that on the last occasion when he asked Blaney to leave the plant early in order to visit the doctor, Blaney remarked, to again quote Roach, "If I would quit singing over the radio for the union I would not have to go to the doctor."⁵

Blaney admitted that he and Roach had some discussion about the manner in which Roach was performing a certain task but denied making the above-referred-to antiunion statements. Bothe, a General Counsel witness, was examined at length about various incidents which she testified took place in the plant before and after the Board election, including another incident involving Blaney and Roach but she was not questioned about the Blaney-Roach incident which purportedly took place about 5 or 6 days before the election and upon which the General Counsel heavily relies to show antiunion motive for Respondent's refusal to assign Roach his normal amount of employment during the 1952 slack season, for Roach's layoff, and for Respondent's refusal to recall Roach when work became available.

The undersigned was favorably impressed with Blaney's demeanor while on the witness stand; with the sincere and frank manner with which he testified; and with the plausibility of his entire testimony. On the other hand, Roach's testimony is not only unconvincing but it is replete with self-contradictory statements. For example, on cross-examination Roach testified that prior to the election he was not troubled with any throat ailment, that he did not visit the doctor because of any throat trouble, and that he visited Dr. Carmichael "three or four times a week" for about 4 or 5 months before the election because of stomach trouble. The undersigned therefore finds that Blaney did not make the above-referred-to antiunion statements.

²Much of the evidence adduced by the General Counsel in Case No. 16-CA-567 related to events occurring more than 6 months before the service on Respondent (October 7, 1952) of a copy of the first charge filed herein by CIO and also in Case No. 16-CA-570 more than 6 months before the service on October 17, of the AFL charge. At the hearing, Respondent objected to the introduction of this evidence. The evidence objected to, however, was received, not for the purpose of establishing unfair labor practices before the cutoff dates, but solely for such effect as it might have in elucidating and explaining its character and quality of Respondent's alleged illegal conduct after that date. It is well settled that Section 10 (b) of the Act allows consideration of related events prior to the limitation date for the purpose of throwing light on the specific conduct within the period in issue attacked by the complaint as an unfair labor practice. See *N. L. R. B. v. Luzerne Hide & Tallow Co.*, 188 F. 2d 439 (C. A. 3).

³Unless otherwise noted all dates refer to 1952.

⁴At this election CIO received 237 votes, AFL received 91, and 876 ballots were cast for "no union." As far as this record reveals, no objections were filed to the conduct of the election nor to the results thereof.

⁵Roach also attributed a similar remark to Hicks, which he denied. The undersigned credits Hicks' denial.

Roach further testified that a few days before the election, Hicks "made fun of" him "for playing on the radio" by getting "out in the middle of the floor and [going] through the motions like he was playing and singing and had all the employees laughing at me or laughing at him." Bothe, recording secretary of Local 227, testified that Hicks "would get out on the floor and make out like he was playing the guitar or that he was singing, and then he would say, 'Isn't that a pretty sight?'"

Bothe further testified, "when we had come out with our union buttons on" Hicks said, "I think you are kind of jumping the gun coming out this morning like this. I thought I had more influence over my hands [than] that"; that the day after the first CIO radio broadcast, which took place about a week prior to the election, Hicks commented, in the presence of Roach and several others who were then working at her bench, "I guess you know if you are ever laid off you won't be called back to work after last night", that the day after the adherents of CIO began wearing their union buttons in the plant, which was about 2 weeks before the election, Hicks, in the presence of the persons working at her bench, including one female employee wearing an AFL button, said to her, to quote Bothe, "If I had to belong to a union, why didn't I belong to the AFL. . . That the CIO was just a bunch of Communists, that they had originated in Russia"; and that when she inquired whether Hicks thought she was a Communist, Hicks replied, "That's all this is, just a bunch of Communists", that after she wore her union button in the plant, Hicks and other supervisors refused to allow her the privileges she previously had enjoyed, such as going to the drinking fountain whenever she desired; that after the election Hicks and other supervisors forbade her to go to other departments on her free time, although she had been allowed to do so prior thereto; and that about a week or two after the election she asked Hicks to leave her job to go to the ladies' rest room "for a minute" and Hicks refused permission, adding that she would have to wait an hour until the luncheon period

Regarding an incident involving Roach, Bothe, on direct examination, testified that about 8 or 10 days after Roach's April 21 layoff she telephoned Roach and informed him that Frank Rowan, an employee with less seniority in the hog-casing department than Roach had, had been recalled and advised him to take the matter up with Respondent's employment office; that after Rowan had been recalled and Cannon⁶ had been assigned to run the elevator, she asked Hicks when he was going to recall Roach to work, and that Hicks replied, "I don't know. We are not calling back anybody now. We may not call him back for 60 days." Regarding this last incident, Bothe testified, on cross-examination, as follows

Q. You also claim that Mr. Hicks told you that he might never recall Earl Roach back, is that right?

A. Yes, sir He told me that again the day I was called back to work⁷ in his office that Earl would not be called back, unless he was forced to call him back.

Hicks frankly admitted that on one occasion after the CIO radio broadcast he, in the presence of the hog-casing employees then at work, pretended that he was playing a guitar and singing. About this incident, Hicks testified that when he arrived at the building in which his department is located on this particular morning, he was informed that there was quite a commotion going on in the hog-casing department; that upon arriving at that department, "some of the employees began to show me some union buttons and began to laugh and I walked on the other side of the table and Bonnie Bothe and Billy Pierce pretended to take one and pin on me one CIO button and one AFL button . . . I figured it was pretty funny and I kind of enjoyed it. About the same time there was some more of the employees on the table or bench where they worked. They began to make like they were playing a guitar and begin (sic) to holler a little bit. So I picked up and I went on like I was playing a little bit and Earl [Roach], he sided for a little bit, too. . . We were all having a lot of fun . . . I thought I might as well have a little fun along with them."

Hicks testified that when Bothe inquired about recalling Roach he told her to inform Roach to quit bothering him and to advise Roach to inquire at the employment office about being recalled for that is where the hiring is done.

⁶ Also referred to in the record as Kennedy.

⁷ Bothe was laid off for economic reasons from June 20 until sometime in September, admittedly in accordance with Respondent's seniority policy.

The undersigned credits Hicks' testimony for Hicks was a credible witness. Whereas, Bothe's testimony abounds with exaggerations and distortions of the facts. This finding is buttressed by the fact that although Bothe testified that Roach heard, and other employees could have heard if they were listening, Hicks say, following CIO's initial radio broadcast, "I guess if you are ever laid off you won't be called back to work after last night," neither Roach nor any other witness testified regarding this incident or about any other antiunion statement Bothe testified Hicks made to her in the presence of others. The undersigned, accordingly, finds that Hicks' version of what took place at the time he pretended he was singing and playing the guitar to be substantially in accord with the facts; that his conduct on that occasion showed no anti-CIO bias or anti-AFL preference for he merely joined in the merriment that was prevailing among the employees; that he did not make the antiunion statements attributed to him by Bothe; that after Bothe displayed her union button he did not in any manner restrict any of the privileges she had theretofore enjoyed; and no other supervisor restricted Bothe in the exercise of any of her past plant privileges.

On April 12, Roach and other hog-casing department employees were laid off. There is no credible evidence disclosing the layoff was not necessitated by economic reasons or that Respondent departed from its established policy of laying off employees in accordance with their respective seniority. The question to be resolved is whether Respondent recalled other employees with less seniority or hired new employees before recalling Roach. The question must be decided in Respondent's favor. The only evidence to show that Respondent failed to follow its usual, customary policy of recalling laid-off employees in accordance with department seniority, is the unsupported conclusory testimony of Bothe who testified that Joe Lickey replaced Roach after Roach's layoff and remained in Roach's job "until Albert came back from leave"; that Rowan, who had less seniority than Roach, was recalled about 8 or 10 days after Roach's layoff; and that Cannon was assigned to run the elevator after Roach had been laid off.⁸

Against the above unconvincing and unreliable evidence, James Doig, Respondent's employment manager, credibly testified that on August 4, the day a job in the hog-casing department became available for which Roach's seniority qualified him, he telephoned Roach's home, as was Respondent's practice of recalling laid-off employees, to inform Roach to return to work, but no one answered the telephone; and that on August 6 and again on the 8th he phoned Roach's home for the same purpose and no one answered the phone on either occasion.⁹

On February 8 or 9, 1953, Roach called on Doig and asked for employment. There was then no job available for Roach in the hog-casing department. Doig sent Roach to General Superintendent Kellert who assigned Roach to a truckdriver's job in the car route department.¹⁰

Upon the entire record in the case, the undersigned finds that Respondent did not discriminate against Roach with respect to the terms or conditions of his employment or with his hire or tenure of employment as alleged in the complaint. Accordingly, the undersigned will recommend that the allegations of the complaint (Case 16-CA-567) with respect to Earl Roach be dismissed.

Lucille Caswell returned to Respondent's employ about 1950, and worked continuously, except for periodic economic layoffs, in the hog-casing department.

On or about March 29, Caswell went to the hospital and did not return to the plant until June 2, when she was informed that she was laid off on April 21 due to lack of work. There is no credible evidence that her layoff was not in accordance with her seniority status.

Caswell testified that after June 2, she appeared at Respondent's employment office¹¹ as often as she "could get time to go there"; that sometime in July, after Respondent had

⁸ There is no indication in the record whether Roach was capable of performing the duties assigned to Cannon or whether elevator operators accumulated seniority in Roach's department.

⁹ Roach's testimony that after being laid off someone was present at his home at all times because he had instructed his mother not to leave his home while he and his wife were absent therefrom and that his mother followed his instructions, is not credited.

¹⁰ At least 6 weeks prior to the election and before becoming a CIO member, Roach had requested a truckdriver's job.

¹¹ Laid-off employees who regularly appeared at the employment office were given hiring preferences over all others except those laid off in the department requesting additional help.

hired some females whom she had never seen before and others with less seniority than she, she telephoned Doig and inquired when she would be recalled and Doig replied that she would be recalled in accordance with her seniority; and that when she told Doig that Respondent was hiring "new girls" and putting them in other departments, Doig replied that those hirings had nothing to do with her department.

Caswell further testified that about a week before leaving the plant on or about March 26, she told her foreman, Omar L. Linder, that she was opposed to unions;¹² that after she had put on a CIO badge, Linder came up to her where she was working, looked at the badge and remarked, "I didn't think you would do that to me"; that when she asked Linder, "What do you mean," Linder walked away and never spoke to her again; that on or about March 26, she saw Henry Skrape, whom she called a strawboss, make a list of the names of all persons wearing union buttons;¹³ that about a week or 10 days after June 2, she went to the plant and asked Linder when she would be recalled to work; and that Linder replied, "I don't have anything for you now, but I will have about August 15."

On cross-examination, Caswell testified her husband and Linder have been friends "for years before I went to work" for Respondent; that she had several conversations with Linder after June 2 in which she asked when would he recall her; that each time Linder would reply in a week or 10 days.

The credible evidence clearly reveals that Caswell was laid off in accordance with Respondent's established seniority policy; that no female employee was recalled to work in Caswell's department with less department seniority than Caswell; that had Caswell been in the employment office when work was available for which she was qualified, she would have been hired, and that Caswell's union membership or activities played no part in Respondent's determination to lay off Caswell or its failure to recall her. The undersigned further finds that Respondent did not discriminate in regard to Caswell's hire or tenure of employment or with the terms and conditions of her employment as alleged in the complaint. Accordingly, the undersigned will recommend the allegations of the complaint (Case 16-CA-567) as to Lucille Caswell be dismissed.

Ocie Cecil's seniority in the hog-cut and kill department commenced on June 5, 1947. She was laid off on April 21, 1952, for lack of work. There is no credible evidence that Cecil's layoff was not in accordance with Respondent's established seniority policy.

Cecil testified that she was a CIO member and secured a few signed cards prior to the election which she gave to her father-in-law who was employed in a neighboring plant and a CIO supporter; that "just before the election" Linder told her that General Superintendent Kellert wanted to see her; that she went to Kellert's office and was told by Kellert, among other things, that she could be fired for "trying to organize a union during working hours"; that Kellert also told her that she could engage in union activities "outside of the job"; that on April 21, Linder informed her that she was being laid off for lack of work and that she would be recalled as soon as work picked up; that since her layoff she has been back to the plant only three times, once in September, once in October or November, and once in February 1953; that Linder called at her home "practically every week" after her layoff and that she and Linder "would talk about the work and he would tell me that as soon as the work picked up he would call me back"; that in June, he told her that Frances Hill was going to take a leave for about 3 weeks and Linder promised her Hill's job while Hill was away; that in October, she called Ed Acton, supervisor of Respondent's pork division, and asked him for work; that Acton replied that he was sorry he had forgotten she had been laid off because the previous day he had hired some girls for the sweet-pickle department and had he remembered she was not working he would have given her a job, that Acton advised her to call Doig; that when she asked Doig for a job, Doig replied that he thought she had gone to California and in any event there was no job available but he would keep her in mind.

Cecil further testified that about 2 or 3 weeks before the election Linder asked her at the plant if she belonged to the Union; that when she replied in the negative, Linder said, "Don't wear any buttons down here because I am going to make it hard on anyone wearing

¹² Caswell was unable to explain how she happened to so advise Linder.

¹³ Contrary to the General Counsel's contention, the undersigned finds that Skrape, at no material time herein, was a supervisor within the meaning of the Act. Under the circumstances, it was incumbent upon the General Counsel to prove that Skrape was instructed by Respondent to make such a list, or he was acting for Respondent, or that Respondent received the purported list. This the General Counsel failed to do.

a button"; that sometime in June, in the presence of her husband, she asked Linder "if it was on account of the union that he wasn't going to hire us back"; that when Linder replied, "No, not exactly," she said, "I understand that they are talking up there in the plant that's why we were laid off"; that Linder then said, "Some of them were"; that she then asked, "What about me?" . . . "What about Martha [Byke]?" ; and that Linder replied, "You will come back . . . [Byke] will never come back."

Cecil also testified that a couple of days after Kellert had cautioned her not to organize on company time, she asked Linder why he had not told her what Kellert wanted before sending her to Kellert; that Linder replied that he did not know what Kellert wanted at that time; and that Linder then said he had heard that it was reported to Foreman Eddie Terry that she had been bothering the employees by attempting to get them to sign union cards.

On cross-examination, Cecil testified she wore no union button in the plant; that she has known Linder for several years; that Linder and his wife visited her home a "dozen or more times"; that she and her husband have visited Linder's home; that when she spoke to Acton on the telephone (presumably in October) Acton told her, to quote Cecil, "He was going to do away with the women in the hog kill unless he found a place where he could place them somewhere else in the plant"; that she had intended to go to California but that Linder advised against it because if she remained in town she could have Hill's job when Hill went on leave; and that Kellert did not tell her that she could be fired for organizing on company time but that Kellert had said that she "could be fired for bothering people on company time."

Linder denied making the antiunion statements attributed to him by Cecil; that he told Cecil that some employees were laid off because of their union activities; that he told Cecil that Byke would never be recalled; that he ever discussed Hill's job or Hill's expected leave with Cecil; and that Hill took no leave of absence in the summer of 1952.

The undersigned accepts Linder's denials and finds that he did not make the antiunion statements Cecil attributed to him. This finding is not only based on Linder's favorable witness stand demeanor, but upon the fact that Cecil's testimony reveals an attempted tendency on her part to distort the facts in her favor. Moreover, the implausibility of her testimony regarding Linder's purported statement that she would be recalled to work as soon as work is available but Byke would never be recalled is obvious when consideration is given to the fact that: (1) Linder had no authority to promise a job to anyone, to hire anyone, or to recall a laid-off employee; and (2) all the April 21 layoffs were in accordance with Respondent's established seniority policy.

Upon the record as a whole, the undersigned finds that Respondent did not discriminate against Cecil with respect to the terms or conditions of her employment or with her hire or tenure of employment as alleged in the complaint. Accordingly, the undersigned will recommend that the allegations of the complaint with respect to Cecil (Case 16-CA-567) be dismissed.

Martha Byke's seniority in the hog-cut and kill department commenced on March 31, 1948. She was laid off on April 21, 1952, due to lack of work. The credible evidence discloses that Byke's layoff was made in accordance with Respondent's established seniority policy.

Byke, an AFL observer at the election, testified that while she was employed in the sausage department in August 1951, McPherson, the head of that department, told her that Linder had an opening in the hog-cut and kill department¹⁴ and would like her to return there, that McPherson asked her to remain in his department; that after being assured by Linder that the proffered job would be "pretty steady" and that there was very little likelihood of any further layoff, she returned to the hog-cut and kill department; that when Linder advised her on April 21 that he was sorry but he had to lay her off, she replied, "I have been expecting it"; and that when she inquired how long the layoff would be, Linder told her that she would be recalled as soon as work picked up.

Byke then testified that since her April 21 layoff she had not been to the plant seeking work until February 1953, at which time she told Doig that Sam TwedeII, an AFL vice president, "called me from Dallas and said that we had a letter from Mr. Winkler¹⁵ telling him that [Respondent] would put me back to work"; that Doig said he knew nothing about

¹⁴ Byke's regular department, and the only department in which she had seniority, was the hog-cut and kill, which Linder supervised.

¹⁵ Respondent's counsel

the letter but would check; that Doig then left her and when he returned stated that there was no opening for her; and that Bessie Brown, Biddie Franklin, and Helen Paitt, each of whom had less seniority in the hog-cut and kill department than she, were recalled to work and she was not.

Byke testified about a conversation wherein some unnamed foreman inquired whether Cecil "had worked for the union"; that she replied in the affirmative; that when the foreman said that Cecil had denied working for the Union she retorted, "Well, she most certainly did. If you will get somebody to take my place, I will go in there and prove it"; and that the foreman replied that it would not be necessary because he would accept her statement as being correct.

Byke also testified that about 3 weeks prior to the election she began wearing her AFL button in the plant; that about that time Linder asked her why she wore the button; that she replied, "Because a lot of people came up to me and tell me I am CIO girl and I am not"; and that when Linder stated, "Why didn't you come to me or some of the other higher-ups, and we would have gotten this straightened out," she said, "I think this is just as good a way as any to get it straightened out."

Byke also testified that 2 or 3 days after the election, Acton said to her and Linder, "There would come a day when some of these employees would be sorry that they ever thought that they wanted a union in here"; and that a day or two after the election she heard Linder say that he "was going to get rid of all of the . . . CIO's."

On cross-examination, Byke admitted that Brown, Franklin, and Paitt had not worked in the hog-cut and kill department since their April layoffs.

Acton and Linder each denied making the antiunion statements attributed to them by Byke. The undersigned accepts said denials and finds that they did not make the statements which Byke testified they had made.

Upon the entire record in the case, and especially upon Doig's credible testimony that had Byke, Cecil, and Caswell reported regularly to the employment office after April 21, they would have been given employment,¹⁶ the undersigned finds that Respondent did not discriminate with regard to Byke's hire or tenure of employment or with the terms or conditions of her employment as alleged in the complaint. Accordingly, the undersigned will recommend that the allegations of the complaint (Case No. 16-CA-570) with respect to Martha Byke be dismissed.

Upon the record as a whole, the undersigned is convinced, and finds, that the allegations of the complaints, that Respondent violated Section 8 (a) (1) and (3) of the Act, are not supported by the credible evidence. The undersigned, therefore, recommends that the complaints, and each of them, be dismissed.

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. Wilson & Company, Inc., Oklahoma City, Oklahoma, is engaged, and at all times material herein has been engaged, in commerce, within the meaning of Section 2 (6) and (7) of the Act.
2. United Packinghouse Workers of America and its Local 227, each affiliated with Congress of Industrial Organizations, and Amalgamated Meat Cutters and Butcher Workmen of North America, affiliated with American Federation of Labor, are labor organizations, within the meaning of Section 2 (5) of the Act.
3. The allegations of each complaint (Cases Nos. 16-CA-567 and 16-CA-570) that Respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (a) (1) and (3) of the Act have not been sustained.

[Recommendations omitted from publication.]

¹⁶ Franklin testified, and the undersigned finds, that sometime in July, while in the employment office, she heard Caswell's name called by a representative of that office, but that Caswell had already left the office