

2. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Local Union No. 299, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

4. By distributing authorization cards of the labor organization named in paragraph No. 3, above; by making statements to its employees attempting to persuade them to join said labor organization; and by threatening dire consequences if the employees failed to join said labor organization, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (2) 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.

6. Respondent's discharge of Ambrosene Peterson was not in violation of Section 8(a)(1) and (3) of the Act.

[Recommendations omitted from publication.]

Marval Poultry Company, Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America, Local 504, AFL-CIO. *Case No. 5-CA-1591. November 29, 1960*

DECISION AND ORDER

On July 27, 1960, Trial Examiner John H. Eadie issued his Intermediate Report in the above-entitled proceedings, 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. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices as alleged in the complaint, and recommended that these particular allegations be dismissed. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and supporting briefs.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Jenkins].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this 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 Respondent, Marval Poultry Company, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Amalgamated Meat Cutters and Butcher Workmen of North America, Local 504, AFL-CIO, or any other labor organization of its employees, by discharging or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

(b) Interrogating its employees in a manner constituting interference, restraint, or coercion concerning their membership in or activities on behalf of said Union, or any other labor organization, or making any threat of reprisal or promise of benefit because of such activity.

(c) Engaging in surveillance of union meetings.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist the Union named above, 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, or to refrain from any or all such activities.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Offer to Glen Hinkel and Maynard Crawford immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole in the manner set forth in "The Remedy" section of the Intermediate Report.

(b) Post at its plant at Dayton, Virginia, copies of the notice attached hereto marked "Appendix."¹ Copies of said notice, to be furnished by the Regional Director for the Fifth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customary posted and including each of Respondent's bulletin boards. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports,

¹In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

and all other records necessary to analyze the amounts of backpay due under the terms of this Order.

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

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the discharge of Jean Dove was violative of the Act.

APPENDIX

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, as amended, we hereby notify our employees that:

WE WILL NOT discourage membership in Amalgamated Meat Cutters and Butcher Workmen of North America, Local 504, AFL-CIO, or in any other labor organization, by discharging or in any other manner discriminating against employees in regard to their hire or tenure of employment, or any term or condition of employment.

WE WILL NOT interrogate our employees in a manner constituting interference, restraint, or coercion concerning their membership in or activities on behalf of Amalgamated Meat Cutters and Butcher Workmen of North America, Local 504, AFL-CIO, or any other labor organization, or make any threat of reprisal or promise of benefit because of such activity.

WE WILL NOT engage in surveillance of union meetings.

WE WILL NOT in any other 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 the Union named above, 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.

WE WILL offer to Glen Hinkel and Maynard Crawford immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to any seniority or other rights and privileges previously enjoyed, and will make whole said employees for any loss of pay suffered as a result of the discrimination against them.

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 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.

MARVAL POULTRY COMPANY, INC.,
Employer.

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.

INTERMEDIATE REPORT
STATEMENT OF THE CASE

Upon charges duly filed by Amalgamated Meat Cutters and Butcher Workmen of North America, Local 504, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for the Fifth Region, issued a complaint dated September 29, 1959, against Marval Poultry Company, Inc., herein called the Respondent, alleging that the Respondent had engaged in unfair labor practices within the meaning of Section 8(a) (1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended, herein called the Act.

The Respondent filed an answer dated October 8, 1959, in which it denied all allegations of the complaint.

Pursuant to notice, a hearing was held at Harrisonburg, Virginia, before the duly designated Trial Examiner, on December 15 and 16, 1959. The Respondent presented oral argument on the record at the hearing. The General Counsel and the Respondent filed briefs with the Trial Examiner after the conclusion of the hearing.

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 RESPONDENT¹

The Respondent is a Virginia corporation, with its main office and principal place of business located in Dayton, Virginia, where it is engaged in the processing, packaging, and distribution of poultry. During the 12-month period preceding the date of the complaint herein, the Respondent, in the course and conduct of its business operations, shipped goods and materials having a value in excess of \$1,000,000 from its Dayton plant directly to customers located outside of the Commonwealth of Virginia:

II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Meat Cutters and Butcher Workmen of North America, Local 504, AFL-CIO, is a labor organization which admits to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *Background; interference, restraint, and coercion*

The Union began to organize the Respondent's employees about March 1, 1959. By letter dated June 15, 1959, the Union notified the Respondent that it represented a majority of the employees and requested that the Respondent recognize it as the bargaining representative.

¹As stated above, the Respondent in its answer denied all allegations of the complaint. Although at the start of the hearing it was understood and agreed that the parties stipulated to the commerce allegations of the complaint and that the Union is a labor organization within the meaning of the Act, the record does not so show. The record shows Mr. Gardner's answer to the General Counsel's statement on the stipulation as "We'll stipulate I and II, the service." The Trial Examiner recalls that Mr. Gardner stated, "We'll also stipulate I and II, the service"; and, on his own motion, corrects the record in this respect.

The Union held three meetings for the Respondent's employees. The first was held on June 19, 1959, at Newmarket, Virginia. A second meeting was held on July 7, 1959, at the "Briar Branch Hunting Club," an isolated place about 14 miles southwest of Dayton. The third meeting was held in Bridgewater, Virginia, on July 31, 1959.

The supervisory employees who allegedly engaged in conduct violative of Section 8(a)(1) of the Act were Ralph Pettit, Joe Roadcap, Edward Mason, Billy Andrews and Norlyn Curry.²

During the early part of June 1959, Andrews asked employee Robert Brown if he had signed a union card. When Brown replied that he had signed a union card, Andrews told him that he (Brown) would lose his job if the Union organized the plant. Andrews also told Brown that if he gave up the Union, it would "make things easier" for him; and that if he did not give up the Union, he (Andrews) "could make it rough to stay there."

About the same time as the above conversation, Roadcap and Mason also asked Brown if he had signed a union card. About the middle of June, Mason asked Brown if he had any union cards. When Brown replied that he did not have any, Mason asked him to get him "a couple" and to get "a couple of unemployment slips" at the same time. At some undisclosed time Mason and Roadcap each told Brown that if the Union "got in," the Respondent would close the plant and "go under new management in a different area."

It is found that the above interrogation, promise of benefit, and threats of reprisal by Andrews, Roadcap, and Mason are violative of Section 8(a)(1) of the Act.

Employee Franklin Dovell worked on the "packing line . . . making boxes, and helping to pack chickens." He signed a union card on June 11, 1959. About a week later when questioned by Andrews, Dovell admitted that he had signed a union card. About the same time Dovell was transferred to a less desirable job "in the pinning room cleaning up feathers."³ His rate of pay was not cut, but his weekly earnings were by reason of the fact that he worked fewer hours per week. Some time after the above transfer Andrews told Dovell that if he would "quit messing around with the union," he (Andrews) would get him transferred back to his old job. Both Andrews and Mason told Dovell that if the Union "ever got in," the Respondent would close the plant. It is found that the above interrogation, promise of benefit, and threats of reprisal by Andrews and Mason are violative of Section 8(a)(1) of the Act.

About the middle of June 1959, Andrews had a conversation with employees Harry and Jean Dove. Andrews asked them how the Union was "getting on." When they replied that they did not know, Andrews said, "You ought to, for the union is paying you \$10.00 a night to go out and make night calls." He also told Harry Dove that if he and Brown did not "quit fooling around with the union," that they had better start looking for other jobs as the Respondent would get rid of them "one at a time." The above interrogation and threat of reprisal by Andrews is found to be violative of Section 8(a)(1) of the Act.

About the same time Mason had a conversation with the Doves. He asked them if they had any union cards. When they replied that they did not have any cards, Mason said, "I'd like to have a couple, and some unemployment slips, too. . . . If you all sign up for the union, you just might as well sign up for unemployment, too." Mason also told them that "if the employees voted the union in that . . . [Marvin Poster, president and general manager of the Respondent] was going to shut down and go to Georgia and open under a new name." It is found that the above interrogation and threats of reprisal by Mason constitute interference, restraint, and coercion.

As related above, a meeting of the Union was held on June 19. Shortly before the meeting Andrews asked Brown if he was going to attend. When Brown replied that he was going, Andrews offered to drive him to Newmarket and told him that "all the bosses was going to meet down there, and after the meeting was over with, why, there'd probably be a scrap amongst us." Andrews also spoke to employees Mabel Shifflett on the day of the meeting. He told her that "anyone he saw from the plant there going to the meeting that night at Newmarket, he was going to crowd them off the road," and that "I don't give a . . . who they are." Andrews' above interrogation and threats are found to constitute interference, restraint, and coercion.

² The Respondent admits that Pettit, Roadcap, and Mason are supervisory employees within the meaning of the Act. The status of Andrews and Curry is in dispute. They act as assistants to foremen and are both in the same category. The record conclusively shows and I find that Andrews and Curry are supervisory employees within the meaning of the Act.

³ Dovell in his testimony described the above job as "the dirtiest job in the plant."

Brown and employees Harry and Jean drove to the union meeting at Newmarket⁴ in the same car. Employee Maynard Crawford drove to the meeting with his daughter, Phyllis Crawford. The meeting started about 8 p.m., and about 15 or 20 employees were present. Before the meeting began Roadcap was parked in his car in Newmarket "inside the city limits, parked on the right side of the road . . . heading north." After the meeting when Maynard Crawford left the union hall, Roadcap pulled in immediately behind his car and followed him approximately 18 miles to Harrisonburg.

During the week following the above meeting Roadcap asked Maynard Crawford "how the union meeting went down there." Crawford stated, "Well, you was down there. Why didn't you go in?" Roadcap replied, "Well, I wasn't authorized to go in." Roadcap also spoke to Harry Dove about the meeting. He stated that he saw Dove and his "crew" at the meeting; and that if the union activity of the employees jeopardize his job, he would somehow "catch" Dove or Brown "one . . . at the time" and fire them.⁵

I find that Roadcap engaged in surveillance of the union meeting on June 19. The statements of Andrews and Roadcap before and after the meeting indicate that such was Roadcap's purpose. It is found that by this conduct of Roadcap the Respondent violated Section 8(a)(1) of the Act. It is also found that Roadcap's interrogation and threat of reprisal, as disclosed in the above conversations with Crawford and Dove, constitute interference, restraint, and coercion.

During the latter part of June 1959, employee Mabel Shifflett had a conversation with Foreman Mason. Mason told her that Poster had held a meeting with the foremen; that if the Union organized the plant, all the employees would be out of work because Poster "was going to close the plant down" and move it to Georgia; and that Poster had told him that he would give him a job in Georgia but had asked him "not to tell anyone about it."⁶ It is found that the above threat of Mason was violative of Section 8(a)(1) of the Act.

The union meeting at the Briar Branch Hunting Club was held on the night of July 7, 1959. As related above, the club was located in an isolated area "on the edge of the woods" about 14 miles southwest of Dayton. About 20 employees were at the meeting. While the meeting was in progress Andrews and Curry were "driving up and down" in front of the club in their cars. When the employees left the meeting, Andrews and Curry had their cars parked "right opposite across from where [the employees] had to pull out from the hunting lodge, so that they could see every automobile that come in and out."⁷

Brown and Jean and Harry Dove drove to and from the above meeting in the Doves' car. On the return trip, Andrews maneuvered his car in front of Dove's car, and

⁴ The evidence shows that Newmarket is about 22 miles from Dayton

⁵ Roadcap did not deny the above conversations specifically. However, he denied engaging in surveillance of the union meeting and testified to the effect that he was in Newmarket on the night in question on personal business. His testimony in this connection is not credited.

⁶ Shifflett testified credibly to the above. Mason did not deny categorically the statement attributed to him. He testified, however, that he told some few employees, including Harry Dove, that the plant might close; and that this was his "own personal opinion." Poster testified to the effect that supervisory employees were instructed not to make any threatening statements to employees or otherwise interfere with their union activity. That the Respondent had such a policy is open to question since the record shows that a number of such threats were made by foremen. For example, Roadcap admitted that he had told employees "that the plant would be moved if the union came into the plant," but testified "it was strictly my own opinion." In any event the Respondent was responsible for the statements of its supervisory personnel.

⁷ Andrews admitted that he was parked in front of the hunting lodge. As for his own purpose in being there, he testified, "I was just curious. I wanted to see what the union meeting was like." Curry testified that the hunting lodge is located "about a mile and a half up the road" from his house; that his purpose in going near the lodge on the night of the union meeting was "to see if I could see a deer"; and that he stopped and talked to Andrews. In an affidavit dated August 25, 1959, Curry states in part as follows:

Sometime after June, there was a union meeting at Briar Branch, Va., in a hunting cabin. I found out about this meeting the next day from people that live up that way. Also, I live about 3 miles from Briar Branch and I had noticed some cars of employees driving-by my house in the direction of the hunting camp on the night the union meeting was supposed to have been held. However, I did not go up to the meeting place on that night, but stayed at my home.

Aside from the above conflict, Curry did not impress me as a credible witness.

Curry drove behind it, so that Dove's car was hemmed in the middle. Andrews then engaged in a series of short stops and starts, threatening to back into Dove's car. Andrews also crowded Dove's car off the road. Later that night when Brown and the Doves went to Andrews' store, Andrews told Jean Dove that he did not want her to use his name "in the union meeting again," and threatened to slap her.

I find that Anders and Curry were engaging in surveillance of the union meeting in violation of Section 8(a)(1) of the Act. I also find that Andrews' conduct after the meeting interfered with, restrained, and coerced the employees.

The third meeting of the Union was held at Bridgewater on July 31 1959. Bridgewater is about 4 miles from Dayton. Just before the meeting started, Pettit drove by the union hall "real slow." The union hall is located on a side street about 1½ blocks from the main street of Bridgewater. Pettit and Mason also had their cars parked on the main street before the meeting. After the meeting Brown had a conversation with Pettit and Mason. They questioned Brown concerning the meeting; and Mason told him that he had a tape recorder in the union hall which had recorded everything that was said. I find that the above conduct of Pettit and Mason was violative of Section 8(a)(1) of the Act.

B. *The discharge of Jean Dove*

Dove was employed by the Respondent from July 1955 until her discharge on June 29, 1959. She worked on the end of the eviscerating line with four or five other employees.

About the middle of May 1959, Dove signed a union card. On and after June 1 Dove and her husband, Harry Dove, visited the homes of other employees in the evenings after work and solicited them to sign union cards. At times they were accompanied by a union organizer. About 30 employees signed union cards for the Doves. Jean Dove attended all of the union meetings, including the one held at Newmarket on June 19.

Dove's supervisors were Pettit and Curry. She admitted in her testimony that at some time during May 1959 one of her supervisors complained that she was not doing her "fair share" of the work and warned her that she would be discharged unless her work improved; and that starting about May 1, 1959, and about "twice a week" thereafter, the last occasion being about 3 days before her discharge, Pettit complained to her about "letting the gizzards go down the line." About 11:30 a.m. on June 20 Dove was discharged by Pettit who told her that her work was "not satisfactory."

The Respondent adduced in evidence three reprimand slips on Dove. Two of them dated June 10 and 23 are signed by Pettit. The third slip is dated June 22 and is signed by Curry. All three slips make the same complaint, to the effect that Dove was "not catching her share of gizzards."

Pettit testified, in substance, that Dove's work during her employment was satisfactory "off and on"; that about a year before her discharge he warned her about poor work;⁸ that he warned her "orally" but finally "had to write up a report" on June 10, 1959, because her work got "so bad"; and that "if you stayed right on her neck, she would do it while you was watching her; when you turned your back and was gone she did not work." Curry testified that Dove missed her share of gizzards starting in the first part of 1959; that he spoke to her about it; and that the other employees on the line performed their share of the work.⁹

In view of Dove's length of employment and of the Respondent's illegal conduct, heretofore related and found, I am inclined to suspect that the Respondent's reason for discharge is a mere pretext. However, I do not believe that the evidence warrants the inference of illegal motivation. There can be no question but that the Respondent had knowledge of Dove's activity on behalf of the Union before her discharge, particularly on and after June 19, the date of the union meeting at Newmarket.¹⁰ Her conversations with Andrews and Mason shortly before her discharge have been related above. But by Dove's own admission there were complaints about her work starting on or about May 1, 1959, apparently some few

⁸ Dove testified that she could not "recall" any complaints about her work before May 1, 1959.

⁹ In his brief the General Counsel seems to argue that if Dove permitted gizzards to go "down the line." It was because the other employees were not doing their fair share of the work. In her testimony Dove did not claim this to be the case.

¹⁰ Pettit testified that he had heard "rumors" of union activity "possibly a month before" Poster received the Union's letter dated June 15, 1959.

weeks before she signed a union card and engaged in any union activity. Accordingly, I find that the Respondent discharged Jean Dove for cause and not in violation of the Act.

C. The discharge of Glen Hinkel

Hinkel worked for the Respondent for about 3 weeks before he was discharged on June 29, 1959. He worked under the supervision of Roadcap and Andrews.

About a week before his discharge Hinkel signed a union card. On the day of his discharge Andrews asked him if he had signed a union card. When Hinkel admitted that he had signed a card, Andrews told him that he was discharged and "Go to the office and get your check."¹¹

Andrews testified that Hinkel had four different jobs during his short period of employment; that he was unable to perform the work satisfactorily on the first three jobs, that when "feeding chickens in the chute," Hinkel "had the wrong size chickens in the wrong chute"; that when Hinkel worked "on packing," he was "just too slow" and "caused the whole crew to get behind"; that he (Andrews) received "frequent" complaints from other members of the crew about Hinkel; that on the next job of "strapping boxes" Hinkel "never did learn" how to operate the strapping machine although he (Andrews) spent a "couple of hours" attempting to teach him; that on his last job of "running the conveyor switch" Hinkel slowed down production because "he was always away, he wouldn't stay at the switch where he should have been"; that Hinkel was on this job "better than a week"; that Hinkel's work did not improve after he criticized it;¹² and that Roadcap finally decided to discharge Hinkel.

Concerning Hinkel's discharge, Roadcap was questioned and testified as follows:

Q. Would you tell us the circumstances surrounding the discharge of Glen Hinkel?

A. Well, we was short of help and this Glen Hinkel came in and Billy asked me if it would be all right to hire him.

Mr. AGNEW: That's Billy Andrews?

The WITNESS: Yes.

And I said go ahead and give him a trial, if he works out okay. So he put him to work, and he worked two weeks and he was almost useless, and if I'd of been on my toes I'd of got rid of him a week before I did, but that's just one of those things I let it go for awhile.

But he worked approximately two weeks, and we discharged him.

Q. (By Mr. GARDNER.) You say he was almost useless? What do you mean, he was lazy, or incompetent, or—

A. Well, I don't know, he's just naturally slow. I don't know whether you'd call it lazy or what you'd call it.

Q. Did you talk with him at all prior to his discharge?

A. No, sir, I didn't really talk to him.

Q. Did you discuss with Andrews what you would say to him, or what reason you'd give for terminating his employment?

A. Yes, sir.

Q. What reason did you agree on, if any?

A. That he wasn't suitable for that type of work.

Q. Was there any mention made at this time of his union activity, or non-activity?

A. Well, he'd been there so short a time, and I knew him not that well, I didn't know whether he was a union member or whether he wasn't.

Q. He was discharged, then—or, I will withdraw that.

Was his discharge, which you and Andrews agreed upon, in any way connected with his union activities, or the fact that he signed a union card?

A. No, sir, I don't believe we never did.

Q. Did you know that Andrews is alleged to have said, "We can't use you because you signed a union card"?

A. Yes, sir, I've heard of that.

¹¹ Hinkel testified to the above conversation. Andrews testified that the Union was not mentioned at the time of discharge; and that he told Hinkel that he could not use his services any longer because he was "too slow." Hinkel denied that Andrews told him that his work was unsatisfactory. I credit Hinkel's version of the conversation. Andrews did not impress me favorably as a witness, and his testimony has been discredited heretofore.

¹² Hinkel denied that any supervisor criticized or reprimanded him over the performance of his work. His denial is credited.

Q. Have you discussed this with Andrews?

A. Well, it was so far-fetched I didn't think it was any use to discuss it with him.

If, as Andrews and Roadcap testified, Hinkel was so slow and lacking in intelligence so as not to be able to perform the most simple jobs in Respondent's plant, it seems to me that the Respondent would have had no trouble in producing other witnesses in support of Andrews and Roadcap, such as the employees who purportedly made "frequent" complaints to Andrews. However, the Respondent's whole defense is based on the testimony of Andrews and Roadcap. Hinkel, according to them, either was too slow or unable to learn on the first three jobs. On the last job which he held for over a week, Andrews claimed that Hinkel was able to perform the job but was "always away" from his place of work. Thus, there is nothing specific in the Respondent's defense, such as production records or a particular incident. There are just the vague generalities testified to by Andrews and Roadcap. I am unable to credit their testimony as to Hinkel's alleged shortcomings. Further, contrary to the impressions of a lazy and ignorant person which the Respondent sought to create, at the hearing Hinkel appeared to me to be an intelligent and energetic young man. A careful review of the record of his testimony renews my original impression.

Thus, the credited evidence shows that the Respondent discharged Hinkel without warning as soon as it learned of his adherence to the Union. I find that the discharge was violative of Section 8(a)(3) and (1) of the Act.

D. The discharge of Maynard Crawford

Crawford was employed by the Respondent from November 1956 until his discharge on July 7, 1959. For about the last year and a half of his employment Crawford's job was to sharpen knives, scissors, and clippers. During this time he also performed some odd job such as sweeping.

Near the end of March 1959, Michael Betzold, International organizer of the Union, contacted Crawford and asked him to help in organizing the Respondent's employees. Crawford signed a union card at this time. Thereafter, he went to employees' homes, at times with Betzold, and solicited them to join the Union. About 25 employees signed union cards for Crawford.

At sometime after the union meeting at Newmarket on June 19, Roadcap asked Crawford if he had signed a union card. When Crawford replied that he had signed one, Roadcap told him, "You know, you're subject to lose your job. . . . We'll get everyone that signed a union card. It might take us a year before we get rid of them."

When Crawford was discharged on July 7, he had a conversation with Pettit at the time. Pettit told him that he did not like to be the one to tell him of his discharge as they had been friends for many years. Crawford replied to the effect that if that was the case, why did he (Pettit) "run to the office" with every bit of news he heard about the Union. Pettit then told him, "Well, . . . if I keep the union out, . . . I'll get a \$20.00 weekly raise."¹³

¹³ Crawford testified credibly to the above. Pettit denied the statement attributed to him concerning the raise. His denial is not credited. During his testimony, Crawford admitted that he was convicted and served time for murder in the second degree. His testimony in this connection indicates that the crime was one of passion.

Evidence that a witness has been convicted of a felony is material to the question of credibility and may be offered for impeachment purposes. It does not, however, disqualify a witness, nor require that his testimony, *ipso facto*, be discredited. *Rosen et al. v. U S*, 245 U S 467. The Board has held that "Counsel may show convictions for felonies or misdemeanors amount to *crimen falsi* in accordance with a well recognized rule of evidence" (*Crown Corrugated Container, Inc.*, 123 NLRB 318, wherein the Board quoted from *NLRB v. Baldwin Locomotive Works*, 128 F. 2d 39, 46 (C.A. 3).) Wigmore has referred to the *crimen falsi* of the common law as including forgery, perjury, barratry, subordination of perjury, suppression of testimony by bribery, conspiracy to procure the absence of a witness, or conspiracy. Wigmore on Evidence (3d ed.), vol. II, sec. 520. Even the testimony of a witness convicted of one of the latter crimes, however, must be considered by the trier of the facts *United States v. Margolis*, 138 F. 2d 1002, 1004 (C.A. 3); *Colt v. United States*, 160 F. 2d 650, 651 (C.A. 5); *United States v. Montgomery*, 126 F. 2d 151, 155 (C.A. 3); *McCormick v. United States*, 9 F. 2d 237, 239 (C.A. 8). After such consideration, it may, of course, be found unworthy of belief. On the other hand, it may be accepted as credible, provided it has been "scrutinized with care." *United States v. Margolis, supra*.

The conviction of Crawford was not for a crime of falsehood, nor was it of such a nature as to discredit him completely as a witness. From his demeanor Crawford im-

The Respondent contends that Crawford did not perform his job properly and did not stay at his work station. Poster and Pettit testified that the scissors used by some of the employees were being sharpened by Crawford after he was told specifically not to sharpen them. It appears from their testimony that this was the main, if not the only, reason for Crawford's discharge.¹⁴ Pettit testified that during the whole period of time that Crawford was on this job he reprimanded Crawford continuously because "the knives wasn't sharpened and the scissors wasn't sharpened."¹⁵

The evidence shows that the Respondent used discipline slips since January 1, 1959. The employees were not shown these slips. There are three for Crawford, dated June 18 and July 1 and 7, and all signed by Pettit. They read as follows: (1) "Knives that the oil bag cutters were using weren't sharpened & he couldn't be found," (2) "Let the foot cutter knife get dull & he couldn't cut feet properly," and (3) "Neck clippers wasn't sharp. Resulting in poor cut of necks after telling him a lot of times to keep them sharp."

Although Poster testified at length to the effect that for the "best part of a year" Crawford had been sharpening scissors against orders, and that because of such continued disobedience of orders he told Pettit to discharge Crawford, it is noteworthy that no discipline slips were made out for this reason.¹⁶ Pettit testified that "After things got from bad to worse, after Mr. Poster spoke to me a couple of times," he instructed the employees who were using the scissors not to let Crawford sharpen them; and that he did not discharge any of those employees when they disobeyed his orders.

I am convinced and find that Crawford's alleged disobedience in sharpening scissors was a pretext seized upon by the Respondent as a reason for his discharge; and that the Respondent, in fact, discharged him because of his membership in and activities on behalf of the Union. Aside from the discriminatory motivation as shown by Crawford's conversations with Roadcap and Pettit, I am unable to believe the Respondent's claim of Crawford's continual disobedience of orders for almost a year, especially since it involved extra work on his part. This complaint seems to throw a different light on Crawford, and contrary to the picture given of him in the discipline slips. It does not appear that any particular incident was involved on or about the day of his discharge. Further, if the alleged offense was as serious as the Respondent would have the Trial Examiner believe, why were not the employees who used the scissors reprimanded. It also is noteworthy that these employees were not paid on a piece-rate basis, and accordingly would not be unduly concerned with the rate or quality of production. They would have had valid excuses if Pettit had complained to them because of such production. For all of the above reasons I am not able to credit the Respondent's defense.

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 set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and end 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 designed to effectuate the policies of the Act.

It has been found that the Respondent discriminated against Glen Hinkel and Maynard Crawford. It will be recommended that the Respondent offer Hinkel and

pressed me as a reliable and credible witness. He was direct in his answers; and there are no contradictions in his testimony. Even with the evidence of his conviction, I believe that his testimony is still more worthy of belief than that of Pettit.

¹⁴ In this connection Crawford testified as follows:

Ralph Pettit told me that Mr. Poster told him to tell me to not sharpen the scissors, that he was paying—I don't know what the guy's name was, it's a Greek, all I know they call him the Greek—but Ralph Pettit give me four pair and told me to keep them sharpened, and not let the Greek get hold of them, he wanted to run a test to see the way I sharpened them lasted longer than the ones that the Greek sharpened or was grinding

¹⁵ Crawford denied that he ever was reprimanded over his work.

¹⁶ Pettit testified that slips were not made out "Because Mr. Poster's the one that complained on the thing to me"; and that he made out slips only on incidents that he himself knew about. He did not deny Crawford's testimony regarding the four pairs of scissors, as related above.

Crawford immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of Respondent's discrimination against them by payment to them of sums of money equal to that which they normally would have earned as wages from the dates of discrimination to the date of an offer of reinstatement, less their net earning during such period. Said backpay shall be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Marval Poultry Company, Inc., is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Meat Cutters and Butcher Workmen of North America, Local 504, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By discriminating against Glen Hinkel and Maynard Crawford, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

4. By discharging Jean Dove on or about June 29, 1959, the Respondent did not engage in any unfair labor practice within the meaning of the Act.

5. 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 unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The aforesaid practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Phillips Petroleum Company, Petitioner and Local 323, International Union of Operating Engineers, AFL-CIO.¹ Case No. 15-R-1201. November 29, 1960

ORDER DENYING MOTION

Pursuant to a consent determination of representatives issued by the Board on January 23, 1945, the International Union of Operating Engineers, AFL-CIO,² was certified as the exclusive representative of all employees of the Petitioner's production department in the Smackover, Arkansas, field, with certain exclusions. Thereafter, in 1945, and since that time, the parties have negotiated working agreements which included unit operator and gangpusher as nonsupervisory classifications, the last of which was effective until June 30, 1960. On March 16, 1960, the Petitioner filed a motion to amend determination of representatives requesting the removal of unit operators and gangpushers from the bargaining unit because they are supervisors. On March 31, 1960, Local 323, International Union of Operating Engineers, filed an answer thereto asserting that such employees are not supervisors and that their classifications have always been included in the contract. The Union requested that the Petitioner's motion be denied, or, in the alternative, that a hearing be held thereon by the Board.

¹ As stipulated by the parties at the hearing.

² The parties stipulated that Local 323 is the same identical labor organization as that which was certified.