

2. The labor organization named below claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within Section 9(c) (1) and Section 2(6) and 7 of the Act.<sup>2</sup>

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

All individuals on the payroll of the International Ladies' Garment Workers' Union (as distinguished from its locals) who serve as business agents, organizers, educational directors, and who do union label, and political work excluding office clericals, supervisors, professionals, watchmen, and guards as defined in the Act.<sup>3</sup>

[Text of Direction of Election omitted from publication.]

<sup>2</sup> We find no merit in the contentions raised by the Employer and the AFL-CIO, that the business agents here involved are managerial employees, or for other reasons, should not be considered employees under the Act. In *Air Line Pilots Association, International*, 97 NLRB 929, and the *American Federation of Labor, et al*, 120 NLRB 969, we considered similar contentions with respect to negotiators, organizers, lawyers, and other individuals employed directly by labor organizations and concluded that such individuals were employees under the Act and entitled to the right of self-organization. In our opinion, the holdings in these cases, which we reaffirm, are controlling herein. According, we find that the business agents, whose duties and authorities are substantially the same as those of the organizers in the *American Federation of Labor* case, and the other individuals in the unit described herein, are employees within the meaning of the Act who may be represented for collective-bargaining purposes.

<sup>3</sup> We find on the basis of the record as a whole, particularly in view of their duties, responsibilities, lines of progression and training, that all the employees sought by the Petitioner have sufficient community of interest to warrant their inclusion in the single unit as herein provided. We find no merit in the contention of the Employer that the unit is inappropriate because it excludes employees on the payroll of the locals.

**Altamont Shirt Corporation and Region 30, District 50, United Mine Workers of America and Jimmy Hammers and Pauline Morrison.** *Cases Nos. 10-CA-4455 and 10-CA-4466. April 18, 1961*

#### DECISION AND ORDER

On September 26, 1960, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that 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.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate

Report, the exceptions, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations<sup>1</sup> of the Trial Examiner.

### ORDER

Upon the entire record in these cases, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Altamont Shirt Corporation, Altamont, Tennessee, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Encouraging, sanctioning, condoning, or ratifying the circulation of antiunion petitions among, and the solicitation of signatures from, its employees during their regular working hours.

(b) Committing physical assaults upon union representatives in the presence of employees.

(c) Discouraging membership in the union, or in any other labor organization of its employees, by discharging or constructively discharging employees, or by discriminating in any other manner in regard to hire or tenure of employment, or any term or condition of employment to discourage membership in a labor organization.

(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, or any other labor organization, to bargain collectively through representatives of their own choosing, or 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.

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

(a) Make whole Mary Anderson, Jimmy Hammers, Shirley Meeks, Pauline Morrison, Mary Smith, Sally Burrows, Willie Kate Mott, and Peggy Young, for any loss of pay they may have suffered from the date of the discrimination against them, respectively, to June 13, 1960.

(b) 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, and all records necessary to analyze the amounts of backpay due and the rights of the aforesaid discriminatees under the terms of this Order.

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<sup>1</sup> In the light of our adoption of the Trial Examiner's finding that Respondent closed the Altamont plant on June 13, 1960, for economic reasons, we find merit in Respondent's exception to that part of the Trial Examiner's remedy and recommended order which would require it to offer reinstatement to the discriminatees herein in the event the plant resumed operations either in Altamont or elsewhere. Accordingly, our Order appears as so modified.

(e) Publish in The Chattanooga Times, a newspaper of general circulation in the area, the copy of the notice attached hereto marked "Appendix"<sup>2</sup> and mail signed copies of said notice to all employees who were in its employ on May 10, 1960.

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

CHAIRMAN McCULLOCH and MEMBER BROWN took no part in the consideration of the above Decision and Order.

<sup>2</sup>In 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 Décreé of the United States Court of Appeals, Enforcing an Order."

## 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, we hereby notify our employees that:

**WE WILL NOT** encourage, sanction, condone, or ratify the circulation of antiunion petitions among, and the solicitation of signatures thereon by, our employees during their regular working hours.

**WE WILL NOT** commit physical assaults upon union representatives in the presence of our employees.

**WE WILL NOT** discourage membership in Region 30, District 50, United Mine Workers of America, or in any other labor organization of our employees, by discharging or constructively discharging employees because they engage in concerted activities, nor will we discriminate in any other manner in regard to hire or tenure of employment or any term or condition of employment to discourage membership in a labor organization.

**WE WILL NOT** in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to form, join, or assist said Region 30, District 50, United Mine Workers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, or 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** make whole Mary Anderson, Jimmy Hammers, Shirley Meeks, Pauline Morrison, Mary Smith, Sally Burrows, Willie Kate Mott, and Peggy Young for any loss of pay they may have

suffered from the dates of the discrimination against them, respectively, to June 13, 1960.

ALTAMONT SHIRT CORPORATION,  
*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**

This proceeding, brought under Section 10(b) of the National Labor Relations Act as amended (61 Stat. 136; 73 Stat. 519), was heard in Jasper, Tennessee, on August 9 and 10, 1960, pursuant to due notice. The complaint, issued on June 30, 1960, and based on charges duly filed and served, alleged that Respondent engaged in unfair labor practices proscribed by Section 8(a)(1) and (3) of the Act by discharging some 10 employees because of their union membership and activities, and by engaging in certain specified acts of interference, restraint, and coercion. Respondent answered, denying the unfair labor practices. Respondent's various motions for dismissal, on which ruling was reserved at the hearing, are disposed of by the findings herein.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

**FINDINGS OF FACT**

**I. RESPONDENT'S BUSINESS; THE LABOR ORGANIZATION INVOLVED**

I find on facts alleged in the complaint and admitted in the answer that Respondent, a Tennessee corporation (a wholly owned subsidiary of Colonial Corporation of America), which is engaged at Altamont in the manufacture of men's shirts, is engaged in commerce within the meaning of the Act (i.e., by reason of annual sales to extrastate customers in excess of \$50,000), and that Region 30, District 50, United Mine Workers of America (herein called the Union), is a labor organization within the meaning of Section 2(5) of the Act.

**II. THE UNFAIR LABOR PRACTICES**

*A. The issues*

The main issues in this case are whether Respondent, by its supervisor, Frederick Carr, committed an assault on Union Representative James M. Patrick in the presence of employees on May 25, and whether it encouraged, ratified, or condoned (1) the circulation of an antiunion petition around May 10, and (2) the denial by anti-union groups of employees of admittance to the plant to union adherents on May 26, 27, and 30 (which allegedly resulted in the discriminatory discharges). Other issues involve questions whether Plant Manager Daniel Beitsch made a threat to close the plant and whether one Otis Childers was a supervisor for whose actions Respondent was responsible.

*B. Background; summary of main events*

Respondent began operations in Altamont on September 28, 1959, in a plant building which it leased from Grundy County. It employed around 300 employees at the peak of its operations. Altamont, though the county seat, was scarcely more than a village, and Respondent was forced to hire and to train inexperienced employees to man the plant. As early as December, Leonard Friedman, vice president and general manager, informed the employees in a speech that the Company was distressed at the lack of progress in reaching a satisfactory rate of production; and on April 29, he announced that the Company had found it not economically feasible to continue the operation and that it was planning to close the plant in some 4 or 5 weeks.

Though the Union had begun some organizational activity as early as March, there is neither contention nor evidence that Respondent had knowledge of that fact on

April 29 and none that Respondent's decision to close or the subsequent closing of the plant was discriminatorily motivated.<sup>1</sup> However, the inference is plain from the entire record that it was the announcement concerning the closing of the plant which lent some impetus to the seeking of union help and that the increased organizational efforts in turn led to the formation of a strong antiunion faction of employees who seemed to assume that the union activity was somehow connected with the loss of the plant and that there was some possibility of saving it.

Around May 10 petitions were circulated within the plant which coupled an expression of desire to keep the factory with lack of a desire for a union. On May 17, union representatives, accompanied by 10 or 12 members of its organizing committee, met with Respondent's supervisors, informed Respondent of the organizing campaign, identified the employees present as committee members, and protested the circulation of the petition. The first charge was filed on May 19. On May 25, during the Board's investigation of the Union's charge at the Moffitt Manor Hotel, Respondent's supervisor, Frederick Carr, engaged in an assault on Union Representative James M. Patrick in the presence of a group of employees. On May 26, 27, and 30, employees grouped at the employee entrance to the plant repeatedly denied entrance to other employees who refused to sign a paper indicative of renunciation of the Union. Though some of those who were denied entrance appealed to the sheriff and to a justice of peace for help, they were unsuccessful.

In the meantime, the discontinuance of plant operations was proceeding apace, with daily layoffs of substantial number of employees. Plant operations ceased completely on July 13.

### C. *The petition; the alleged threat to close the plant*

On or about May 10, and after some of the employees had signed union authorization cards, there were circulated in the plant during working hours petitions which bore the following caption:

We, the undersigned want to keep our shirt factory. We need the work bad. If this factory leaves we will never get another one. We do not want a union.

Three copies, which were ultimately signed by some 180 employees out of 240 or 250, were delivered by an employee to Plant Superintendent Beitsch, who forwarded them to Friedman at Woodbury. What is in issue is whether Respondent encouraged, condoned, and ratified the circulation as charged in the complaint.

The evidence established that Respondent's supervisors were aware of the circulation of the petition and did nothing to stop it. Whether they encouraged the circulation and the solicitation of signatures turns on testimony which is in part in dispute. Willie Kate Mott testified to hearing conversations between employees and Foreman Donald Gannon concerning the origin of the petition and whether employees were expected to sign it. Though Gannon stated that the petition did not come from the office and that the employees did not "have to sign anything," he stated later, after checking on the origin of the petition, that though it did not come from the office, "it would be a good thing to have 300 signers on it." Betty Louise Morrison and Shirley Meeks testified also that Gannon stated the petition did not come from the office. Morrison testified further that later in the day, after being solicited to sign by Anna Ruth Layne and Willie May Henry and being informed that the paper was in the office, she went to the office with two other girls where Frederick Carr produced the paper from a desk for their signatures after first obtaining a promise from them not to disclose any of the names. They signed the petition in Carr's presence and returned it to him.

Shirley Meeks testified that Ethelene Gibson handed the petition to Beitsch in her presence and asked if she should sign it and that Beitsch replied, "you can sign it and have a factory or you can not." Beitsch denied Meeks' testimony. I credit his denials in view of the General Counsel's failure to call Gibson, as Meeks may not have correctly heard or may have misunderstood the somewhat ambiguous conversation as she reported it between Gibson and Beitsch.

Neither Carr nor the office girl who was present was called in denial of Morrison's testimony concerning the incident in the office.<sup>2</sup> Gannon admitted having

<sup>1</sup> Though the General Counsel argues in his brief that Respondent's final decision to close was made on May 26 and that it "may have been motivated by union considerations," he cited for support only proffered evidence which *was excluded on his own objection*.

<sup>2</sup> Respondent represented it had been unable to locate Carr despite several attempts to do so. At the close of the hearing the Trial Examiner allowed Respondent 3 additional

informed Ethelene Gibson on her inquiry that the petition had not come from the office, but his testimony contained no reference to and no denial of the testimony of Mott, Morrison, or Meeks. Their testimony is credited.

Though the foregoing evidence established that Respondent did not originate the petition, it not only permitted the petition to circulate freely during worktime, but through Gannon and Carr, it encouraged the circulation and encouraged and participated in the obtaining of signatures thereon. Under those circumstances the facts relied upon by Respondent are immaterial, i.e., that Respondent had no rule against solicitations and that the Union had not requested and been denied permission to solicit or to circulate a petition.

It is therefore concluded and found that Respondent encouraged, sanctioned, condoned, and ratified the circulation of the petition and the solicitation of signatures thereon, and thereby engaged in interference, restraint, and coercion within the meaning of Section 8(a)(1).

#### D. *The assault on Patrick*

On May 17 Union Representative Patrick and Camp met with Respondent's supervisors and on May 19 they filed a charge, as recounted under section B, *supra*. On the afternoon of May 25, Board Attorney Smith was conducting an investigation of the charge at the Moffitt Manor Hotel, and Patrick and Carr were assisting in making witnesses available. While Patrick was talking with a group of employees outside the hotel, Frederick Carr approached with another group composed of employees and nonemployees. Carr first addressed himself to Matt Nunley (father of employee Sally Burrows), who was whittling, threatened to kill anyone who "lays a hand on one of my girls," and stated that "we" did not want and did not need a "goddamn union." When Patrick endeavored to assure Carr that the group were peaceful people who were present in connection with the Board's investigation, Carr accused him of being the head or the ringleader of the group and announced he was going to whip Patrick. Carr pulled off his coat, Patrick removed his glasses, and Carr charged at Patrick. Patrick put out his hands and pushed Carr away, and two persons grabbed Carr by the arms and led him away.

Though no blows were struck and though the incident did not develop into a serious one<sup>3</sup> because of the timely intervention by bystanders, the facts do establish an assault as charged in the complaint. Furthermore, though Carr was a resident of the hotel at the time, his language (concerning his interest in protecting his employees from union representatives) showed that he injected himself into the gathering as the foreman and supervisor of the employees. It is, therefore, concluded and found that by his assault upon Patrick, in the presence of employees, Respondent engaged in interference, restraint, and coercion within the meaning of Section 8(a)(1) of the Act.

#### E. *The denials of admittance; the assaults*

The complaint allegation that Respondent discriminatorily discharged eight employees<sup>4</sup> on May 26, 27, and 28, is based on the theory that Respondent by its supervisors, Beitsch, Carr, Donald Gannon, and Lee Ragland<sup>5</sup> condoned and ratified

weeks within which to file a motion to reopen the record in the event it succeeded in locating Carr, but no such motion has been received.

<sup>3</sup> Camp, who witnessed the scene from a window of the hotel, testified that Patrick and Carr were "patting hands" as Patrick tried to ward off Carr.

<sup>4</sup> Mary Anderson, Jimmy Hammers, Shirley Meeks, Pauline Morrison, Mary Smith, Sally Burrows, Willie Kate Mott, and Peggy Young. The complaint was dismissed as to two other employees, i.e., Wanda Jean Nunley, on the General Counsel's motion, and Eloise Grimes, on Respondent's motion.

<sup>5</sup> The General Counsel amended to add Otis Childers to that group, but failed to establish that Childers in fact had supervisory status. Though Willie Young and Paul Grady Smith testified to having been informed by Carr that Childers was "boss" or was "in charge," and though Young also testified to occasions when Childers gave her instructions about reporting or not reporting, both gave further testimony which showed that Childers acted only as a conduit for orders from Carr and others, that such authority as he exercised was purely routine, and that they were free to question and to disregard his authority. Young testified, for example, that Carr told her she should do what Childers told her *provided it was reasonable*, and if it was not, to call him; and under Smith's description Childers was at best a strawboss over the bundle boys, whose orders he freely ignored. When the foregoing is viewed in the light of Childers' job classification as bundle boy, his employment at the wage-hour minimum of \$1 an hour, and the testimony of Respondent's witnesses that Childers was without authority to exercise any of the

the acts of the antiunion faction of employees in denying admittance to union adherents who refused to sign a paper renouncing the Union. The evidence established that the eight employees had signed union authorization cards, that all except Anderson, Hammers, and Morrison were members of the organizing committee who were present with Camp and Patrick in the meeting with Respondent's supervisors, and that their adherence to the Union was openly tested and exposed when they balked at signing the antiunion paper as a condition to entering the plant. The issue whether Respondent condoned and ratified the imposition of that shibboleth (the equivalent, the General Counsel argues, to signing a "yellow dog" contract) requires a review of the evidence.

Employees entered the plant by ascending a number of steps onto a small platform and going through double doors into a waiting room. From there one door led into the plant and another door and a window opened, on the left, into the office. There was also a large window at the front of the office to the left of the platform entrance.

The evidence is undisputed that at reporting time on the mornings of May 26, 27, and 30, groups of employees who were assembled on the steps and on the platform<sup>6</sup> denied admittance to other employees except on condition that they sign a paper indicative of renunciation of the Union. Those actions occurred on several occasions when one or more of Respondent's supervisors were present and under circumstances which plainly established knowledge on Respondent's part that an antiunion faction was denying entrance to other employees.

Several of the General Counsel's witnesses gave undenied testimony that Carr was present on various occasions when they attempted to mount the steps to the platform, when other employees were signing the paper, and when they were informed by employees in the group massed in front of them that they could not go in unless they signed. There was also undenied testimony that Carr, as well as leaders of the antiunion faction, conferred outside the plant with the county judge, Fults, on the morning of the 26th, when the exclusions began. When Shirley Meeks and Mary Smith asked Carr on the 26th whether it was necessary to sign in order to enter, he replied he would not say whether they had to sign or not sign; and neither then nor on any of the other occasions did he (or any other of Respondent's supervisors) offer to assist any employee in gaining entrance. Other witnesses identified Foremen Donald Gannon and Lee Ragland as present outside the plant at various times on May 26, and still others testified to seeing Gannon through the open window on May 27, and to calling to him inquiries concerning their paychecks. Gannon's reply was a shrug of the shoulders—apparently a characteristic gesture, as the Trial Examiner observed during Gannon's appearance on the stand.

Two witnesses who actually signed the paper and who were admitted (Betty Louise Morrison and Paul Grady Smith) testified that they signed at the office window in the waiting room at a time when Beitsch was in the office. Smith testified that Gannon was also present with Beitsch and that the two of them were watching through the window as employees signed the paper.<sup>7</sup> Mary Anderson testified similarly that the paper was in the waiting room on the 26th and that Beitsch was in the office when she and Eloise Grimes endeavored to attract his attention from the waiting room by knocking on the office window. Anderson went back on the 27th for her pay and talked with Beitsch, who told her she could go back to work if she had not quit. Anderson replied that she would rather not do so because "they don't want the Union in there," and that she would rather not go in and cause trouble. Beitsch repeated that she could go back to work if she wanted to and then directed the office girl to fix up Anderson's cutoff slip. Anderson testified that despite Beitsch's statement, she was afraid of getting hurt because she did not think Beitsch would be able to protect her if the employees started bothering her in the plant.

Pauline Morrison and Jimmy Hammers were denied admittance on the 26th and 27th and left during the fight on the 30th without attempting to mount the steps.

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supervisory criteria set forth in Section 2(11), the entire evidence plainly preponderated against the General Counsel's contention, despite the fact that there were otherwise only 5 supervisors over some 250 employees at the time.

<sup>6</sup> Though the evidence showed that county judge, Malcom Fults, and other nonemployees were among persons on the lot or yard outside the plant at various times and that on some occasions, one or more of the nonemployees had weapons, the evidence is undisputed that only employees were grouped on the steps and platform and that only those participated in the actual denial of entrance into the plant.

<sup>7</sup> Smith's other testimony (denied by Beitsch) that he later watched from the office window as Beitsch typed on a sheet of paper which had signatures on it is without probative weight since he could make no identification of the paper and since he may well have confused the typewriter with the teletype machine by which Beitsch stayed in communication with Friedman in Woodbury

Hammers testified that she called Beitsch on each of those days and told him she could not get into the plant because the women on the steps would not let her in unless she signed a paper. Though Beitsch stated that her job was open and that she did not have to sign a paper to get in, the same condition was again imposed by the employees on each occasion when she and Morrison renewed their efforts. On the 27th, after Hammers explained to Beitsch again why she could not get it, Beitsch laughed and said that he could not do her fighting for her. On July 2, when Hammers called to ask if her job was still open, Beitsch said it was but asked why she had not been in and told her to come in and talk with him.

When Hammers and Morrison went in on the 3d, they were referred to Supervisor Robert Yokel, in Beitsch's absence. Yokel asked, and they explained again, why they were not working. Yokel told Morrison there were only a few hours work left and asked if Morrison could go back to work at once. In the meantime, Carr and Ragland came in and raised questions about whether they were entitled to work on the ground that there was no job for Hammers and that Morrison was a learner. Carr also asked Morrison to sign a statement to the effect that the company officials knew nothing about, and had nothing to do with, the women who had kept her out of the plant, and when Morrison refused, Carr stated that her refusal showed she had a grudge against the Company. Yokel then said that since there was so little work left, they would be given separation slips, and slips were prepared which assigned lack of work as the reason for separation.

The denials of admittance, which continued through May 30, culminated in a fight on the latter date between two employees (Shirley Meeks and Mary Smith) who were seeking entrance and two leaders of the antiunion faction (Anna Ruth Layne and Marie Cooper). Meeks and Smith testified that after they were denied admission by Layne and three other employees except on condition they signed a "nonunion" paper, that "a few words" passed between Smith and Layne, that Layne "jumped" Smith, and that when Meeks attempted to intervene, she was in turn attacked by Cooper. The fight was stopped in a few minutes when Beitsch and Carr came out and pulled the girls apart.

Though neither Layne nor Cooper was called as a witness, Respondent called Ruby Schrum, who testified that the fight started when Smith called Layne "a damn whore." As neither Smith nor Meeks specified the content of the words which precipitated the actual fight, and as there was no other testimony as to their content, Schrum's testimony is credited as to Smith's language. It is therefore concluded and found that the assault was precipitated by Smith's own use of fighting language, that the denial of admittance was not its proximate cause, and that, regardless of legalities concerning the respective personal rights of action as between Smith and Layne, Respondent may not be held responsible for an assault which resulted directly from Smith's own provocation.

To support its disclaimer of responsibility for the denials to admittance to the plant, Respondent offered the testimony of Ragland, Gannon, Beitsch, and Friedman. Ragland and Gannon testified that they were inside the plant when the "congregating" occurred, that they saw no one prevent employees from entering the plant, and that no one sought help from them to gain entrance. Gannon admitted that he was in the office on one occasion when there was a gathering outside, but denied hearing anyone call to him. Ragland admitted that two girls (finally identified as Hammers and Morrison) told him that other girls would not let them come in and that he told them he had nothing to do with it (pursuant to instructions to "keep his nose out of" anything that might come up). The latter conversation was apparently part of that in which Yokel played the leading part on June 3 and to which Ragland testified (Yokel was not called). According to Ragland, Hammers was informed that her job had been discontinued and Morrison was told that though there were a few hours work left, he would have to uncrate her machine, which he was willing to do.<sup>8</sup>

Beitsch testified that he also saw the crowds outside but that he saw no one who was prevented from coming to work. On the 26th, the plant opening was delayed for an hour or so (by the fact that no one was reporting to work), and Beitsch went out to the doorway and announced that the doors were open to anyone who wanted to come in to work, and thereafter the employees came in "in dribblets." Beitsch affirmed that one of the girls had called him to report that she could not get into the plant without signing a petition against the Union and testified that he told her that

<sup>8</sup> Ragland made no denial of Carr's conduct in attempting to obtain from Morrison a statement absolving the Company of responsibility for her exclusion from the plant; and the mutually corroborative testimony of Morrison and Hammers is otherwise credited over Ragland's to the extent that conflicts exist.

as far as he was concerned she had to sign nothing to get into work. Beitsch admitted that he never attempted to escort anyone into the plant, explaining that he was physically afraid and would rather quit than to go out into the mob. His intervention in the fight, he explained further, was due to the fact that he lost his head.

Beitsch testified that layoffs totalling 79 were made on May 20, 23, 24, and 25, that 38 more were made on the 26th and 27, and that except for the fact that other employees did not report to work, more layoffs would have been made on the two latter dates. He testified further that he began hearing in May about the feeling in the community regarding the closing of the plant, that the gatherings outside occurred after substantial layoffs had been made, and that some of those laid off were among the demonstrators. He also testified that some of the people outside were not employees of the Company and that he saw shotguns and rifles out there. Beitsch reported on those matters to Friedman, who instructed him to take care of the factory and never mind going outside to intervene in what went on there.

Friedman affirmed those instructions as well as Beitsch's testimony concerning the layoffs. He testified further that following his announcement to the employees on April 29 that the plant would be closed, he began to receive a large number of petitions signed by many citizens, businessmen, and employees which expressed dismay over the loss of the plant and which pledged support and cooperation in the event the Company should reconsider and should resume operations. Friedman also began to receive, continuously, information concerning disturbances at Altamont, including reports of shooting and threats of bombing or dynamiting the plant building, and he accordingly alerted Judge Fults (the administrative officer of Grundy County, from whom Respondent leased the plant) who posted a vigilante or citizens committee to guard the county property. For that reason also Respondent decided to remove from behind the plant building the trailers which it owned and which were occupied by Beitsch, Ragland and Gannon. The trailers were moved on May 30, which date also marked the end of the incidents at the entrance.

#### Concluding Findings

This case is governed by principles which are now well established. Both the Board and the courts agree that there is an affirmative duty imposed upon an employer by the Act to insure that its right to discharge is not delegated or surrendered to any union or antiunion group, and that an employer who *acquiesces* in the exclusion of employees from his plant by such a group will be regarded as having constructively discharged the excluded employees in violation of Section 8(a)(3). *Fred P. Weissman Co.*, 69 NLRB 1002, 1025; *enfd.* 170 F. 2d 952 (C.A. 6); *cert. denied* 336 U.S. 972; *D. D. Newton, an individual d/b/a Newton Brothers Lumber Co.*, 103 NLRB 564, 567; *enfd.* 214 F. 2d 472, 475 (C.A. 5); *N.L.R.B. v. Goodyear Tire & Rubber Company*, 129 F. 2d 661, 664 (C.A. 5); *N.L.R.B. v. Hudson Motor Car Company*, 128 F. 2d 528, 532-533 (C.A. 6); *Detroit Gasket and Manufacturing Company*, 78 NLRB 670, 671; *J. P. Florio & Co. Inc.*, 118 NLRB 753, 754, 756. And as the court held in the *Goodyear Tire* case, *supra*, whether Respondent had, or had not, responsibility for any part of the feeling which existed is beside the mark, for the evidence here plainly established that union adherents were repeatedly excluded, to Respondent's knowledge, except on condition they sign a renunciation of the Union. Difficult as an employer's position may be under such circumstances, his duty requires him to resist the domination of his managerial prerogative to employ, whether manifested by or against a union faction. *Id.*, and see also *Majestic Metal Specialties, Inc.*, 92 NLRB 1854, 1862.

No such resistance was shown here. Instead, Respondent delegated to Judge Fults and the citizens committee the job of guarding the premises and surrendered to the antiunion faction of employees the exercise of its right and its duty to employ. Statements by Beitsch and other foremen that employees were free to come in without signing were meaningless gestures, for subsequent attempts were consistently met with renewed demands and further denials of entrance.

Respondent's defenses that the union activity and the "feeling" and "disturbances" in the community followed the announcement that the plant would be closed are also wide of the mark. The Act imposes no limitation on the exercise of the rights guaranteed by Section 7 because of the extent or the length of the operations involved. Neither do such facts license an employer to commit, nor immunize him from the commission of, unfair labor practices.

Beitsch's alleged fears of danger (in excusing his failure to help employees to gain entrance) were both exaggerated and wide of the mark. Not only was the presence of Judge Fults and his citizens committee insurance against danger to Respondent's supervisory staff—as attested by Carr's activities outside the plant and by the fact that Beitsch, Ragland, Gannon, and their families lived in trailers a few

feet from the rear entrance—but the only evidence of force or coercion as regarded admission to the plant was that which the antiunion group was exerting against the union adherents at the employee entrance. Respondent could plainly have ended that; it could not escape its legal duty to do so.

It is, therefore, concluded and found on the entire evidence that by condoning and ratifying the conduct of the antiunion faction in denying admittance to the plant to Mary Anderson, Jimmy Hammers, Shirley Meeks, Pauline Morrison, Mary Smith, Sally Burrows, Willie Kate Mott, and Peggy Young because they refused to sign a statement renunciatory of the Union, Respondent constructively discharged said employees and thereby engaged in discrimination to discourage membership in the Union in violation of Section 8(a)(3) of the Act.

The dates of the above discharges are found to be the dates of the first exclusion of the individual employee, i.e., Anderson, Hammers, Meeks, Morrison, and Smith on May 26, and Burrows, Motts, and Young on May 27. Subsequent statements made by Beitsch in some cases that the employees were free to enter the plant did not, in the light of repeated subsequent exclusions, constitute valid offers of reinstatement. That finding applies to Mary Anderson to whom Beitsch offered no protection on May 27, particularly since the exclusions continued on the 30th. Yokel's interview with Hammers and Morrison on June 3 also did not constitute a valid offer of reinstatement. Work was available for one or both of them, and Yokel's final decision to give them separation slips followed Morrison's refusal to give a signed statement absolving the Company of knowledge of, and responsibility for, their exclusion from the plant.

### III. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action of the type conventionally ordered in such cases as provided under Recommendations, below, which I find necessary to remedy and to remove the effects of the unfair labor practices and to effectuate the policies of the Act.

It will be recommended that backpay shall run from the date of the constructive discharges as herein found to the date of the plant closing on June 13, 1960. As the present record does not disclose on what dates the discriminatees would have been reached for layoff but for the discrimination against them, the establishment of such dates is a matter which must necessarily be undertaken at the complaint stage of this proceeding. In cases where it is impossible to establish when the layoff would have been made had the discrimination not occurred, the backpay shall run up to and including June 13.

The recommendations as to offers of reinstatement in the event plant operations should be resumed in the future, in Altamont or elsewhere, comport with the Board's order in *A. M. Andrews Company of Oregon, et al.*, 112 NLRB 626.

In view of the plant closing, the posting of the usual notice to employees would be an obviously futile means of remedying the unfair labor practices. It will therefore be recommended that Respondent publish in *The Chattanooga Times*, a newspaper of general circulation in the area, a signed copy of the notice attached hereto, marked "Appendix," and that Respondent mail signed copies of said notice to all employees who were in its employ on May 10, 1960.

For reasons which are stated in *Consolidated Industries, Inc.*, 108 NLRB 60, 61 and cases there cited, I shall recommend a broad cease and desist order.

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

### CONCLUSIONS OF LAW

1. Region 30, District 50, United Mine Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

2. By encouraging, sanctioning, condoning, and ratifying the circulation of anti-union petitions among, and the solicitation of signatures by its employees during their regular working hours, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

3. By providing an unprovoked assault upon Union Representative Patrick in the presence of employees, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By discharging Mary Anderson, Jimmy Hammers, Shirley Meeks, Pauline Morrison, and Mary Smith on May 26, 1960, and Sally Burrows, Willie Kate Mott, and Peggy Young on May 27, 1960, Respondent engaged in discrimination to dis-

courage membership in the Union thereby engaging in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

5. The aforesaid unfair labor practices having occurred in connection with the operation of Respondent's business as set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and substantially affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

**Jat Transportation Corp., et al. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers, Taxi Drivers and Terminal Employees, Local Union 826, Petitioner.**

*Cases Nos. 2-RC-9948-50, 2-RC-9953-57, 2-RC-9960, 2-RC-9964-66, 2-RC-9968-77, 2-RC-9979-89, 2-RC-9991-93, 2-RC-9995-98, 2-RC-10000-03, 2-RC-10005, 2-RC-10007-08, 2-RC-10013, 2-RC-10015-19, 2-RC-10021-25, 2-RC-10027-28, and 2-RC-10290. April 18, 1961*

**SUPPLEMENTAL DECISION, CERTIFICATIONS, AND DIRECTION**

Pursuant to a Decision, Order, and Direction of Elections issued by the Board on August 23, 1960,<sup>1</sup> elections by secret ballot were conducted on September 13 through September 16, 1960, under the direction and the supervision of the Regional Director for the Second Region among the employees in the appropriate units. Upon the conclusion of the elections the parties were furnished with tallies of ballots which showed that of the 59 directed elections, listed in Appendix A, attached to the Regional Director's report, in 57 of the elections the Unions involved did not receive a majority of the valid ballots cast, and that in 2 elections a participating union received a majority of the valid ballots cast. In the remaining five elections as indicated on pages 4, 6, 7, 8, and 11 of the Regional Director's report, the results were not conclusive, as the challenged ballots were determinative of the election. The Petitioner filed timely objections to conduct affecting the results and the conduct of the elections.<sup>2</sup>

In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation of both the challenges and

<sup>1</sup> 128 NLRB 780.

<sup>2</sup> In a stipulation approved by the Board on January 3, 1961, the Petitioner withdrew its objections in the *Dee Bee Garage Corp., et al.*, Case No. 2-RC-9954, one of the above-mentioned five elections in which the challenged ballots were determinative, and the parties agreed that certain challenged ballots be opened and counted and that a revised tally of ballots be issued. The revised tally of ballots showed that the Petitioner received a majority of the valid ballots cast, and it was certified by the Regional Director as the representative of the employees in the appropriate unit. In the absence of exceptions thereto, the Board adopts the certification as issued by the Regional Director, and hereby severs this case from the instant proceeding.