Alabama Textile Products Corporation *and* Amalgamated Clothing Workers of America, AFL–CIO. Case 15–CA–2780.

April 21, 1967

DECISION AND ORDER

BY CHAIRMAN MCCULLOCH AND MEMBERS BROWN AND JENKINS

On January 24, 1967, Trial Examiner Benjamin B. Lipton issued his Decision in the above-entitled proceeding, finding that Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed, as set forth in the attached Trial Examiner's Decision. Thereafter, the Charging Party filed exceptions to the Decision and a supporting brief and the Respondent filed an answering brief to the Charging Party's exceptions and brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

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 Trial Examiner's Decision, the exceptions, the brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[1]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and orders that the complaint herein be, and it hereby is, dismissed in its entirety.

[1] In affirming the Trial Examiner's dismissal of the allegation that employee Knighten was discharged in violation of Section 8(a)(3), we do not adopt his finding that a supervisor's awareness of her planned attendance at a union meeting was insufficient to impute to Respondent knowledge that she had engaged in union activity

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

BENJAMIN B. LIPTON, Trial Examiner: Hearing in this proceeding was held in Andalusia, Alabama, on October 6, 1966, upon charges filed by the Union on February 9 and 14, 1966, and a complaint issued by the General Counsel on June 23, 1966, alleging that Respondent discharged Inez C. Knighten in violation of Section 8(a)(3) and committed independent violations of Section 8(a)(1) of the Act. All parties at the hearing were afforded full opportunity to present relevant evidence, examine and cross-examine witnesses, and argue orally on the record. Careful consideration has been given to the briefs submitted by the General Counsel, Respondent, and Charging Party.

Upon the entire record in the case,[1] and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is engaged in the manufacture and nonretail sale of shirts and related products at Brantley, Alabama, the sole plant involved in this proceeding. During the year preceding issuance of the complaint, Respondent had a direct outflow in interstate commerce of goods and products valued in excess of $50,000. It is admitted, and I find, that Respondent is engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Amalgamated Clothing Workers of America, AFL–CIO, herein called the Charging Party or the Union, is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

About October 21, 1965,[2] the Union initiated a campaign to organize the Brantley plant, and a committee of employees was established to solicit union authorization cards. Theretofore, a collective-bargaining contract had been consummated with the Union covering the employees at Respondent's main plant at Andalusia, Alabama, some 28 miles from Brantley. About 150 persons, including supervisors, are employed at the Brantley plant.

B. *Knighten's Union Activities*

The alleged discriminatee, Knighten, testified that on October 28, at her work station, she remarked to Myrtle Huggins that she "was going to join the Ku Klux Klan tonight, and the Union tomorrow." She noticed at the time that Guy G. Carmichael, Respondent's plant manager, was standing 4–5 feet away, and although she was not looking at Carmichael, "it was possible that he could have" heard her.[3] The next morning, October 29, she signed a union card brought to her by Lois Henegan. On November 3, she began attending weekly union meetings held in Opp and Elba, Alabama, and thereafter gave out union cards in the ladies' room at the plant before work and at lunch. After her discharge, occurring on December 6, she had two union meetings at her home.

[1] Without opposition, the General Counsel's motion to correct the official transcript in minor respects is hereby granted.

[2] All dates are in 1965, unless otherwise specified

[3] Under the circumstances, Carmichael is credited that he did not hear any such conversation

C. *Alleged Interference and Coercion*

Martha Smith testified that, in late October or early November, Supervisor Barbara Johnson told her that "a girl" had informed Johnson that Smith had asked this "girl" to sign a union card. The remark was made in the course of a friendly and casual conversation otherwise unrelated to the Union. Johnson testified that she never spoke with Smith concerning the Union or union cards.

All the remaining testimony to substantiate the Section 8(a)(1) aspect of the complaint was adduced by Knighten, as follows:

Between October 21 and her discharge, she had discussions with her immediate supervisor, Ruth Kelly, about "the possibility of the plant going Union." (a) In the latter part of October, Kelly asked her what she thought "about the company going Union," and why she did not invite Kelly to a meeting. She replied that she did not know "we had had a meeting, and when we did," she would let Kelly know. (b) About November 10, Kelly asked Knighten if she thought she would attend "these meetings." Knighten said she "had planned to," and was going to learn more about the Union. However, Knighten flatly testified that Kelly never asked her what went on at the union meetings.[4] (c) A few days before her discharge, she and Kelly were "just casually" talking about "the number of people in the shop that had joined it, and the possibility that there were more in the shirts than there was in the jackets that had signed union cards." Kelly asked her if she thought the shop would go Union, and remarked that she wished that "the shirt department was as loyal as the jacket department."

Kelly testified that she did not know Knighten was taking any part in the Union. She related the extent of their conversations. On one occasion,[5] responding to Knighten's question, Kelly said she "didn't know anything about the union except back in the 1940's when they tried to organize them." Knighten indicated that she had some information about the union, a "book," containing a contract of the Glass Blowers Association from Montgomery, Alabama. Knighten said she was going to read it, and offered in secrecy to let Kelly see it. Two or three weeks later, Knighten handed Kelly the book, which she took home to read. The next morning she returned the book, commenting that she did not understand much about it. Knighten then remarked, "From what I can get out of it, we've got more benefits without the union." In the second week of November, Kelly overheard Knighten say she was going somewhere that night, and asked her where she was going. Knighten said, "I'm going to a union meeting, don't you want to go?" Kelly replied she had not been invited, and indicated she would not go in any event. Kelly denied having any discussion with Knighten concerning the shirt department being more loyal then the jacket department, and averred she had no knowledge of the union activities in either department.

Knighten further testified that Grace Gibson, head supervisor over shirts, "made the same remarks" on the subject of the Union as did Kelly. (a) Between November 10 and 17, Gibson said she wished "shirts were as loyal to the company as jackets was," and asked her whether she thought "they would go Union." Knighten answered that she did not know. (b) On a subsequent occasion,[6] the same conversation was repeated (as above), with the additional comment by Gibson that "she was surprised that some of the ones she knew had joined the Union."[7] (c) Sometime after November 10, Gibson asked her if she had gone to the union meeting with (Maturia) Johnson, and she responded negatively.

Gibson in detail denied each of the foregoing items of testimony, and any discussion whatsoever with Knighten concerning the Union. Through Gibson, Respondent referred to a company policy, in effect "for many years," which was publicized in the employees' job manual, *viz:*

UNION ACTIVITY

> Company Policy U–2: The laws of the United States and the State of Alabama provide that any person is free to join or not to join a labor organization and in the exercise of that freedom they shall be free from threats, coercion or intimidation. This also applies to your right to freely come and go to and from your work at all times without being molested or bothered by anyone. Any violation of the above should be reported to a law enforcement officer or to the Industrial Relations Department.

Conclusions

Even assuming that the conversation occurred as related by Smith, there appears no support for the allegation in the complaint that Supervisor Johnson "accused" Smith of requesting an employee to sign a union card, and I find, in all the circumstances, no basis on any other ground for drawing an inference of coercion in Johnson's statement.

In the complaint, six paragraphs allege violations by Supervisor Kelly. Of these, five must fall by reason of complete failure of support in Knighten's own testimony. The remaining allegation is that, on October 10, Kelly "asked an employee why the employee had not invited her to a union meeting."[8] With no implication that such an inquiry, even if made, would constitute coercion, I accept as the more plausible Kelly's account of the conversation, which plainly shows an absence of violative conduct. Furthermore, it appears to me improbable and unreliable that Knighten attributed identical utterances to Kelly and Gibson, especially as her testimony is also inconsistent with the specifications of the complaint as to both these supervisors. In these particulars, it is at least evident that her testimony is seriously confused. More specifically, I am constrained to credit the firm and explicit disavowals of Kelly and Gibson, concerning the statements of comparative loyalty between the shirt and jacket departments; the expression of surprise "at who had signed union cards"; and the soliciting of Knighten's opinion as to whether the Company was going Union.[9] In light of the above disposition, the lack of evidence of union

[4] The complaint contains four separate allegations that on November 3, 10, 17, and 24, Supervisor Kelly "requested an employee to disclose what went on at a union meeting"

[5] According to Knighten, the incident took place before the union campaign started at Brantley

[6] On cross-examination, Knighten was "positive" that this conversation occurred on December 3, the Friday before her discharge Other evidence unquestionably shows that Knighten was absent on December 3

[7] The latter statement is alleged in the complaint as to both Gibson and Kelly However, Knighten gave no such testimony as to Kelly

[8] Apparently, though not explicated at the hearing or in his brief, the General Counsel's theory is that of unlawful interrogation

[9] Cf *Bourne Co* v *N L R B*, 332 F 2d 47 (C A 2).

animus, and Gibson's contrary testimony, I similarly dismiss the remaining allegation that Gibson asked Knighten if she had gone to the November 10 meeting with Johnson.

D. *The Discharge*

Knighten was employed as an operator by Respondent in 1941. Her first job was to sew top collar and back pockets on pants. Upon her return from maternity leave in 1947, she was assigned to sewing pockets on shirts. Following another maternity absence, in March 1956, she was assigned to a newly reorganized[10] "attach collar" section of the shirt department. She continued on this job until her discharge on December 6, 1965.[11]

Incompetence was stated as the reason for discharge on the form termination notice which was given to Knighten. Plant Manager Carmichael, who made the decision, testified that the grounds upon which he relied were: her inferior production ("the lowest operator in the plant among the experienced operators," except for those accorded a physical handicap permit); the poor quality of her work; and her "attitude toward work" (e.g., her alleged use of profane and abusive language when examiners returned work to her for repair).

During 1965, there were employed in the attached collar section as many as 13 operators, including trainees,[12] and as few as 8 operators, reached immediately after Knighten's discharge.[13] They were paid on a piece-rate basis established as a result of timestudies. In 1965, for example, they had to produce 46 dozen units a day to earn their "base rate" of $1.46 an hour, and some 40 dozen units to earn the equivalent of Federal minimum wage of $1.25 paid by Respondent. Operators with an average production of less than 40 units a day were recorded for the pay period in the classification of "make up."[14] From September 1, 1963, to December 6, 1965, Respondent hired 18 new operators, and severed from the payroll 17 operators, of whom 3 were terminated for "make up," i.e., Laura Grant in October 1963; Linda Odum Grantham in August 1965, and Inez Knighten in December 1965.[15]

Since 1963, when the minimum wage was raised to $1.25 an hour, Knighten was continuously in "make up."[16] From 1961 to 1963, she was in this category "most of the time." However, the record indicates, for example, that in the year 1965 all operators were at some time in "make up" in varying degrees (as shown in the attached chart, Appendix A).

Knighten's own testimony discloses the following: She never failed to make her production quotas on her other jobs before she was assigned (after returning from leave) to "attach collars." She was awarded silver dollars for good production in her sewing work on pants. (By 1950, Respondent was no longer making pants.)[17] At times (which she did not specify) when a machine was vacant, she "begged" to be returned to her former duties at sewing pockets, but was told that she was needed more on "attach collars."[18] Her supervisors spoke to her "constantly" concerning her failure to meet production in attaching collars—about every 2 weeks when she was in "make up," and she was given many verbal warnings of discharge.[19] Such criticism became "much worse" beginning about the first of September.[20]

On November 3, she received for the first time a written letter of warning signed by Guy C. Carmichael, "plant superintendent," which was a standard form used by Respondent. Such letters were given certain other operators, concurrently with Knighten, and at times in the past. The letter stated:

> We are interested in you being successful on your job. Only by having successful workers can we compete and keep jobs for people. Your success and the company's success depend upon individuals who can meet production and quality standards required by our customers.
>
> Our records show that your production is bad and does not meet these standards. We are counting on you to improve this condition. However, if it is impossible for you to improve, it would be necessary to separate you from the payroll of this company.
>
> We feel sure that you will do your best.

Knighten refused to take the letter handed to her by Head Supervisor Gibson, and it was left on the table.[21] Knighten said she "could not do it" (make production).

On November 10,[22] Plant Manager Carmichael had prepared a schedule of Knighten's production performance since November 4, 1964, with projected goals for her to achieve in the forthcoming payroll periods. Under Carmichael's instruction, Kelly gave Knighten this "progress chart" and told her in substance that if she did not meet these projected goals, "the company would not

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[10] Previously there were two separate operations of "running on" and "attaching collars" on shirts

[11] From August until November 1962, Knighten was absent because of illness

[12] The training period was designated as 320 hours, or about 8 full weeks

[13] Two different sewing operations were performed in the attach collar section Six employees, including Knighten, worked exclusively on "banded" collars for dress shirts, two employees, requiring special training, worked on "convertible" collars for sport shirts, and one employee interchanged in both operations

[14] Attached hereto as Appendix A is a chart showing the named operators and their average hourly earnings from January 1, 1965, through February 9, 1966 (Resp Exh. 2A)

[15] The record also reflects that in other divisions of the plant and at other company plants, employees had been discharged for poor production

[16] The same "make up" level of 40 dozen units a day was unchanged at least since 1956, despite increases in the minimum wage. In November 1965, all operators received a wage increase or "add on" of 5 cents an hour, which had the effect of reducing by that amount the production required of them to stay out of "make up."

[17] It is appropriate here to indicate my view that the character of Knighten's work before 1956, upon which the General Counsel places substantial reliance, must realistically be regarded as "ancient history" Certainly, it is sufficient, on questions concerning Knighten's competence, to consider her performance over the past 9 years

[18] Plant Manager Carmichael testified that Knighten requested a transfer once "3 to 5 years back, and one time since then," and that she was not transferred because a lot of money was spent training her in collar attachment, where she was then needed, while she was not needed on her "old job"

[19] Supervisor Kelly testified that she repeatedly offered assistance to Knighten "to help her make production," but Knighten would always say there is nothing that Kelly could do

[20] Prior to the advent of the Union at Brantley

[21] According to Supervisor Kelly, who was then present, Knighten "threw it down on the table and said that she didn't want it." Knighten testified that she knew what it was, that she had previously seen "some of them."

[22] Carmichael and Gibson established this date

go along with her." In pertinent part, the chart shows the following:

HOURLY AVERAGE AND PROGRESS CHART

No. & Name 9080 INEZ G. KNIGHTEN

Dept. or Plant Brantley

Date	Hours	Earned	Hourly Average	Make up	Accumulated Hours	Quota
Nov 3 1965	70[2]	76.32	1.08	11.81		Bad
Nov 17 1965	68[2]	79.42	1.16	6.21	1.16	Bad
Dec 1 1965	71[2]	79.33	1.11	10.05	1.22	Bad
Dec 15 1965					1.30	
					1.36	
					1.42	
					1.45	

Carmichael and Kelly testified that it would have been sufficient under the progress chart for Knighten to have improved her earnings to $1.25 (i.e., to stay out of "make up") and she would have been retained.[23] In the past, Respondent used the above-quoted form, particularly in the "accumulated hours" column, only with respect to trainees. According to Gibson, it was adopted as a standard procedure for the regular operators since November 1965; theretofore, these operators were orally given similar projects on a "curve" basis to induce improvement in their production.

As of November 3, when Knighten was given the warning letter, her average hourly earnings were shown as $1.08.[24] In the following payroll period, ending November 17, she improved her production to $1.16, thereby meeting the figure projected in the progress chart, above. However, in the next period, ending December 1, she receded to $1.11. Carmichael then decided to discharge her as of Friday, December 3, and her supervisors were so instructed. As earlier noted, Knighten was absent on December 3. On Monday, December 6, toward the end of the day, Kelly told Knighten that Carmichael wanted to see her in the conference room. Knighten refused to go. Shortly thereafter, she was called in by Head Supervisor Gibson and given a formal termination notice indicating she was dismissed for "incompetence." Gibson invited her to make a statement on the termination form, but Knighten declined.[25]

Significant in the record are evaluation reports made out by Supervisor Kelly reflecting on a daily basis the work performance and conduct of Knighten since January 1965. These reports, which are regularly kept for all employees, utilize a numerical code system together with explicit comment in evaluating the employees' production, quality, attendance, and "other" conduct.[26] Knighten's production was rated as "bad" for every month of 1965. Her work quality was rated as "bad" for 8 months and "poor" for 2 months—in that the amount of rejected work returned to her "exceeded repair quota," as specified in the reports.

Pertaining to the issue of Knighten's use of "profane and abusive language," her evaluation reports show the following notations: on July 22—"Temper tantrum about being checked out"; on September 7—"Profane language about bad quality—Disturbs other people"; and on October 5—"Abusive language to Examiners (2)—She cursed Lurline Gibson and Mary McNeal because they sent bad work back to be repaired. To Lurline: Any dam[n] Fool can push the collar full, after this remark she cursed." Concerning the July incident, Supervisor Kelly testified that when she told Knighten she was going to be checked out the next day,[27] Knighten went into a tantrum "cursed and stomped and roared until she was outside the building." In September, after Knighten was given back "a bundle of repairs," she got "real mad," to the extent that the other employees told Kelly they were "upset and disturbed" over Knighten's manner and language. As to the October occurrence, Supervisor Gibson and another examiner had sent back to Knighten "bad work to be repaired," and "she just cursed both of them out at the same time, including me [Kelly] too,—using vulgar language, profane language, God's name in vain." Carmichael testified that he spoke to Knighten immediately after the event, and she "flatly denied it." On the stand, Knighten denied only that she "cursed them," admitting that she "might have made a few remarks," but could not recall what she said. The apparent conflict may merely involve a difference in subjective definition of what constitutes profanity or cursing. In any case, I credit the account given by Kelly, and also find that such conduct by Knighten, particularly in view of its recency, entered into Carmichael's decision to discharge her, as he attested.

Carmichael directly testified as to the reason he did not previously discharge Knighten, whose production record was consistently "bad" since 1963. At the "old plant" in Brantley, Respondent's overall production requirements were about 1,000 dozens (shirts) a week. When the "new plant" was constructed and occupied in June 1963, there were some operators "that were bad," but Respondent started building toward an ultimate goal of 1,500 dozen per week. Some substandard employees were allowed to stay on, but Respondent knew it "would surely have to let them go," if they did not improve. At the time Knighten was discharged, he had 8 experienced operators in order "to take action toward straightening things up." In alleged justification of the discharge action, Respondent introduced into evidence data showing a marked improvement in the productivity of virtually all the experienced operators from December 1, 1965, through July 27, 1966.[28] Carmichael also plausibly explained at some length (which need not here be fully detailed) his evaluation of the other "attach collar" operators. Betty Sue Howell, in particular, is alleged by the General Counsel as having a production record inferior to that of Knighten. The question is at best arguable.[29] As

[23] Knighten did not testify to the substance of the conversation when she was given the progress chart by Kelly, and it does not appear whether she was given to or did understand that she would not be discharged if she improved her earnings to the level of $1 25

[24] See Appendix A for comparison with the other operators

[25] The form contains a space for the employee to indicate disagreement with the Company's stated reason for termination, so that the "employee may protect rights to employment compensation "

[26] In Appendix B hereto are examples of such reports on Knighten for the months of January and July 1965

[27] Presumably a temporary suspension

[28] See chart in Appendix C hereto

[29] Cf Appendices A and C

Carmichael testified, Howell was warned about low production; she complained of a back ailment; she requested and was granted a leave of absence in mid-July 1965; and she returned to work in mid-November with a certificate from her doctor that "her health was okay." Carmichael stated that "action" would have been taken if, upon her return, Howell had not been able to pick up production.

In February 1965, Knighten filed an application with Respondent to obtain a handicap permit, under regulations of the U.S. Department of Labor, Wage and Hour Division, containing a physician's verification that she had a condition of osteoarthritis and was 25 percent disabled from performing her type of work. With such permit, she could be paid less than the minimum wage, and the level of her "make up" accordingly reduced. Such a handicap permit was held by Laura Holliday, an operator in "attach collar" whose "make up" level was lowered to $1.12, as compared with $1.25 for the other operators.[30] However, Knighten's application was rejected in view of Respondent's written policy that no department would be allowed to have more than 5 percent of employees on handicap status at any one time. While Carmichael testified in effect that an employee's physical condition is taken into consideration by Respondent, he made it clear that this was only in the manner consistent with the treatment of Howell, as described above. Apart from the filing of her application for handicap permit in 1965, it does not appear that Knighten sought to advance the fact of her physical disability as reason for her poor work performance,[31] regarding which she was continually warned. In the circumstances of this record, it cannot be held that Carmichael's judgment was arbitrary in permitting Howell's return in November while terminating Knighten shortly thereafter.

General Counsel further points to the testimony of Martha Smith, that she was discharged in 1958 "for being in make up," and yet was recalled by Respondent in 1963. Suffice it to state that Smith was not in the "attach collar" operation here in question; that this evidence relating to matters in 1958 and 1963 is too remote; and that the subject of Smith's work experience was insufficiently litigated.

Two additional items may be noted of postdischarge events, although neither is of compelling weight. (1) On February 2 or 3, 1966, counsel for the Union, James Graham, approached Respondent's attorneys and requested a publicized disavowal that Knighten was discharged for reasons relating to the Union. Such a notice, in evidence, was promptly posted by Respondent indicating that the discharge was for "poor production" and not for union activities. (2) In latter January or early February, Merril Petty, the Union's plant chairman at the Company's Andalusia plant, had a series of discussions with J. A. Thompson, executive vice president of Respondent, concerning Knighten's discharge. At the initial meeting, Petty indicated he would personally undertake an investigation. At the next conference, he reported that he had talked to Knighten and she said that "the supervisors had been asking her questions about the Union. They asked her how many was at the meeting."[32] He therefore felt that she had been discharged for that reason. Thompson then stated that he would investigate and requested Petty to wait before filing any charges. A few days later, Thompson called in Petty and gave him a handwritten analysis of the comparative work performance for each operator in "attach collar." In pertinent summary, he said that the supervisors denied the alleged questioning of Knighten, that she had in fact been terminated because of her production record, and that "it would be poor business to keep her with makeup of that kind."[33]

Conclusions

The facts as above related and found perforce require a dismissal of the alleged violation. Essentially the General Counsel contends that for years Respondent tolerated the "make up" performance of Knighten and of other employees, and seized upon this ground as a pretext to terminate Knighten when the Union commenced organizing the plant and Knighten was in the "forefront" of these activities. However, the record does not bear out such contention. It cannot quite be said that Respondent "tolerated" or accepted as normal the long-existing makeup condition in the attach collar section, as the evidence shows a consistently reproving attitude of Respondent toward experienced operators who were overlong in "make up," including certain discharges which were made for this reason in the past. Nor is a company committed indefinitely to continue inefficient operations or operators, even though long tolerated. Respondent here credibly established that in the fall of 1965, it was in a position "to take action toward straightening things up" in the attach collar section, and it apparently succeeded in some degree. By Knighten's own admission, the criticism of her work became more concentrated and "much worse" at the beginning of September, before the Union appeared on the scene. In terminating Knighten as having the lowest productivity and the least potential for improvement, Respondent's own assessment cannot be put aside as clearly erroneous. And the evidence provides no substantial basis for holding that she was disparately selected as against the other operators. Furthermore, it is not at all unreasonable that Respondent took into account the more recent conduct of Knighten in her use of offensive language to supervisors and examiners, her displays of temper, and her uncooperativeness. Perhaps there were courses, other than discharge, which were feasibly and economically open to Respondent in this instance of an employee of 25 years' service and one who was handicapped in her particular work by an arthritic disability. From the standpoint of the evidence, it was not shown that work was available elsewhere in the plant for which Knighten was qualified at the time of her discharge.

The entire issue turns, of course, on whether Respondent's motive for discharging Knighten was in whole or substantial part related to her union activity, with

[30] In other respects, her piece rate and earnings were on the same basis as the others

[31] Knighten testified only that she was never able again to make production after her hospitalization in 1962 Kelly recalled one instance when Knighten mentioned her health during a discussion of her production, but she did not say "what was wrong with her "

[32] Knighten herself gave contrary testimony, as earlier found in the disposition of the Section 8(a)(1) issues herein.

[33] Petty also stressed that Knighten had "made good" in other operations (i.e , prior to 1956) and should have been transferred back to her old job when there were openings. Thompson explained that she could not then have been released from her job in view of Respondent's production needs in "attach collar" and the fact that there were no trainees in that operation at the time

the burden of proof on the General Counsel. Her union activity, previously described herein, was not in my opinion of such overt and pronounced character as to mark her as a likely candidate for discrimination and discouragement of union membership, if Respondent were so minded. Nor am I able to find that Respondent had knowledge of Knighten's union activity, upon consideration of the actual evidence thereon, *supra*,[34] and of all the relevant factors, including the timing and circumstances of her discharge, and the general absence of union animus on Respondent's part. But in any case, even if Respondent were fully aware of Knighten's union activity, I would and do conclude that General Counsel failed to establish that Knighten was terminated without valid cause and for unlawfully discriminatory reasons. Accordingly, the 8(a)(3) allegation is not sustained.[35]

[34] While Supervisor Kelly was aware that Knighten was going to a union meeting the second week in November (after Knighten had been given the warning letter), this evidence alone is not enough in the circumstances to impute to Respondent knowledge that she was active in behalf of the Union.

[35] See, e g , *N L.R.B* v *T A McGahey, d/b/a Columbus Marble Works*, 233 F 2d 406, 412 (C A. 5), *Jackanic's Reinforcing-Erectors, Inc.*, 158 NLRB 99

Conclusions of Law

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The allegations of the complaint that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act have not been supported by substantial evidence.

RECOMMENDED ORDER

It is recommended that the complaint be dismissed in its entirety.

APPENDIX A

Inez Knighten

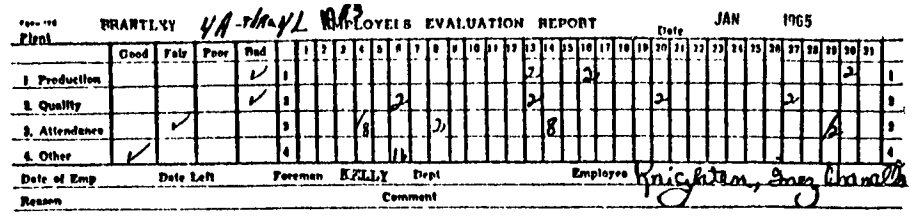
1965

"ATTach Collars"

* For the week or weeks in the Payroll period denoted by the asterisk, the operator exceeded the Maximum allowed Daily Reppin.

	1-13	1-27	2-10	2-24	3-10	3-24	4-7	4-21	5-5	5-19	6-2	6-16	6-30	7-14	7-28	8-11	8-25	9-8	9-22	10-6	10-20	11-3	11-17	12-1	12-15	12-29	1-12	1-26	2-9
Jamie L. Henegan	139	143	140	144	147	151	147	145	146	141	145	137	130	136	136	135	139	135	138	139	141	148	142	141	144	144	148	143	143
Betty L. Odum																													
Bobbie Lee Cook		74	93	99	108	103	104	104	94	100	104	95	102	108	123	107	90	107											
Pauline (Mount) Parker																													
Frances Nichols	97	94	95	97	104	108	98	97	90	101	83	89	96	110	121	115	105	102	104	108									
Betty Sue Howell	113	125	108	106	109	129	123	102	102	111	102	126	102	90									119	126	139	149	133	131	122
Myrtle Hall Huggins	127	128	128	132	129	137	128	130	127	130	130	109	119	107					109	120	122	128	130	130	135	132	139	136	133
Katherine (Bartwell) Nelson	120	116	111	116									93	107	118	113	113	112	117	122	123	129	126	123	143	143	140	138	138
Mamie Hatteway					15	25	35	52	58	49	63	62	88	82	96	111	105	92	115	120	126	129	127	136	105	142	132	145	153
Voncile Halstead																													
Inez Knighten	105	115	103	112	114	116	106	117	120	120	118	102	100	114	107	120	109	91	106	102	99	106	116	114	82				
Mary Jo Fazier							15	24	33																				
Trainee																													
Bernell Gatlin													145	143	146	145	116	95	99	85	110	110	120	119	111	117	112	116	116
Naoma Harrelson													145	141	109	145	79	86	110	111	116	121	115	133	147	140	139	138	142
Linda Odum	162	59	175	162	170	182	174	176	171	182	177	181	191	193	190														
Handicap Permit																													
Laura G Holliday	113	114	113	113	113	113	102	119	111	113	90	96	93	109	113	112	113	103	113	112	113	117	117	119	117	117	116	119	115
Beth Clark Capps	99	96																											
Margaret A Richards	171	80																											
Grace Morlan	173	47	78	83																									
Dean Miller	129	35	47	24																									

APPENDIX B



Plant BRANTLEY EMPLOYEES EVALUATION REPORT Date JAN 1965

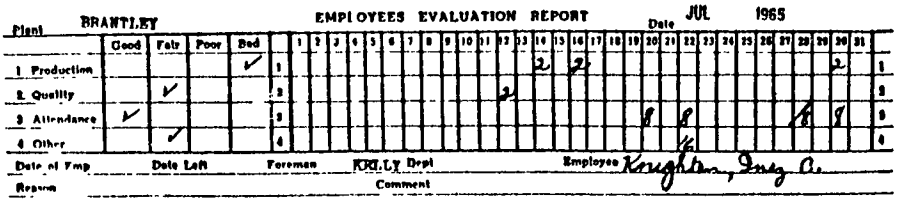
	Good	Fair	Poor	Bad
1 Production				✓
2 Quality				✓
3 Attendance		✓		
4 Other	✓			

Date of Emp — Date Left — Foreman KELLY Dept — Employee Knighton, Inez Chappell

Reason — Comment

2-1-16 Period ending 6/16 earned $1.02 with $15.79 make up.
2-1-30 Period ending 6/30 earned $1.10 with $ 9.98 make up.
2-1-14 Period ending 7/14 earned $1.14 with $ 3.78 make up.
2-2-14 Exceeded repair quota for week ending 7/14 with 68 pieces, quota 54 pieces.
13-4-22 Temper tantrum about being checked out.

** Under the code, 16 signifies the kind of conduct; 4 the category on the front side of the report; and 6, the date.



Plant BRANTLEY EMPLOYEES EVALUATION REPORT Date JUL 1965

	Good	Fair	Poor	Bad
1 Production				✓
2 Quality		✓		
3 Attendance	✓			
4 Other		✓		

Date of Emp — Date Left — Foreman KELLY Dept — Employee Knighton, Inez C.

Reason — Comment

2-1-16 Period ending 12/16 earned $1.02 per hr. with $18.54 make up.
2-1-30 Period ending 12/30 earned $1.10 per hr. with $3.87 make up.
2-1-13 Period ending 1/13 earned $1.15 per hr. with $6.22 make up.
2-2- 6 Exceeded repair quota for week ending 1/6 with 118 pieces, quota 90 pieces.
2-2-13 Exceeded repair quota for week ending 1/13 with 131 pieces, quota 90 pieces.
2-2-20 Exceeded repair quota for week ending 1/20 with 94 pieces, quota 90 pieces.
2-2-27 Exceeded repair quota for week ending 1/27 with 147 pieces, quota 90 pieces.
16-4-6 Given verbal warning about make up. **

APPENDIX C

Attach Collars	DEC 1 1963	1 1964	DEC 30 1965	JAN 12 1966	JAN 26 1966	FEB 9 1966	FEB 23 1966	MAR 13-14	MAR 23 1966	APR 6	APR 20 1966	MAY 4 1966	MAY 18 1966	JUN 1 1966	JUN 15 1966	JUN 29 1966	JUL 13 1966	JUL 27 1966
Katherine B. Nelson -9007	122	142	143	141	131	131	134	145	135	150	151	145	141	132	126	141	—	142
Mamie R. Hattaway - 9011	131	145	142	137	145	133	142	143	149	145	151	141	144	124	131	125	145	130
Voncile Halstead - 9018						66	17	24	25	23	41	41	—	—	-	—	-	-
Jammie L. Henegan - 9027	141	141	141	142	142	143	146	144	142	151	146	143	142	140	134	134	147	127
Betty Sue Howell - 9048	124	127	99	133	131	133	135	145	141	131	133	124	143	132	121	132	—	-
N.C. 112 Laura G. Holliday - 9119	117	117	117	116	114	115	115	114	115	124	117	117	117	114	114	118	115	117
Myrtle Huggins - 9123	130	131	132	124	131	133	141	147	142	127	140	142	147	131	131	130	133	131
Bernelle Gatlin - 9185	131	115	121	117	113	116	123	113	116	103	109	116	—	—	-	—	-	-
Naoma D. Harrelson - 9204	132	147	145	132	130	142	133	130	132	156	152	141	141	148	134	146	121	145
Betty Gaines - 9040														117	14	21	26	33
Luzell Williams - 9050															24	51	67	59
Madelyn Hall - 9066																		13